

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी दुर्गारत्न, न्यायिक सदस्य एवं श्री जी मंजूनथ लेखक सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2807/Chny/2018
निर्धारण वर्ष /Assessment Year: 2013-14

Dr. M. Senthivelan,
No.14, Big Devangar Street,
Bhuvanagiri,
Cuddalore – 608 601.
[PAN: AEFPS 9669N]

The Asst. Commissioner of
Income Tax,
Vs. Cuddalore Circle,
Cuddalore.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

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

: Mr. R. Vijayaraghavan, Advocate
: Mrs. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.08.2021

घोषणा की तारीख /Date of Pronouncement

: 24.09.2021

आदेश / ORDER

Per V. Durga Rao, Judicial Member:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), Puducherry in I.T.A No.74/CIT(A)-PDY/2016-17 dated 29.06.2018 relevant to the Assessment Year 2013-14.

2. The brief facts of the case are that the assessee, a Doctor by profession and working as Professor in Annamalai University, admitted income from salary and profession. He also admitted income from real estate business and interest income received from his bank accounts. During the financial year 2012-13, the assessee converted 7.49 acres of land at R.S No.62/2, 64/1,2, 65/3,4, 66/3, 66/4, 110/34, 110/33, 110/4, 110/5 situated at Melbhuvangiri and Keezhbuvanagiri into saleable plots (stock-in-trade). The assessee sold some plots measuring 57345 sq. ft. for Rs. 57,34,500/- and declared income at Rs. 4,77,965/- on presumptive basis u/s. 44AD. In the assessment order, the A.O has noted that the assessee has converted the capital asset into stock-in-trade as per the provisions of s. 45(2) of the Income Tax Act, 1961 (hereinafter as "the Act"), profits or gains arising from the transfer of capital asset or its treatment by the assessee as a stock-in-trade of a business carried on by him, such conversion or treatment is deemed as a transfer of capital asset and attracts capital gain provisions. The same was pointed out to the assessee, in reply the assessee has submitted by a letter dated 26.12.2015 that the lands at Keezhbuvangiri and Melbhuvanagiri are agricultural lands till the date of conversion into saleable plots. The assessee also stated that the lands are located more than 8 KM from the nearest Chidambaram Municipality and thus, he satisfied the requirement for being agricultural

land as it is located beyond the specified limit hence, he did not admit capital gain tax on conversion. The A.O was deputed Inspector to make an enquiry in respect of distance of the land. The enquiry Officer submitted a report, which is extracted as under:

"As directed by the ACIT, Cuddalore Circle, Cuddalore, I went to Bhuvana&ri to verify the distance of lands owned by the above assessee from the nearest municipality.

Since, Chidambaram Municipality was the nearest municipality; I obtained a map of Chidambaram Municipality from the Municipality office and ascertained the municipal limit of.

I measured the distance of the assessee's land at Keezhbhuvanasiri and Melbhuvanasiri (at R.S. No.62/2, 64/1,2, 65/3,4, 66/3, 66/4, 110/34, 110/33, 110/4, 110/5), by car, from the municipal limit of the Chidambaram Municipality. The odometer of the car showed the distance as 6.7 Km. I also made sure that the distance measured was the shortest road distance with the help of Google Map. The Google map also showed the distance as 6.7 Km. A copy of screen shot of Google map is enclosed for ACIT's kind perusal."

3. The A.O after considering report given by the Inspector, he has noted that the land is situated within 6.7 KM of the Municipality and therefore, the claim of the assessee is that it is above 8 K.M was rejected. The assessee has filed a certificate from the Tehsildar. According to the certificate issued by the Tehsildar, the land is situated at about 8.5 KM from the nearest Chidambaram Municipality. The A.O has considered the certificate and he has observed that as per the report given by the Income Tax Inspector as per provisions of s. 2(14)(iii) of the Act that the distance measured was the shortest road distance from the municipal limit of nearest Chidambaram municipality

and also the Google map confirmed the distance is 6.7 K.M. Hence, the certificate issued by the Tehsildar is not entertained for the purpose of capital gains. He also considered the Circular issued by the CBDT Circular No.17/2015, for the period prior to assessment year 2014-15, the distance between the municipal limit and the land under dispute is to be measured having regard to the shortest road distance. The assessee also not filed any details carrying out any agricultural activities from the land. Accordingly, the A.O has decided that the assessee has to pay capital gain tax as per the provisions of s. 45(2) of the Act and calculated the capital gains. The assessee carried the matter before the Ld. CIT(A) and the Ld. CIT(A) confirmed the matter of the A.O.

4. Before us, the Id. Counsel for the assessee has submitted that the land which is in dispute is agricultural land and it is away from the local municipality i.e., Chidambaram Municipality which is 8.5 KM away. He also filed a certificate issued by the Tehsildar to that effect and submitted that this land is an agricultural land therefore, the provisions of s. 45(2) of the Act has no application.

5. On the other hand, the Ld. Departmental Representative submitted that the assessee has not proved any evidence that the land is an agricultural land and the certificate issued by the Tehsildar that

the distance from the municipality i.e., 8.5 K.M is no basis and therefore, he has strongly supported the orders passed by the A.O as well as Ld. CIT(A).

6. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. The only issue involved in this appeal is whether the assessee has to pay capital gains to the disputed conversion of land into stock-in-trade. According to the A.O, the assessee converted a land which is stock-in-trade and sold the plots. According to the A.O, the land sold by the assessee attracts the provisions of the capital gains hence capital gains have to be taxed. The case of the assessee is that the land which is converted by the assessee which is 8.5 K.M away from the Chidambaram Municipality and therefore, he does not come to the ambit of s. 45(2) of the Act. He further submitted that the land is an agriculture land. The assessee has not proved any evidence that the land is an agricultural land. So far as the distance is concerned, the A.O has deputed the Inspector to ascertain the distance from the municipality limit and accordingly, the A.O has inspected and submitted a report that as per the odometer of the car showed the distance as 6.7 K.M and even according to the Google map also the distance is 6.7 K.M. By considering the report given by the Inspector, the A.O came to

the conclusion that the distance is 6.7 K.M therefore, the assessee claim is not correct. In so far as the certificate issued by the Tehsildar is concerned which is at page No.1A of the paper book, it does not show that from the Chidambaram how it comes to 8.5 K.M and apart from that in our view the Tehsildar is not a competent person to decide the distance. Therefore, we are of the opinion that the certificate issued by the Tehsildar is not a material to be considered the distance. In view of the above, we are of the opinion that the A.O has rightly taxed the capital gains in the hands of the assessee and the same is confirmed by the Ld. CIT(A). We find no infirmity to interfere with the order passed by the Ld. CIT(A). Hence, the appeal filed by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 24th September, 2021 in Chennai.

Sd/-
(श्री जी मंजूनाथ)
(G. MANJUNATHA)

लेखासदस्य/ACCOUNTANT MEMBER

Sd/-
(वी दुर्गराव)
(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 24th September, 2021.

EDN/-

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