

आयकर आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2613/Chny/2018
निर्धारण वर्ष /Assessment Year: 2015-16

Shri Deepak N Jain,
No.8, Arunachalam Street,
Sowcarpet, Chennai – 600 079.

Vs. The Income Tax Officer,
Non-Corporate Ward 4(3).
Chennai – 34.

PAN: AJJPD 4900E
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.11.2019

घोषणा की तारीख /Date of Pronouncement

: 28.11.2019

आदेश / O R D E R

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-5, Chennai in ITA No.374/17-18/CIT(A)-5/2017-18 dated 28.06.2018 for the assessment year 2015-16.

2. Shri Deepak N. Jain, the assessee, sold a property for which the value adopted for stamp duty was more than the value declared in the sale deed. Based on this information, the Assessing Officer reopened the assessment and after affording opportunity, adopted the value shown in the sale deed as sale consideration and added the difference sum as his income under the head 'Long Term Capital Gains'. Aggrieved against that order, the assessee filed an appeal before the CIT(A). The Id.CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The Id.AR pleaded that the assessee sold an agricultural land situated at village Gol, Ummedabad for Rs.2,51,000/- on 07.05.2014. However, the registration authorities have adopted the stamp duty value at Rs.21,17,544/-. Though it was pleaded before the Id.CIT(A) that the impugned land is agricultural land at Rajasthan, which is not a capital asset within the meaning of Section 2(14) and hence the assessment made by the Assessing Officer is not correct, the Id.CIT(A) without appreciating the facts and circumstances of the case, has dismissed the appeal and hence, he pleaded that the assessee's appeal be allowed.

4. Per contra, the Id.DR submitted that the nature of land is not examined by the Assessing Officer, as seen from the assessment order. However, the assessee has taken a plea before the Id.CIT(A) that the impugned land is an agricultural land, the facts of which has not been examined. Therefore, he pleaded that the appeal be upheld on the basis of orders of the lower authorities.

5. We heard the rival submissions and gone through the relevant material. Since the nature of the land sold is not examined, we deem it fit to remit this issue back to the Assessing Officer for a fresh examination. The assessee shall lay all materials in support of his contention before the Assessing Officer and comply with the requirements of the Assessing Officer in accordance with law. The Assessing Officer is also free to conduct appropriate enquiry as deemed fit, however, he shall furnish due opportunity to the assessee on the materials etc., to be used against the assessee and on due consideration of the assessee's clarification / explanation shall pass the order in accordance with law.

6. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced in the Court on 28th November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 28th November, 2019

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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