

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री अब्राहम पी.जॉर्ज, लेखा सदस्य के समक्ष
[BEFORE SHRI N.R.S.GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.834/CHNY/2017
निर्धारण वर्ष /Assessment year : 2012-13

Shri Sundaram Sanjay
4A, Sriram Apartment,
3,Valmiki street, T.Nagar,
Chennai-600 017.

(PAN:AFJPS1935C)

(अपीलार्थी/Appellant)

Vs. Deputy Commissioner of
Income Tax,
New Corporate Circle (18),
Chennai-600 034.

(प्रत्यर्थी/Respondent)

पीलार्थी की ओर से/ Appellant by : Shri K.S.Balakrishna,Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri V.M.Mahidar, JCIT

सुनवाई की तारीख/Date of Hearing : 19.12.2018
घोषणा की तारीख /Date of Pronouncement : 19.12.2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

In this appeal filed by the assessee it is aggrieved that Assessing Officer made addition of ₹1,63,54,432/- under the head long term capital gains rejecting his contention that the land sold was agricultural in nature.

2. Learned Counsel for the assessee submitted that assessee had sold punja land jointly held by him along with his wife, on 28.12.2011 to one M/s.BGR Boilers Pvt. Ltd. for a consideration of ₹2,00,00,000/-. As per Learned AR, assessee was entitled to 50% share therein.

Contention of the Learned AR was that the said sum received by the assessee was not exigible to capital gains since the land sold was agricultural in nature. According to learned AR, land was located far away from any notified towns. However, according to him, Assessing Officer took a view that assessee could not file any evidence for crop cultivation and expenditure incurred in relation to agricultural operation. According to him, Assessing Officer took a view that land sold was not agricultural. As per Learned AR, addition made by the Assessing Officer was confirmed by learned CIT(A) despite assessee's contention that land was classified as agricultural in revenue records. Contention of the Learned AR was that purchaser M/s.BGR Boilers Pvt.Ltd., never made any attempt for converting the land and land still remained agricultural. According to him, land had coconut trees, teakwood trees and mango trees yielding crop. Further, as per Learned AR, land was at Perivelikkadu Village and it was not a corporation or municipality. Thus, as per Learned AR, land did not fall within the definition of capital asset under clause (iii) of section 2(14) of the Act. Learned AR also placed before us a copy of adangal record, which according to him, clearly proved the land sold to be agricultural in nature. To a question from the Bench, Learned AR fairly agreed that assessee was unable to produce copy of adangal record before the lower authorities. However, according to him, adangal record

in the name of purchaser was produced and this also clearly indicated that land sold was punja land with cultivation.

3. Per contra, learned DR submitted that the land, whether it was situated within local limits of a town committee which had population of more than ten thousand required to be verified. Further according to him, adangal record was not produced by the assessee before the lower authorities.

4. We have perused records and heard the rival contentions. Copy of the sale deed has been placed before us by the assessee at paper book pages 77 to 87. Schedule to the sale deed show that land sold was punja land property lying under survey no. No.202 in Periyavelikkadu Village, Lathur Panchayat Union, Cheyyur Taluk in the District of Kancheepuram. Claim of the assessee is that land was agricultural in nature and did not fall within the definition of capital asset under clause (iii) of section 2(14) of the Act. Assessee claims that adangal record in the name of purchaser was produced before the lower authorities. However, it is an admitted position that adangal record in the name of assessee has been produced for the first time before us. No doubt, this adangal record clearly indicate that there was some cultivation in the land located at survey no.202. However, as mentioned by us, this adangal record was not produced by the assessee before the lower authorities. We also find

that whether the property falls within the limb (a) of clause (iii) to Section 2(14) of the Act has also not been verified by the lower authorities. In the circumstances of the case, we are of the opinion that matter requires fresh look by Assessing Officer. We set aside the orders of the lower authorities and remit the question regarding the nature of the land sold by the assessee and whether it should be excluded from the definition of capital asset under clause (iii) of section 2(14) of the Act, back to the file of the Assessing Officer for fresh consideration.

5. Appeal of the assessee is allowed for statistical purposes.

Order pronounced on Wednesday, the 19th of December, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:- 19th December, 2018.

Somu

Sd/-

(अब्राहम पी.जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|-------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील) /CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |