

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष
एवं श्री एम बाला गणेश, लेखा सदस्य

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2621/Chny/2019

निर्धारण वर्ष /Assessment year : 2011-12

The Income Tax Officer,
Non-Corporate Ward-15(5),
Chennai 600 034.

Vs. Shri Varun Gunaseelan,
10,Gandhi Nagar,2nd Main road,
Adyar,Chennai 600 020.

(अपीलार्थी/Appellant)

[PAN AFOPV 5695 K]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Ms.Vijayaprabha,JCIT,D.R
: Mr.R.Pavan Kumar,Advocate

सुनवाई की तारीख/Date of Hearing

: 25.02.2020

घोषणा की तारीख /Date of Pronouncement

: 28.02.2020

आदेश / O R D E R

PER M. BALAGANESH, ACCOUNTANT MEMBER:

This appeal of the Revenue arise out of the order of the Id
Commissioner of Income Tax (Appeals)-15, Chennai, in ITA
No.151/2018-19/C.I.T(A)-15 dated 28.06.2019 for assessment year
2011-12.

2. The Revenue raised the following grounds for our adjudication.

"1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.

2. The Ld. CIT(A) erred in holding that the transfer u/s 2(47) of the Act took place during the previous year relevant to AY 2005-06 as per the sale agreement dated 21-03-2005 between the assessee's father (the seller) and M/s Ragas Educational Society (the purchaser); when in fact the transfer took place only during the previous year relevant to AY 2011-12 when the sale deed dated 09-12-2010 was executed.

2.1. The Ld. CIT(A) erred in considering the sale agreement dated 21-03-2005 as the document on the basis of which the transfer took place when in fact para no.2 of the sale agreement clearly states that the amount of Rs. 6 crores paid by the purchaser was only an advance and hence it is not the final consideration. Further, para no.6 of the sale agreement provides that the seller was required to register the sale of the property with the Registrar within twelve months, but he has failed to do so. Accordingly, this sale agreement cannot be considered as the document for deciding whether or not any transfer of the capital asset took place.

2.2. The Ld. CIT(A) erred in ignoring the fact that survey nos. 203/3B (13.5 cents), 203/8 (5 cents) and 233/2 (34 cents) which were sold by the assessee as per the sale deed dated 09-12-2010 were not included in the sale agreement dated 21-03-2005. Accordingly, the transfer of the capital asset took place as per the sale deed dated 09-12-2010 and hence the resulting Long Term Capital Gain was correctly taxed in AY 2011-12 by the Assessing Officer.

2.3. The Ld. CIT(A) erred in holding that the impugned immovable property was not a capital asset u/s 2(14) of the Act, it being agriculture land, without any finding of fact as to what agricultural activities were being carried out on the said land. The sale deed dated 09-12-2010 does not specify the land to be agriculture land, nor does the sale agreement dated 21-03-2005. Further the tests laid down by the Hon'ble Madras High Court in the case of CIT vs. Shri A. Lalichan in TCA No. 504/2018 to determine whether or not certain land can be regarded as agricultural land for the purposes of section 2(14) of the Act have not been applied by the Ld. CIT(A)."

3. The only effective issue to be decided in this appeal is whether capital gains can be assessed on transfer of lands in the hands of the assessee during the year under consideration in the facts and circumstances of the case.

4. The brief facts of the issue are that the Ld. A.O. reopened the assessment for the assessment year 2011-12 on ground that the assessee had sold two immovable properties for total consideration of ₹.1,46,20,000/- and ₹.68,01,600/- during the year under consideration. Since capital gains were not reported by the assessee and no return of income was filed by the assessee, notice under Section.148 of the Act was issued to the assessee. The reason for reopening of the assessment was duly communicated to the assessee by the A.O. The assessee during the re-assessment proceedings

submitted that he had not sold any property during Financial Year 2010-11 relevant to assessment year 2011-12; that transactions referred in the reasons recorded represent the registration of sale deed made by Power of Attorney of the assessee for certain agricultural lands situated at Uthandi village, which were in the names of the assessee, his father R.Gunaseelan and his brother Karthik Gunaseelan. The Ld. A.R. submitted that these properties were already transferred by them and the possession of the lands were duly handed over by them during March,2005 vide sale agreement dated 21.03.2005 entered into with M/s.Ragas Educational Society. The assessee also submitted that the consideration was duly received by them way back in 2005 pursuant to handing over of the possession of lands to M/s.Ragas Educational Society. The assessee also submitted that Power of attorney was executed by all the three land owners in favour of the third party in earlier years. Accordingly, the assessee submitted that the same tantamounts to part performance of the contract and transfer within the meaning of Section 2(47)(v) of the Act read with section 53A of Transfer of Property Act, 1882. Accordingly, the assessee pleaded that there was no capital gains that would arise in respect of the subject mentioned lands during the year under consideration. The assessee submitted that power of attorney holder had executed registration of sale deed in favour of M/s.Ragas

Educational Society during the Financial Year 2010-11 with Sub-Registrar, Neelangarai. The assessee categorically stated that there was neither any sale of immovable property during this year by him, or his family members, nor receipt of any consideration during the year. The assessee also submitted that the assessee, being a minor during the relevant assessment year 2005-06 i.e. the year in which the agreement of sale was entered into, and accordingly, the agreement was entered into by assessee's father R.Gunaseelan on his own behalf and on behalf of two minor sons. The assessee also furnished the copy of scrutiny assessment order of R.Gunaseelan (assessee's father) framed under Section.143(3) of the Act on 30.11.2017 for the assessment year 2005-06 in support of his contentions.

5. The Ld. A.O. did not agree with the contention of the assessee on the ground that the possession was handed over by the assessee to M/s.Ragas Educational Society in March, 2005 vide sale agreement dated 21.03.2005 is incorrect. Ld. A.O. observed that assessee's father had written a letter to ACIT, Circle-1, Chennai on 23.11.2007 stating that the sale agreement was not proceeded upon, and the assessee along with minor sons had executed a cancellation agreement dated 21.03.2005 wherein the initial agreement dated 31.12.2003 was nullified and cancelled and assessee returned a sum

of ₹.6/- crores together with the liquidation damages of ₹.10 lakhs to M/s.Jaya Educational Trust.

6. The A.O. also observed that the original sale agreement dated 21.03.2005 was executed for 3.935 acres of land at Uthandi village, whereas the sale deed executed on 09.12.2010 for the assessment year 2011-12 was only for 172 cents of vacant land for total consideration of ₹.1,46,20,000/- and 26 cents of vacant land for consideration of ₹.68,01,600/-. The Ld. A.O. also observed that sale deeds of lands executed on 09.12.2010 are not agricultural lands as per the official web site of the Registration Department, Tamilnadu, as the said lands had been described and classified as "House Site" and thereby negated the claim of exemption by the assessee. Accordingly, the Ld. A.O. sought to bring to tax the long term capital gains arising on transfer of subject mentioned land and assessed accordingly. On appeal, learned CIT(A) accepted the contentions of the assessee and accordingly granted relief to the assessee by observing as under:-

"4.3. I have carefully gone through the observation of th A.O. in the assessment order as mentioned above under para 4.1 and the appellant's submission before the CIT(A) under para 4.2

4.3.1. The only issue contested in appeal is against the AO's addition of Long Term Capital Gain(LTCG) of Rs.2.49 Crores. Before dealing with the issue, the background facts are briefly mentioned hereunder:

The appellant, and his father, Dr.R.Gunaseelan and elder brother, Mr.Ka'rthik, sold two land properties to M/s Jaya Educational Trust through a sale agreement dated 3-12-2003. Later, the said sale agreement was cancelled through a cancellation agreement dated 21-3-2005 and another sale agreement dated 21-3-2005 was signed with M/s Ragas Educational Society. As stipulated under Clause-3 of the sale agreement, the possession was handed over and the entire sale consideration of Rs.6 Crores was received. Since the appellant was then a minor, the relevant portion of the appellant's sale consideration was clubbed and declared as per Section 64, in the hands of the appellant's father, Dr.R.Gunaseelan in AY 2005-06. The appellant's father, Dr.R.Gunaseelan filed his Income Tax Return with a mention of the said transaction in his capital account. Dr.R.Gunaseelan's return was selected for scrutiny and the assessment was completed by accepting the returned income in the scrutiny assessment order dated 30-11-2007 for the AY 2005-06.

4.3.2. The observations related to the AO's addition of LTCG of Rs.2.49 Crores are summarized hereunder:

Since the buyer of the aforesaid two land properties registered the sale deed on 9-12-2010, the transfer should be assessed in AY 2011-12. From the sale deed registered, it is inferred that the ownership vested with the appellant till then. Perusal of the website of Tamilnadu Registration Department — TNReginet, shows that the land sold was classified as 'residential' and not an agricultural land. Therefore, the AO adopted the guideline value and treated the land sold as a capital asset and brought to tax Long Term Capital Gain on the ground that the details related to sale deed and break up of indexed cost of acquisition were not given, the AO adopted the purchase price as per the purchase document and worked out Long Term Capital Gain as mentioned above under para 4.1.

4.3.3. Before the CIT(A), the appellant's AR has strongly contended against the AO's addition. The AR's contentions are briefly mentioned below:

In view of supporting documents, "transfer" took place on 21-3-2005 when as per Clause -3 of the sale agreement, the full consideration of Rs.6 Crores was received by the joint owners including the appellant and the possession of the property was handed over to the buyer on the same date. 'Once possession is handed over and full consideration is received, "transfer" as per Section 2(47) r.w. Section 53A of the Transfer of Property Act was concluded, pending registration of the sale at instance of the buyer. Subsequently, on 17-10-2007, the buyer obtained POA(Power of Attorney) the appellant on his attaining majority. The land was in fact, an agricultural land as evidenced from the certificate of Village

Administrative Officer,, purchase and sale documents. When the transfer of land was scrutinized by the then AO in AY 2005-06 in the hands of the appellant's father, Dr.R.Gunaseelan, a detailed written submission dated 12- 11-2007 was made before the AQ on 19-11-2007. Based on the detailed submission, the AO of Dr.R.Gunaseelan accepted his Return of Income in the scrutiny assessment. However, the appellant's AO has ignored the appellant's submission related to the declaration of sale consideration by the appellant's father, Dr.R.Gunaseelan and brushed aside the documents placed before him, without considering the VAO's certificate which referred to the land as an agricultural land. The AO relied on current classification of land as residential based ow registration department's website. After handing over of property, the classification of land was not under the control of the appellant. The AO has not disputed handing over of possession and receipt /of a sale consideration and declaration of sale consideration in AY 2005-06. In view of the above contention and the documents relied on mentioned below, the AR has contended that the transfer of land was concluded in AY 2005-06 and the sale consideration was declared in the hands of the appellant's father, as the appellant was then a minor. The same was also accepted in the scrutiny assessment in the hands of the appellant's father. Therefore, the AO's addition of Long Term Capital Gain on the ground that transfer took place in AY 201 1-12 based on registration of sale by the buyer, is not legally tenable, the AR has argued.

4.3.4. In support of his contention, the AR has furnished the following particulars:

- ' (a) Copy of sale agreement dated 2 1-3-2005.*
- (b) Copy of bank statement evidencing the receipt of sale consideration of Rs.6 Crores in FY 2004-05.*
- (C) Copy of written submission made by Dr.R.Gunaseelan dated 12-11-2007 and 23-11-2007 before the AO during the scrutiny assessment proceedings in his hands in AY 2005-06.*
- (d) Memo of computation of financials of Dr.R.Gunaseelan including the sale consideration of agricultural land.*
- (e) Balance sheet of M/s Ragas Educational Society declaring purchase of the property in AY 2005-06,*
- (f) Copy of confirmation letter from M/s Ragas Educational Society.*
- (g) Copy of VAO Certificate.*

(h) Copy of Power of Attorney dated 17-10-2007 executed by the appellant on attaining majority given to the buyer.

4.3.5. In support of his contention, the AR has relied the following decisions.

(A) Jasbir Singh Sarkaria[2007] (294 ITR 196(AAR))

"Capital Gains — Transaction deemed to be "SALE" — Transaction in which possession of immovable property is allowed to be taken or retained — Possession need not be sole and exclusive possession — Possession enabling exercise of General control of property to make use of it enough — Agricultural land — Development Agreement — Developer having general control and custody of land — Sufficient — Irrevocable Power of Attorney in favour of Developer is the "Transaction" for purposes of Date of Transfer for Capital Gains Tax — Income Tax Act, 1961, ss 2(47)(v), 45 — CBDT Circular No. 495 Dated September 22,1987'.

(B) The Hon'ble ITAT, Chennai in the case of R.Kalanidhi Vs. ITO [2009] 314 ITR (AT) 266 (Chennai) has held as under:

"Capital Gains — Exemption — Transfer — Assessee within three years of purchase entering into Agreement to develop property executing power of Attorney in favour of Developer and handing over of possession of half share in property — Total consideration agreed and vendee allowed to enjoy property for purpose it was taken over — Transfer complete — Exemption liable to be withdrawn — Income Tax Act, 1961, as 54, 2(47)(v) — Transfer of Property Act, 1882, s. 53A".

4.3.6. I have considered both the points of view. I have perused the appellant's contention with supporting documents and the decisions relied on. After examination of the appellant's documents, I am convinced that "transfer" of the two land properties was concluded on the date of sale agreement dated 21-3-2005 as per Section 2(47) r.w.s. 53A of Transfer of Property Act and therefore, the land owners were correct in declaring the sale in AY 2005-06. The AO's observation that the transfer took place in AY 2011- 12 merely based on the registration of sale deed by the buyer, is not an acceptable legal position. In view of the decisions relied on by the appellant, the appellant has proved with supporting documents that the land sold in AY 2005-06 was in fact an agricultural land based on a certificate from VAO and the property documents. The AO's rejection of the appellant's claim of agricultural land by merely referring to the Registration Department's website is not acceptable as classification of land, six years later is not under the control of the appellant who

handed over the property in AY 2005-06. It is pertinent to note that the AO accepted the declaration of sale consideration of Dr.R.Gunaseelan, the appellant's father including the share of the appellant, in the scrutiny assessment for AY 2005-06. The balance sheet of the buyer, M/s Ragas Educational Society in AY 2005-06 clearly shows that even the buyer has declared the purchase of property which conclusively proves that the transfer was concluded in AY 2005-06. The appellant has also executed Power of Attorney on 17-10-2007 in favour of the buyer on his attaining majority which again proves that the transfer was already concluded in AY 2005-06. From the discussion in the foregoing paras, I have come to the following conclusion:

(a) 'Transfer' of land was concluded in AY 2005-06 as per Section 2(24) r.w. Section 53A of Transfer of Property Act.

(b) The appellant's father, Dr.R.Gunaseelan had declared the sale consideration of land in AY 2005-06 which has been accepted by the AO in his assessment order which proves that the relevant assessment year was in fact AY 2005-06.

(c) Based on supporting documents, the appellant has proved that the land sold was in fact an agricultural land and the same has been accepted by the AO in AY 2005-06 in the hands of the appellant's father, Dr.R.Gunaseelan.

4.3.7. From the above remarks, decisions relied on by the AR and the supporting documents submitted by the AR, I am convinced that the 'transfer' of agricultural land was relevant to AY 2005-06 and duly considered in AY 2005-06. Therefore, the AO's addition of LTCG by treating the land as capital asset in this AY 2011-12 is not sustainable. Therefore, the AO's addition of LTCG of Rs.2.49 Crores is deleted and the appellant's grounds are allowed.)"

Aggrieved, the Revenue is in appeal before us.

7. We have heard the rival submissions and perused the material available on record. We find that the only contention of the Revenue is that the sale agreement entered into by the assessee with M/s.Ragas Educational Society on 21.03.2005 for sale of 3.935 acres of

lands at Uthandi village was incomplete as the said agreement contemplated completion of registration within 12 months from 21.03.2005, which admittedly did not happen in the instant case. The Ld. D.R. vehemently argued before us that the subject mentioned lands that were transferred by way of registration of sale documents on 09.12.2010 were in respect of 172 and 26 cents of lands which are not included in 3.935 acres of land for which agreement of sale was entered into on 21.03.2005. Per Contra, the Ld.AR before us vehemently submitted that the subject mentioned lands that were registered on 09.12.2010 are forming the part of total extent of lands of 3.935 acres that were included in agreement of sale dated 21.03.2005. Ld. A.R. vehemently argued that since transfer had already been complete in terms of section 2(47)(v) of the Income Tax Act read with section 53A of the Transfer of Property Act, 1882 way back in assessment year 2005-06, pursuant to execution of sale agreement dated 21.03.2005; handing over of possession to M/s.Ragas Educational Society and executing the Power of attorney in favour of a third party, hence any action taken for taxing the capital gains again in assessment year 2011-12 would tantamount to double addition in the hands of the assessee. The Ld. A.R. also placed reliance on the copy of the scrutiny assessment order framed in the hands of assessee's father for assessment year 2005-06 in support of his claim.

8. Ld. A.R. also placed on record the copy of assessment order framed in the hands of father R.Gunaseelan for the assessment year 2011-12 under Section.143(3) of the Act dated 31.03.2016 wherein during the course of assessment proceedings of father, a specific query was raised with regard to details of sale of agricultural land at Uthandi village during the assessment year 2011-12. The assessee thereon i.e. Shri R.Gunaseelan (assessee's father) had duly responded to the said query, vide letter dated 12.11.2007 filed before ACIT,Circle-1,Chennai stating that the subject mentioned lands were only part of transfer in assessment year 2005-06 and also subject mentioned lands were only agricultural lands and hence out of the purview of definition of capital assets under Section.2(14) of the Act. The Ld. A.O.of assessee's father i.e. ACIT, Circle-1,Chennai was duly convinced by a certificate issued by Village Administrative Officer , who had certified that the subject mentioned lands are agricultural lands and accordingly did not proceed to make any addition in the hands of assessee's father for assessment year 2011-12. Accordingly, the Ld A.R. argued that:-
- a) The total extent of 3.935 acres of lands that were part of the sale agreement dated 21.03.2005 are agricultural lands.

- b) That the subject mentioned lands that were registered on 09.12.2010 by Power of attorney holder in favour of M/s.Ragas Educational Society are also agricultural lands.
- c) That the subject mentioned lands for which the sale deed is executed on 09.12.2010 are included in 3.935 acres of lands which are part of agreement of sale dated 21.03.2005.
- d) That in any case, 'transfer' is already completed in assessment year 2005-06 pursuant to handing over of possession of lands; execution of power of attorney and receipt of consideration and hence, no capital gains on sale of very same lands could be assessed in assessment year 2011-12.

Accordingly he pleaded that no capital gains at all could be arisen in the hands of assessee in respect of the subject mentioned lands during the year under consideration. The Bench at the time of hearing raised a specific query to the Ld. A.R. to prove the fact that those lands that were registered on 09.12.2010 by the Power of attorney holder are included in 3.935 acres of land for which purpose the Bench directed the Ld. A.R. to match Survey Numbers thereon. In response thereto, Ld. A.R. placed following table before us.

| Sale deed Document No. | Item in the document | Survey No. in the document | Area in cents | Survey No. as per sale agreement | Survey No. as per power of attorney (Sl.No. in P.oA) |
|------------------------|----------------------|----------------------------|---------------|----------------------------------|--|
| 6708 | 1 | 201 & 202/1B | 6.5 | 201 & 202/1B | 201 & 202/1B(1) |
| | 2 | 202/7 | 17 | 202/7 | 202/7 |
| | 3 | 203/3B | 13.5 | --- | -- |
| | 4 | 203/5 | 5 out of 12 | 203/7 | 203/5(4) |
| | 5 | 216/4 | 14 | 216/4 | 216/4(15) |
| | 6 | 216/5 | 26 | 216/5 | 216/5(17) |
| | 7 | 216/8 | 25 | 216/8 | 216/8(16) |
| | 8 | 233/1A | 16 | 233/1A | 233/1A(19) |
| | | 233/1B | 15 | 233/1B | 233/1B(19) |
| | 9 | 233/2 | 34 | 233/D | 233/2(10) |
| | | | | | |
| 6711 | | 217/3 | 26 | 217/3 | 217/3(12) |

We find that this details requires factual verification from the side of the Ld. A.O. and hence in the interest of justice and fair play, we deem it fit and appropriate to remit this issue to the file of Ld. A.O for adjudication in the light of aforesaid evidences and in the light of aforesaid observations and in accordance with law. The Revenue should ensure that there is no double addition made towards capital gains. The assessee should adduce necessary evidences in support of his various contentions. Accordingly grounds raised by the Revenue are allowed for statistical purposes.

9. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the open court after conclusion of hearing on 28th February, 2020, at Chennai.

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

चेन्नई/Chennai

दिनांक/Dated: 28th February,2020.

K S Sundaram

Sd/-

एम बाला गणेश)
(M. BALAGANESH)
लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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