आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री रमित कोचर, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

ITA No.2209/Chny/2017
निर्धारण वर्ष **/Assessment Year: 2008-09**

Sri N. Balakrishnan, 2A Krishnaswamy Avenue, Mylapore, Chennai-600 004.	**v.**	The Asst. Commissioner of Income Tax, Non-Corporate Circle-1(1), Chennai-34.
[PAN: AAGPB 7845 Q] **(**अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr. M.Karunakaran, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Vana Srinivasa Rao, JCIT
सुनवाई की तारीख/Date of Hearing	:	21.11.2019 & 11.03.2020
घोषणा की तारीख /Date of Pronouncement	:	08.05.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against appellate Order dated 08.06.2017 passed by learned Commissioner of Income Tax (Appeals)-2, Chennai (hereinafter called "the CIT(A)"), in ITA No.239/CIT(A)-2/2015-16, dated 08.06.2017 for assessment Year (ay) 2008-09, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 03.03.2016 passed by learned Assessing Officer

(hereinafter called "the AO") u/s.143(3) read with Section 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

> *"1. The Assessing officer erred in re-opening the regular assessment made under section 143(3), after expiry of four years, on mere change of opinion and in violation of the proviso to section 147 of the Act.*
>
> *2. The authorities below erred in holding that the land sold by the appellant was not an agricultural land.*
>
> *3. The Assessing officer ought to have seen that alleged conversion of the land into residential area on 1/8/2017 was much after the date of sale of the property by the appellant on 26/7/2007 and therefore he should not have based his assessment on such material.*
>
> *4. The appellant submits that the land was classified as Nanjai, wet agricultural land before the date of sale and even after the date of sale the land is classified as Nanjai wet agriculture land. in the revenue records and therefore the same has to be treated as agricultural land in the light of the settled law laid down by various Courts.*
>
> *5. The appellant submits that the land was purchased as agricultural land and sold as such without any conversion and simply because the sale consideration was high the land sold cannot be treated as non-agricultural.*
>
> *6. The appellant therefore prays that the re-assessment may be cancelled as invalid in law and the profit on sale of agricultural land may be allowed exemption as it was not a capital asset within the meaning of section 2(14) of the Act and render justice."*

3. The brief facts of the case are that the assessee is an individual and filed return of income which was originally processed u/s.143(3) of the Act by framing of scrutiny assessment. The assessee has sold 4.45 acres of agricultural land at Thaiyur Village under various survey numbers and made short term capital gains of Rs. 9,11,17,182/- which was claimed as

an exempt income on the grounds that capital gains arising on sale of a agricultural land is exempt from income-tax. The AO on verification observed that land under Survey No.1248 & 1249 was classified as 'Residential Area Clause-1' and hence the said land is capital asset wherein short term capital gains arising from sale of said land is chargeable to tax in respect of Survey Nos.1248 & 1249. The case of the assessee was reopened by AO by invoking provisions of Section 147 of the 1961 Act and notice u/s.148 dated 08.08.2014 was issued by the AO to the assessee. Admittedly the reopening of the concluded assessment was done by Revenue beyond four years from the end of assessment year and originally return of income was processed by Revenue by conducting scrutiny assessment u/s 143(3) of the 1961 Act. The assessee on his part during the course of re-assessment proceedings submitted that the return of income originally filed be treated as return of income filed in response to notice issued u/s 148 of the 1961 Act. The assessee submitted before the AO screenshot of website showing the classification of land as agricultural land for the period from 2003-2007 and it was claimed by the assessee that the land was sold on 26/07/2007 while the said land was classified as residential by Government only on 01/08/2007, which is 5 days after the sale of the land. The AO observed that the assessee has sold the land in very short period of time at a value which is six time the acquisition price of the land , in order to make quick profit in view of developing real estate scenario of the locality. The AO sent a letter to Sub-Registrar asking details of the land and the SRO replied that the land was

classified as a residential area. The AO asked assessee to produce evidence to prove whether any agricultural activities were carried on the said land. The AO also made enquiries from Tahsildar to find out whether any agricultural activities were carried on in the said land in the relevant survey numbers . The Tahsildar reported to the AO that except for survey number 1395/3B, there was no agricultural activities carried on the said land from 2003-2007. This led AO to come to conclusion that the said land is held by assessee as capital asset and there is no intention to use the said land for agricultural activities. It is pertinent to mention that the assessee has merely shown an income from agricultural activities of Rs. 7000 on the said land admeasuring 4.45 acres earned during the year, in the return of income filed with the Revenue. The AO confronted the assessee with all the evidences but the assessee did not provide any evidences to substantiate that any agricultural activities were carried on the said land. It is pertinent to mention that even during original assessment conducted by AO u/s 143(3), there was no proof provided by assessee as to the agricultural activities being carried on by assessee on the said land. It is also been observed by AO in its reassessment order dated 03.03.2016 passed u/s 143(3) read with Section 147 of the Act, that the assessee did not co-operated in reassessment proceedings as complete details were not furnished nor the assessee was appearing during hearing but repeated objections to reopening of the assessment was filed by assessee. The AO also observed that no agricultural activities were carried on the said land since 2003 onwards . Ultimately, the claim

of the assessee for exemption of short term capital gains on sale of the said land wrt survey number 1248 and 1249 was rejected by AO both on legal/jurisdictional ground as well on merits, vide reassessment order dated 03.03.2016 passed by the AO u/s 143(3) read with Section 147 of the 1961 Act.

4. Aggrieved by aforesaid reassessment order passed by the AO, the assessee filed first appeal with Ld.CIT(A), challenging the legality and validity of reopening of the concluded assessment both on legal/jurisdictional ground as well on merits, , the Ld.CIT(A) rejected claim of the assessee upholding the reopening u/s.147 of the Act on legal grounds as well on merits, by holding as under vide appellate order dated 08.06.2017 as under:

> *"5. My Observations:*
>
> *5.1. Firstly, the issue of jurisdiction i.e. validity of reopening is taken up. It is seen that, the reopening of assessment u/s. 147 was based on an objection raised by the Revenue Audit Party. The Assessing had reasons to believe that income chargeable to tax had escaped assessment for AY 2008-09, and, after duly recording the reasons and obtaining the approval of the higher authorities for the re-opening, has issued notice u/s.148.*
>
> *The reasons recorded by the Assessing Officer for the re-opening, (as contained in the assessment folder), are as follows:*
>
> *"The assessee has filed the return of income for asst. year 2008-09 admitting a total income of Rs.21,08,440/-. The same was processed u/s, 143(1) and subsequently selected for scrutiny and order u/s. 143(3) was passed accepting the returned income.*
>
> *During the previous year relevant to the asst. year 2008-09, the assessee had sold 4.45 acres of agricultural land at Thaiyur Village under various survey numbers and made Short Term Capital Gain of Rs.9,11,17,182/- and claimed it as exempt since the property sold being agricultural land. However, on verification of the survey numbers of the properties sold with Tamil Nadu Registration Department website, it is observed that the properties in survey numbers 1248 and 1249 are classified as "Residential*

Area-Class I", Thus, the land In the survey Nos. 1248 & 1249 fall under the definition of "Capital Asset" as these lands were not used for agricultural purpose. Hence the assessee is liable to pay tax on Short Term Capital Gain in respect of land sold under survey no. 1248 & 1249.

The assessee had earned dividend of Rs. 271,64,615/- and claimed exemption. However, disallowance of expenditure for earning this income as per sec. 14A r.w.Rule 8D viz., 0.5% of Rs. 14,58,42,419/- which works out to Rs. 7,29,212/- was not considered.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment for the asst. year 2008-09 and the case may be reopened u/s. 147."

5.1.1 As mentioned earlier, the case was originally completed under scrutiny i.e. 143(3) of the Act. A perusal of the scrutiny assessment order dt. 30.11.2010 clearly shows that the issue forming the reason for reopening, i.e. nature of the agricultural land at Thaiyur Village, which has been sold by the assessee, claiming the Short Term Capital Gain, has not at all been discussed in this scrutiny Assessment Order. The Assessment Record reflects that the population of Thaiyur Village has been enquired into, and ascertained as 7609 as per Census 2001. Besides, the copy of agreement for sale of land and patta of the land has been obtained and placed on record. However, no enquiries whatsoever have been initiated/carried out by the Assessing Officer into the specific nature of the land, the use to which the land was put to, etc.

The very fact that fresh information was obtained by the Assessing Officer based on verification of the website of the Tamilnadu Registration Department specifically with regard to the classification of the impugned lands as "Residential Area-Class I", justifies and vindicates the reopening of assessment u/s. 148.
It is pertinent to note that re-opening of assessment on the basis of new information has been upheld in a plethora of decisions, such as:

a) *Hon'ble Supreme Court in the case of Kalyanji Mavji & Co, Vs. CIT (102 ITR 287) (SC) (1976) has held that there is no change of opinion if the assessment is reopened on new facts which came to notice subsequently, even though they are already on record.*

b) *In the case of ACIT Vs. Kanga & Co., (2010) TIOL - 464 - ITAT - MUM, it was held that Tangible material, for the purpose of reopening u/s. 148, need not be from outside the Return of Income.*

c) *The reopening of assessment on the basis of a factual error pointed out by the Audit Party has been held to be valid by the Hon'ble Apex Court in the case of CIT Vs. PVS Beedies Pvt. Ltd. (SC) 237 ITR 13.*

Similarly, it has been held in a plethora of decisions that information obtained from other offices, forms a valid basis for reopening of assessment. Some such decisions are highlighted below:

i) ITO Vs. Purushottam Das Bangur & Anr. (SC) 224 ITR 362
ii) ITO Vs. Selected Dalurband Coal Co. (P) Ltd. (SC) 217 ITR 597
iii) Elphinstone Picture Palace Vs. Union of India & Anr. (Pat) 74 ITR 115
iv) H.A. Nanji & Co. Vs. ITO (Cal) 120 ITR 593
v) Sohan Singh Vs. CIT (Del) 158 ITR 174
vi) Rattan Gupta Vs. CIT (P&H) 234 ITR 220
vii) CIT Vs. Medical Trust Hospital (Ker) 325 ITR 191
viii) Amrut Talkies Vs. ITO (Kar) 150 ITR 386
ix) Shashi Jain Vs. ITO & Anr (All) 228 ITR 682
x) Karni Singh Ji of Bikaner Vs. DCIT & Anr.(Del) 237 ITR 505

5.1.2 Further, the very fact that the Assessing Officer, in the course of the reassessment proceedings, was in receipt of information from the Tahsildar, Thiruporur to the effect that no agricultural activities whatsoever were carried out in the impugned lands during 2003 to 2007 and this information, coupled with the fact of classification of the impugned lands as residential, had led to the addition by denial of exemption as agricultural lands, which vindicates and justifies the reopening of the assessment.

Thus, based on the ratio of the aforementioned' decisions, and also keeping in view the fact that the Assessing Officer, through further enquiries was in receipt of information regarding non-user of the land for agricultural purposes, leading to denial of claim of exemption, I have no hesitation in upholding the validity of the reopening of the assessment beyond a period of 4 years but within a period of 6 years from the end of the relevant AY.

5.2. On Merits:

5.2.1. Based on the clear-cut findings of the Assessing Officer through enquires with the Tahsildar, Thiruporur and the detailed discussion contained in the Assessment Order, the undisputed fact that emerges is that no agricultural activity whatsoever has been carried out in the impugned lands by the appellant.

The specific wordings affirming this, in the reply letter dat. 6.1.2016 of the Talsildar, Thiruporur are as follows:

"As per Adangal, no agricultural activities were done during 2003 to 2007 except S. No. 1395/3B"

A perusal of the said letter issued by the Talsildar, Thiruporur clearly shows that the Survey Nos. pertaining to the impugned lands are referred to in the said letter.

5.2.2. The fact that the Tahsildar at Thiruporur, in his response just referred to, has covered the period starting from 2003, specifically only up

to 2007, is on account of the fact that these very impugned lands have been reclassified as Residential area-Class I, w.e.f. 1.8.2007. In other words, the Tahsildar stops with the reference ending up to 2007, since covering the subsequent period (i.e. subsequent to 1.8.2007) in his reply, would be irrelevant/redundant.

5.2.3. Based on the discussions contained in the preceding two paragraphs, it is very clear that:

> *(a) No agricultural activity whatsoever was carried out on the impugned lands from 2003 to 2007.*
>
> *(b) The land itself has been converted/reclassified as Residential w.e.f. 1.8.2007, precluding the user for agricultural activities.*

These two points itself lead to the inevitable conclusion that the appellant has no case at all for claim of exemption, as far as user of the land for agricultural purpose, is concerned.

In this context, it is very pertinent to refer to the decision of the Hon.ble ITAT, "C" Bench, Chennai in the case of ACIT Vs. Shri Pallavaram Kothandaraman Ramesh, in ITA No. 1808/Mds/2011 for AY 2008-09, vide order dt. 17.10.2012. The Hon'ble ITAT was deciding the case on nearly identical set of facts as those prevailing in the case of the appellant.

The facts in brief, in the case of Shri PK Ramesh (supra), are that lands measuring 25 cents at Kanathur Reddykuppam Village were transferred through absolute sale by the assessee, resulting in Long Term Capital Gains, which were claimed as exempt on the ground that the land in question was agricultural land. Although the schedule contained in the Sale Deed described the asset as agricultural land, the data available with the Registration Department, Government of Tamilnadu showed the SRO notified Survey number-wise guideline values as "Residential Area Class-II". In fact not only the impugned Survey No., but the whole locality has been classified as residential, way back in 2003. The property was sold in 2007. The Registration Department has provided the data on the sale value of land based on Sq.ft. and Sq.mtr. scale and not on acre and hectare scale, which also strengthened the Department's view that the property is not agricultural in nature.

Despite the fact that the VAO, Kanathur Reddykuppam has certified that the said land is a dry, rain fed agricultural land, the Hon'ble ITAT, has clearly held that the certificate issued by the VAO cannot supersede the classification given by the Tamilnadu Government. Further that, when the land itself is in a residential area, the question of the assessee applying for conversion or permission for construction does not arise. There is nothing on record to suggest that the assessee had carried on any agricultural operations. Based on these crucial factors, the Hon'ble jurisdictional ITAT has allowed the appeal filed by the Revenue, thereby affirming the stand taken by the Assessing Officer that the lands are not agricultural lands.

Reverting to the case of the appellant, it is seen that this decision of the Hon'ble jurisdictional ITAT squarely applies to the facts of the appellant's case. The decision of the Hon'ble Tribunal in case of P.K. Ramesh(supra) is not based just on the fact of re-classification of the lands as "Residential Area" but also on the crucial fact that no agricultural activities whatsoever were carried out on the said lands, by the assessee. In the case of the appellant, the certificate of the Talsildar, Thiruporur categorically stating that no agricultural activities have been carried out in the impugned lands, only goes to strengthen the case of the appellant.

Enquiries carried out by the Assessing Officer with the Sub-Registrar, Thiruporur, have revealed that the impugned lands were clarified as "Residential Type-I, Class-I". Although the formal classification of the impugned land as residential has taken place on 1.8.2007, five days after the sale of the land on 26.7.2007, I am wholly in agreement with the stand taken by the Assessing Officer that since classification of lands is a long-drawn process, by no stretch of imagination, can it be assumed that the character/nature of land has changed over this extremely brief period of 5 days. It is not the case of the appellant that he had actually carried out agricultural activities during the short period that he held the lands. In fact, the very nature of the locality already being Residential, which fact was formally announced on 01.08.2007, itself would have precluded the carrying on of agricultural activities by the appellant.

These crucial factors, along with the fact that the appellant has held the land as Short Term Capital Asset, selling at a value more than 6 times its cost of acquisition, clearly indicates that the appellant never had any intention of carrying out agricultural activities on the said lands throughout the short period of holding the same. The fact remains that the lands were also formally classified as residential, immediately following the date of sale.

The Assessing Officer has cogently analysed the facts, highlighting the relevant case-laws in the process. The appellant on the other hand, has not succeeded in bringing anything in record to controvert/rebut the clear-cut findings of the Assessing Officer based on specific enquiries and cogent analysis of the facts. Hence, I have no hesitation in holding that the impugned lands are not agricultural. The addition of Rs.2,70,22,255/- made by bringing to tax the income from Capital Gains from the sale of lands as Short Term Capital Gains, denying the exemption claimed by the appellant is upheld.

5. Aggrieved by appellate order passed by learned CIT(A), the assessee filed second appeal with tribunal. This case was fixed for hearing on 21.11.2019 and the matter was heard. However, it was observed by the

Bench that there is no material on record to prove that agricultural operations were carried on by assessee on the said land and other clarifications were also required as per order sheet entry, the appeal was fixed for clarification on 10.02.2020 and the matter was finally heard after seeking clarification , on 11.03.2020.

6. We have heard both the Counsels and have also gone through the material on record as well as cited case laws. We have observed that the assessee has sold a piece of land admeasuring 4.45 acres in Thaiyur Village, Thiruporur Taluk which falls under Chengalpattu District, Tamil Nadu within a short span of buying the same and has earned short term capital gains to the tune of Rs. 9.11 crores . The assessee has sought exemption of the aforesaid short term capital gains earned on said land on the grounds that the land sold is an agricultural land. Since the assessee has claimed exemption on income earned on short term capital gains made on sale of said land on the ground that the land sold is an agricultural land , the onus is on the assessee to prove that the assessee is entitled for exemption with in provisions of the 1961 Act. The decision of Constitution Bench of Hon'ble Supreme Court in the case of Commissioner of Customs v. Dileep Kumar & Company in Civil Appeal No. 3327 of 2009 , dated 30.07.2018 is relevant. It is also observed that originally assessment was framed by AO u/s 143(3) r.w.s. 143(2) of the 1961 Act , while assessment is reopened by AO by invoking provisions of Section 147 of the 1961 Act after four years from the end of assessment

year and first proviso to Section 147 shall be applicable. The assessee has made disclosure in the return of income filed with Revenue that the assessee has earned Rs. 7000 from agricultural operations carried on this land measuring 4.45 acres , but what transpires from the enquiry made by the AO from Tahsildar is that this land was not used for agricultural activities during 2003-2007, except for survey number 1395/3B . Thus, as per government records no agricultural activities were carried on in this land from 2003-2007, except on survey number 1395/3B. Before us, the assessee has contended that the assessee grew some water melon and pumpkin on this land but no evidence is placed on record. Even on being asked by the AO , the assessee did not co-operated with the AO and did not filed the details as to agricultural activities carried on by the assessee on the said land. The assessee has sold this land within a short span of time and made huge short term capital gains of Rs. 9.11 crores. It is also observed that initially assessments was framed u/s.143(3) of the Act but the AO accepted exemption of Rs. 9.11 crores claimed by assessee by way of short term capital gains on sale of land without making any enquiries which the AO ought to have made and claim of the assessee as to exemption was accepted without making any enquiry by the AO. The contention of the assessee in return of income that he was using the said land for agricultural purposes was also not a correct disclosures dehors report sent by Tahsildar that no agricultural activities was carried on this land in 2003-2007. The assessee was called upon by AO during reassessment proceedings to bring on record evidence to prove that

agricultural activities were carried on by him on said land but the assessee did not co-operated in reassessment proceedings. Even before us only bald claim is made that pumpkin and water melon was grown on said land but no evidence is produced to substantiate the same. Even government records also disclose that no agricultural activities were carried on the said land from 2003-2007 except on survey number 1395/3B. It was also pointed out by Revenue audit team that survey number 1248 and 1249 were classified as Residential Area-Class-1' which triggered reopening of the concluded assessment by the AO by invoking provisions of Section 147 of the 1961 Act. At the same time, we have also noted very crucial decision of Hon'ble Madras High Court in the case of M/s.Chemmancherry Estates v. ITO, in TCA Nos.545 & 546 of 2009 on the relevant subject, wherein Hon'ble Madras High Court has adjudicated the manner of classification of agricultural land, wherein it was held as under:

> *"6. TCA.Nos.545 and 546 of 2009 were admitted on 13.7.2009 on the following substantial questions of law :*
>
> *"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the claim of the appellant that the land held by it was agricultural in nature, which had satisfied Section 2(14)(iii) and had not fallen within the exclusions of the Section and its claim of exemption from capital gains would amount to concealment or furnishing of inaccurate particulars warranting levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961?*
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> *ii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the levy of penalty under Section 271(1)(c) on the claim of the appellant that the land sold by it would fall within the meaning of Section 2(14)(iii) of the Income Tax Act, 1961 and therefore, exempt from capital gains ? And*
>
> *iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the levy of penalty under Section*

271(1)(c) when the assessee had not done any positive act to convert the agricultural land held by it into plots for real estate business ?"

7. It is not out of place to mention here that by order dated 12.7.2019, we answered two issues, which arose in these appeals. The relevant portions in the order dated 12.7.2019 read thus :

"4. We have heard Mr.M.P.Senthil Kumar, learned counsel for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing counsel for the respondent/revenue.

5. The first substantial question in TC(A) 181 & 183 of 2009 is whether the land sold by the appellant would fall within the definition of agricultural land as defined under Section 2(14) of Clause (iii) of the Act. To be noted that, the Assessing Officer, Commissioner of Income Tax (Appeals)-IX (hereinafter referred to as CIT(A)) and the Tribunal concurrently held that the land sold by the assessee was not an agricultural land. Thus, the question would be whether this Court while considering the appeals under Section 260-A of the Act can undertake an exercise of re- appreciation of the factual position. The answer to this question should be in the negative, as an appeal under Section 260-A of the Act can be decided only on substantial questions of law.

6. The two authorities and the Tribunal examined the factual position, the conduct of the assessee, location of the land, purchaser of the land etc., and held that the land sold by the assessee was not an agricultural land. Apart from all these factors, one another most important factor was that the land would ***fall within the jurisdiction of the Chennai Metropolitan Development Authority (CMDA). Thus, we need to see what would be the effect of the land falling within the limits of CMDA. Before that, we need to note that the land has been assessed to tax as an urban land. The effect of such assessment also has to be considered. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 defines the urban land under Section 3(p)*** *as follows:*

"(p) 'urban land' means-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration but does not include any such land which is mainly used for the purpose of agriculture."

7. In terms of the above definition, any land situated within the limits of an urban agglomeration and referred to as such in the master plan will be an urban land. In case, where there is no master plan, but the land lies within the limits of an urban agglomeration it would fall outside the scope

of urban land only when the land is mainly used for the purpose of agriculture. Section 3(n) defines urban agglomeration as follows:

'(n) "urban agglomeration" means -

(i) the area comprised in the urban agglomeration specified in Schedule I; and

(ii) any other area which the State Government may, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require by notification in the Tamil Nadu Government Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category II in that schedule;'

8. In terms of the above definition, if any land is notified by the Government as an urban agglomeration, it would automatically fall within the said category as described in the schedule.

Admittedly, the land has been notified to fall within the jurisdiction of the CMDA. The provisions of Development Control Rules, which is applied by CMDA, would stand attracted to all lands, which are within the urban agglomeration. Thus by virtue of the notification, the Government of Tamil Nadu has included the area in which the subject lands are situated to be part of an urban agglomeration. Therefore, the assessee, if he seeks to plead that it is not an urban land, the onus is on the assessee that the land was mainly used for the purpose of agriculture.

9. In our considered view by operation of law, the land can never be an agricultural land though it is stated that in the revenue record it is recorded as an agricultural land, the assessee sold the land as an agricultural land, the total extent was in acres and not in square feet.

10. In our considered view, the definition of agricultural land as defined in Section 2(14) clause iii of the Act hits at the assessee because the lands would fall within the jurisdiction of an urban agglomeration/Corporation. In any event, the two authorities and the Tribunal have extensively examined the facts and concluded that the land is not an agricultural land.

11. We find no grounds to interfere with the said factual finding concurrently recorded by the authorities and the Tribunal. Learned counsel placed reliance on the decision in the case of CIT Vs. Ashok Kumar Rathi [reported in 2018 404 ITR 0173 (Madras)]. The said decision cannot render any assistance to the case of the assessee on account of the facts which were culled out by the Assessing Officer in the process of assessment establishing that the land sold by the assessee was not an agricultural land. The facts in the case of Ashok Kumar Rathi are

differently couched and the said decision cannot be applied to the assessee's case.

12. Furthermore, the entire village of Chemmancherry has been notified under the provisions of Tamil Nadu Land Urban Land (Ceiling and Regulation) Act as well as Urban Land Tax Act and the urban land tax is collected. The Assistant Commissioner of Urban Land is the jurisdictional officer in terms of notification issued by the Government of Tamil Nadu. Thus, the assessee has not made out any ground to interfere with the factual finding and we hold that there is no substantial question of law arising for consideration.

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23. TCA.Nos.545 and 546 of 2009 :

These appeals are filed by the assessee challenging the common order dated 28.11.2008, by which, the Tribunal confirmed the order of levy of penalty. We have already extracted the substantial questions of law, which were admitted. We have heard Mr.M.P.Senthilkumar, learned counsel for the assessee and Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue.

24. The endeavour of Mr.M.P.Senthilkumar, learned counsel for the assessee is to convince this Court that there was no wilfulness on the part of the assessee to declare the land as an agricultural land for the purpose of claiming the benefits and even though this Court in TCA.Nos.181 and 183 of 2009 affirmed the finding of the Tribunal that the land in question is not an agricultural land, that, by itself, will not be a reason to impose penalty under Section 271(1)(c) of the Act unless and until it is established that the assessee had wilfully concealed the particulars or furnished inaccurate particulars or taken a false plea.

25. The learned counsel for the assessee has placed reliance on the decision in the case of CIT Vs. Gem Granites [reported in (2013) 80 CCH 0160 ChenHC], to which, one of us (TSSJ) was a party.

26. The appeals in TCA.Nos.181 and 183 of 2009 were relating to the quantum assessments for the year 2001-02 and 2002-03. Admittedly, the assessee treated the land as a non agricultural land and this aspect has been noted by the Assessing Officer in the following terms :

"Further, in page 3 part 2 of the sale deed, there is a mention that as per agreement dated 29.6.2000, the necessary amount to be paid to the promoters and developers of this plot Sri.R.P. Dharmalingam and Shri.V.Shanmugam for the purpose of filling sand, leveling, forming roads, carrying out other developmental activities and the approval of CMDA and other local bodies should be paid by you directly to them in time and you should obtain the necessary receipt for this separately subject to this

condition the property as per schedule is handed over to you. Therefore, the intention of both purchaser and seller are not conduct agricultural operations in the said land, but to convert the land into house sites for sale.

Though the assessee claims that the land as agricultural and situated in a village, it is within the area marked in CMDA map and urban land tax has been paid. The agricultural operations have been abandoned because the water is salty and no agricultural operations even ploughing and tilling has been done and it remains as a barren land. There is only one bore well for a vast land of this area, that too, has only salt water. Neither there is any big well for irrigation purpose nor there is any farm house. Further, it is not a stop gap arrangement to continue the agricultural operations in future. The CMDA and local bodies permission has been sought through developers to convert the land into house plots. Not even single rupee has been earned for years together by way of agricultural production. The land has been plotted and roads laid before the sale, the land very well situate in a developed area where industries and colleges have come up and land is sold on cent basis, which is normally the case in the sale of house sites only. The purchaser is a housing cooperative society purchasing land for promotion of plots for house construction. On local enquiry, it was found that house sites have been booked/sold out before 06.11.2002 itself the date of which, VAO gave a certificate mentioned earlier. All these factors got to show that it is a non agricultural land and also situated in urban developed area and therefore, it is only a capital asset."

27. By order dated 12.7.2019, in TCA.Nos.181 and 183 of 2009, we affirmed the said finding and held that the land is a non agricultural land. In such circumstances, it has to be seen as to whether there is any wilfulness on the part of the assessee. The above finding of fact recorded by the Assessing Officer will clearly show that as early as 29.6.2000, there was an agreement with third parties for converting the land into housing plots by filling sand, levelling, forming roads, carrying out other developmental activities.

28. To be noted, we are concerned with the assessment year 2001-02.

Therefore, when the penalty proceedings were initiated, the Assessing Officer was fully justified in holding that the assessee was consciously aware of the real position and knowingly furnished inaccurate particulars of income in the revised return. The assessee is not an individual, but a company, which is an association of persons consisting of other corporate giants. Therefore, there TCA.No.181 of 2009 etc. cases is no reason to interfere with the factual finding recorded by the Assessing Officer stating that the assessee was consciously aware of real position and knowingly furnished inaccurate particulars. The CIT(A) reversed the order of the Assessing Officer on the ground that the Assessing Officer proceeded on the assumption that the assessee was guilty. When the correctness of the

same was examined, in our considered view, the Tribunal rightly held that there is a wilful concealment. We find that there is absolutely no ground to interfere with the common order passed by the Tribunal. Since we have already approved the finding recorded by the Tribunal, which is on re-appreciation of facts, we find that the decision in the case of Gem Granites will not be of any assistance to the case of the assessee.

29. In fine, TCA.Nos.181 to 184 of 2009 are disposed of to the extent indicated above. TCA.Nos.521 and 522 of 2009 are allowed.

TCA.Nos.545 and 546 of 2009 are dismissed. No costs. Consequently, the connected MPs are also dismissed.

30. It is relevant to point out that a Division Bench of this Court, vide two separate orders dated 24.8.2009 respectively in MP.No.1 of 2009 in TCA. No.545 of 2009 and MP.No.2 of 2009 in TCA.No.546 of 2009, while granting stay, directed the assessee to deposit a sum of Rs.10 lakhs and Rs.5 lakhs respectively without prejudice to their contentions in the appeals. It is not known as to whether the said amounts were deposited or not. If the deposits were already TCA.No.181 of 2009 etc. cases made, it is well open to the Assessing Officer to make adjustments, if any and proceed further to recover the balance amounts and if not, it is well open to the Assessing Officer to proceed to recover the penalty imposed.

In nutshell, the Hon'ble Madras High Court in the above judgment has held that the entire land which falls within the jurisdiction of CMDA shall be non-agricultural land unless it is shown that the land is used **mainly** for agricultural activities. Para 8 of judgment is relevant:

"***Admittedly, the land has been notified to fall within the jurisdiction of the CMDA. The provisions of Development Control Rules, which is applied by CMDA, would stand attracted to all lands, which are within the urban agglomeration. Thus by virtue of the notification, the Government of Tamil Nadu has included the area in which the subject lands are situated to be part of an urban agglomeration. Therefore, the assessee, if he seeks to plead that it is not an urban land, the onus is on the assessee that the land was mainly used for the purpose of agriculture"***

The assessee has merely shown agricultural income of Rs. 7000 on 4.45 acres of land which was sold by assessee during the year under

consideration. The Tahsildar has also confirmed that agricultural activities were carried on only in land bearing survey number 1395/3B , while no agricultural activities was carried on during 2003-2007 in other survey numbers. The assessee has not furnished any evidence even before us to prove that agricultural operations were carried on the said land but only bald statement is made that water melon and pumpkin was grown. The assessee has filed additional evidences before us to contend that Government of Tamil Nadu vide Notification in G.O. Ms No. 153 dated 20.06.2013 had included Thaiyur Village in the Mamallapuram Local Planning Area , which is post the said previous year. The said land falls within Chengalpattu District , which falls within jurisdiction of CMDA and it is to be verified from which date the said land came within CMDA as there are master plans which were revised from time to time . In our considered view, there is a need for detailed verification and enquiry in the instant case with respect to classification of said land , whether it falls within jurisdiction of CMDA during relevant period or not, whether agricultural activities were conducted by assessee on the said land or not, whether the said land is a capital asset u/s 2(14) or is an agricultural land entitling assessee to exemption etc. , before arriving at the conclusion as to chargeability to tax of the capital gains earned by assessee on the sale of said land. The assessee is claiming exemption and hence onus is on assessee to prove that its income falls within four corners of exemption provisions as are contained in the 1961 Act. The decision of Hon'ble Supreme Court in the case of Mrs. Bacha F. Guzdar v. CIT reported in

(1955) 27 ITR 1(SC) and CIT v. R. Venkataswamy Naidu (1956) 29 ITR 529(SC) We have considered it appropriate that the matter needed to go back to the file of the AO for framing denovo assessment on merits of the issue as well on legal/jurisdictional ground raised by assesse wrt reopening of the concluded assessment u/s 147 of the 1961 Act. We make it clear that all contentions are kept open and the assessee will be allowed to raise all contentions both on jurisdictional/legal grounds as well on merits of issue in denovo assessment proceedings before the AO. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in denovo assessment The evidences filed by assessee in its defense shall be admitted by the AO in denovo assessment proceedings. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

In the result, the appeal filed by the assessee in ITA No.2209/Chny/2017 for ay: 2008-09 is allowed for statistical purposes.

Order pronounced on the 8th day of May, 2020 in Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल. रेड्डी**)**	**(**रमित कोचर**)**
(DUVVURU R.L.REDDY)	**(RAMIT KOCHAR)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 8th May, 2020.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

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