

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2750/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2016 - 17

Shri Ananthan,

No.20/1, Nainar Nadar Street,
Mylapore,
Chennai – 600 004.

The Income Tax Officer,

v. Non-Corporate Ward-1(1),
Chennai – 34.

PAN : AVZPA 8402E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 2751/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2016 - 17

Shri Loganathan,

No.20/1, Nainar Nadar Street,
Mylapore,
Chennai – 600 004.

The Income Tax Officer,

v. Non-Corporate Ward-1(3),
Chennai – 34.

PAN : AIWPL 0156A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Jayaraman, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri A. Sumanth Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.12.2021

घोषणा की तारीख/Date of Pronouncement

: 25.01.2022

आदेश / O R D E R**PER MAHAVIR SINGH, VP:**

These appeals by two different assessees (assessee being brothers) are arising out of two orders of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA No.81/CIT(A)-2/2018-19 & No.82/CIT(A)-2/2018-19 vide orders of even date 19.07.2019. The assessments were framed by the Income Tax Officer for the assessment year 2016-17 vide orders of even date 18.12.2018 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act').

2. Since the issues in both the appeals are common and facts are identical, we will first take up ITA No.2750/Chny/2019 in the case of Shri Ananthan. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in holding that the agricultural land sold by assessee at village Siruseri as capital asset as against claimed by assessee as agricultural land. The assessee has raised argumentative grounds rather these are not grounds but explanation and hence, we need not reproduce the same.

3. Brief facts are that the assessee, an individual filed his return of income for the relevant assessment year 2016-17 from where it was noticed by the AO, during scrutiny assessment proceedings, the

assessee has sold property i.e., at Rs.1,83,00,000/- (for his share). The assessee claimed the sum as exempt u/s.10 of the Act, being sale of agricultural land. The AO during the course of scrutiny assessment proceedings required the assessee to explain how he has claimed this land as agricultural land whereas the sale of land is in survey No.60/2, measuring 1.21 acres, survey No.57/2A measuring 30 cents and 57/2B measuring 32 cents in all measuring 1.83 acres, situated at Siruseri village, Chengelpet Taluk presently Thiruporur Taluk, Kancheepuram District. This land was sold by assessee on 27.11.2015. The total sale consideration received by two co-owners namely Shri K. Ananthan, the assessee and his brother Shri K. Loganathan for a total sale consideration of Rs.2.93 crores out of which assessee's share was Rs.1.83 crores and Rs.1.10 crores belongs to his brother Shri K. Loganathan. The AO verified from the Village Administrative Officer of Siruseri village and ascertained that the property at survey No.60/2 measuring 1.21 acres, survey No.57/2A measuring 30 cents and survey No.57/2B measuring 32 cents are Nanjai lands (wetlands) and no crops have been grown during Fasli No.(s) 1425 relevant to financial year 2015-16, Fasli No.(s) 1426 relevant to financial year 2016-17, Fasli No.(s) 1427 relevant to financial year 2017-18, Fasli No.(s) 1428 relevant to financial year 2018-19. The AO also required the assessee to

explain what is the distance i.e., aerial distance between the agricultural land sold at village Siruseri and that of the municipal limit of Greater Chennai Corporation i.e., Madras Corporation as per notification issued by CBDT in regard to urbanization of areas for income-tax purposes under proviso (ii)(B) of section 2(1A)(c) and u/s.2(14)(iii)(b)(III) of the Act dated 01.01.1994 vide notification No.SO 10(E), the area described is up to a distance of 8 Kms from the municipal limits of Madras (Chennai) in all directions. The assessee came before the Assessing Officer that the land is situated more than 14 Kms. away from the municipal limit of Chennai by road and more than 8 Kms. of aerial distance of municipal limits of Chennai Corporation. But the AO was not convinced and hence he taking the help of GPS i.e., Global Positioning System computed aerial distance and finally noted that the distance as measured between two positioned GPS i.e., distance between the land mentioned in the schedule of the property and the nearest point of Semmancheri i.e., Municipal limit of Greater Chennai Corporation, the distance is is 4.9 Kms. by road and the aerial distance is 3.07 Kms. The Inspector accordingly reported the distance based on the inspector's report which contains the distance between land sold and the limits of Greater Chennai Corporation. The AO held the

property as capital asset liable to pay capital gain tax. He gave final finding as under:-

“23. The land mentioned in the schedule of the property at, Seruseri village is situated at a distance of 4.90Kms (By Road) and Aerial Distance of 3.07 Km from Semmancheri (Semmanchery local body is part of the Greater Chennai Corporation from the year 2011) and the population of Chennai is more than 10 Lakhs. Therefore, the land mentioned in the schedule of property comes under the definition of Capital Asset as per Sec.2(14)(iii)(b)(III) of Income Tax Act, Hence the land mentioned in the Schedule of property is a Capital Asset.”

Aggrieved, assessee preferred an appeal before CIT(A).

4. The CIT(A) noted that the AO after deputing its inspector made necessary enquiries and based on Inspector's report which is further based on GPS measuring found that land in question was located at an aerial distance of 3.07 Kms. from municipal limits of Chennai Corporation. It was also found that it was located at a distance of 4.90 Kms. by road. In view of the AO's enquiry and measurement of aerial distance, he noted that the land sold by assessee is located at an aerial distance of less than 8 Kms. i.e., 3.07 Kms and in the absence of contrary findings, he confirmed the computation of long term capital gain by AO at Rs.1,81,74,744/- by observing in Para 4.2 as under:-

“4.2 In the course of appellate proceedings, the appellant, except for saying that the land is agricultural in nature and located at an aerial distance of more than 8 Km, failed to furnish any evidence, whatsoever, in support

of his contention. In the absence of evidence to the contrary, I have no hesitation in holding that the Assessing Officer rightly concluded that the land in question is a capital asset for the purposes of Income Tax Act, and therefore, liable for taxation as Long Term Capital Gains. For that reason, the Long Term Capital Gains computed at Rs.1,81,74,744/- by the Assessing Officer is confirmed. The appellant fails on this ground.”

Aggrieved now assessee is in appeal before Tribunal

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel stated that the land as per Revenue Department Land Surveyor from Navalur to Siruseri is 7 Kms. and Navalur to the land in question is 5.5 Kms. Actually, the land is situated at 12.5 Kms from road and the land is situated more than the prescribed limit under the Act. The Id.counsel also stated that the Inspector's Report was not confronted to the assessee and the GPS co-ordinated system, as noted by the AO, is not disclosed to the assessee or confronted to the assessee for verification.

6. Now, the question arises, whether the system adapted by the Department for taking aerial distance of the land sold and that of the Chennai Corporation limits from the end of the limit, is correct or not? First of all, we have to see whether these documents were confronted to the assessee or not? As alleged by the assessee's

counsel, that the positioning of GPS by the Income Tax Inspector along with VAO of Siruseri village was not clear, then how the Department can reach to a conclusion that aerial distance is 3.07 Kms? Because positioning of GPS system is very important to measure aerial distance, there may be some other method also as prescribed by Government Authorities. This matter can be referred to the Department of Geographical Survey of India for measuring the aerial distance by the AO. Hence, this matter needs reconsideration at the level of AO. We are not convinced with the method adopted by the AO based on Inspector's report. Hence, we set aside the orders of lower authorities and remand the matter back to the file of the AO, who will ascertain from the Department of Geographical Survey of India and then will decide the issue based on the report of the same. The appeal is allowed for statistical purpose.

ITA No.2751/Chny/2019

7. As regards to ITA No.2751/Chny/2019, the issue is exactly identical and facts and circumstances are also exactly identical to ITA No.2750/Chny/2019, in the case of Shri Ananthan above, except the quantum. Hence, taking a consistent view, we set aside the orders of the lower authorities and remand the matter back to

the file of the AO, who will ascertain from the Department of Geographical Survey of India and then will decide the issue based on the report of the same. The appeal is allowed for statistical purpose.

8. In the result, both the appeals filed by the assesseees are allowed for statistical purpose.

Order pronounced in the court on 25th January, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th January, 2022

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. |