

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **135/CHNY/2021**
निर्धारण वर्ष /Assessment Year: **2011 - 2012**

Smt. Sudha Mohan,
No.H-114, Pallavan Nagar,
Kancheepuram – 631 501. T.N.
PAN : AGMPM 3707 C

Vs. The Principal Commissioner of
Income Tax,
Chennai – 600 001.
Tamil Nadu

आयकर अपील सं./ITA No.:**136/CHNY/2021**
निर्धारण वर्ष /Assessment Year: **2011 - 2012**

Shri. Srinivasan Mohan
No.H-114, Pallavan Nagar,
Kancheepuram – 631 501. T.N.
PAN : AIQPM 4530 P

Vs. The Principal Commissioner of
Income Tax,
Chennai – 600 001.
Tamil Nadu

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Mr. S. Sridhar, Advocate
: Mr. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 01.03.2022
घोषणा की तारीख/Date of Pronouncement : 04.03.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, AM:

The present two appeals by the Assessee are arising out of the two revision orders passed by the Principal Commissioner of Income Tax, Chennai – 600 001 u/s.263 of the Income Tax Act, 1961

(hereinafter referred to as 'the Act'), dated 16.03.2021 for the Assessment Year 2011 – 2012.

2. The sole issue before the Tribunal common to both these appeals is on challenging the assumption of jurisdiction u/s. 263 of the Act by the learned Principal Commissioner of Income Tax revising the assessment order dated 28.12.2018 passed u/s.147 r.w.s143(3) of the Act by the Income Tax Officer, Ward – 2, Kancheepuram.

3. As the issue raised in these two appeals are common relating to revision proceedings in respect of sale of land transaction jointly owned by both the Assesseees, these two appeals were heard together and are being disposed off by this common order for the sake of convenience and brevity. As agreed by both the parties, we will adjudicate the common issue on the basis of facts of the Assessee, Smt Sudha Mohan in ITA No.135/Chny/2021 and our decision shall apply mutatis mutandis on the other appeal of Shri Srinivasan Mohan in ITA No.136/Chny/2021.

4. The brief facts as culled out from the records are that the assessment was completed u/s.143(3) of the Act by the learned Assessing Officer vide order dated 12.03.2014, wherein the assessment was made on the total income of Rs.21,68,680/- by making an addition of Rs.18,52,724/- to the returned income of Rs.3,15,960/-. Subsequently, the case of the Assessee was reopened u/s.147 of the Act by issuing a notice u/s.148 of the Act on 30.03.2018. In the return filed in response to the notice u/s.148 of the Act, the Assessee admitted

an income of Rs.21,68,690/- as originally assessed u/s.143(3) of the Act vide order dated 12.03.2014. The case was reopened u/s.147 of the Act for the reason being that the land sold by the Assessee along with her husband, Shri. K.S. Mohan for a consideration of Rs.64,00,000/- cannot be treated as agricultural land and to be considered as capital asset within the meaning of Section 2(14) of the Act. In the re-assessment proceedings, the detailed submissions were made along with corroborative documents to support the claim of the Assessee that the sale of the land was that of agricultural land falling within the meaning of Section 2(IA) of the Act.

5. After taking on record the factual details pertaining to population and the location of the impugned land from the municipality, the learned Assessing Officer accepted the claim of the Assessee and held that the impugned land is an agricultural land which was exempted u/s.2(IA) and Section 45 of the Act. Accordingly, the re-assessment was completed on the returned income i.e. Rs.21,68,690/-.

6. Subsequently, the learned Principal Commissioner of Income Tax on perusal of the assessment records for the Assessment Year 2011 - 2012 observed that no proper examination nor verification was done by the Assessing Officer while passing the order u/s.143(3) r.w.s.147 of the Act and that the Assessment Order was passed without application of mind. Accordingly, the learned Principal Commissioner of Income Tax issued a show-cause notice dated 7th January, 2021 to

show-cause as to why the re-assessment order should not be set aside by invoking the provisions of Section 263 of the Act.

7. On perusing the order of the learned Principal Commissioner of Income Tax in paragraph No.10, PCIT observed that the Assessing Officer has accepted the claim of the Assessee that the concerned land is an agriculture land falling under the exempted category without making due verification and without taking necessary enquires.

8. The learned Counsel for the Assessee, Mr. S. Sridhar, Advocate placed on record a paper-book containing 76 pages and took us through the original assessment order passed u/s.143(3) of the Act dated 12.03.2014 and pointed out the noting made by the learned Assessing Office in the said assessment order which is reproduced as under:

"As per the AIR information available, the Assessee has deposited cash of more than Rs.10.00 lakhs in his SB A/c. maintained with Karur Vysya Bank, Kancheepuram Branch. Copy of the Bank statement for the A/c. No.1138155000030620 standing in the name of the Assessee was obtained and filed. The Assessee was asked to explain the sources for the cash deposits made and the details / nature of transactions carried out by the Assessee.

The representative stated that the Assessee is an UTI Agent and also doing Real Estate and Civil Construction activity. The UTI agency commission and net income from Real Estate and Civil Construction Activity was shown in the return of income filed. He further stated that he is unable to provide any further details and just produced copy of the bank book of the Assessee.

In the absence of any details available, I have no other option but to complete the assessment based on the available record. On detailed analysis of the Bank Account, the peak credit worked out at Rs.50,52,724/-. The representative stated that on the date of peak credit a cheque for Rs.32,00,000/- was deposited which was received from the buyer of the property

*sold by the Assessee. **He has also filed details of the property sole claimed that the property sold was not a capital asset as defined in Section 2(14). The representative also filed copies of Chitta and Adangal and VAO certificate as proof.** Considering the explanation given by the representative the peak credit is arrived at Rs.18,52,724/-." [emphasis supplied]*

9. He further took us to the re-assessment order passed u/s.143(3) r.w.s.147 of the Act dated 28.12.2018; wherein the categorical factual noting has been put on record by the learned Assessing Officer while accepting the claim of the Assessee that the sale of land is that of agricultural land exempted u/s.2(IA) and Section 45 of the Act. The learned Counsel for the Assessee strongly contended before us that the Conveyance Deed for the sale of the impugned land is placed on record by the Assessee; wherein there is recital and schedule of the property which very clearly stated that what is being sold is agricultural land. The learned Counsel further submitted that the claim of the Assessee was supported by the documents such as Chitta, Adangal and Village Administrative Officer [VAO] Certificate as a proof which were placed on record in the original assessment proceedings as well as in the re-assessment proceedings and also in the impugned revisionary proceedings.

10. The learned Counsel for the Assessee strongly contended that in the present case, the learned Assessing Officer has made the enquiry, noted and verified the documents submitted by the Assessee which are evident from the assessment orders placed on record. According to the learned Counsel for the Assessee, it is not a case where there is non-

application of mind by the learned Assessing Officer. According to him, the jurisdiction assumed by the learned Principal Commissioner of Income Tax for a revision u/s.263 of the Act by holding that no proper examination or verification was done by the learned Assessing Officer while passing the order u/s.143(3) r.w.s147 of the Act is baseless.

11. The learned Departmental Representative made a written submission in the course of hearing and relied upon the explanation to Section 263 of the Act which is inserted w.e.f 1st June, 2015. The learned Departmental Representative placed reliance on several decisions including that of the Hon'ble Madras High Court in the case *Jai Bharath Tanners* reported in 264 ITR 673 and strongly supported the revision made by the learned Principal Commissioner of Income Tax u/s.263 of the Act.

12. We have heard the rival contentions and perused the materials placed on record and had gone through the decisions placed before us and observe that it is an uncontroverted fact that, both in the original assessment made u/s.143(3), dated 12.03.2014 and the re-assessment made u/s.143(3) r.w.s.147 of the Act, dated 28.12.2018, the details of the property, i.e. the impugned sale of agricultural land have been noted by the Assessing Officers and documentary evidences placed by the Assessee in the course of assessment and re-assessment proceedings such as the Chitta, Adangal and the VAO Certificate have

been taken on record and verified vide assessment and re-assessment proceedings as is evident from those orders.

13. Considering these factual findings, it is evident that the learned Assessing Officers, both in the assessment as well as the re-assessment have applied their minds and based on the documentary evidences have taken a plausible view in holding that the sale of land is a sale of agricultural land which is exempted u/s.2(IA) of the Act.

Considering the documents on record and the findings given by the learned Assessing Officers, both in the assessment as well as in the re-assessment proceedings, we find that invocation of revisionary proceedings u/s.263 of the Act by the learned Principal Commissioner of Income Tax is not under proper jurisdiction. Further, we hold that, based on the proper examination and verification done by the learned Assessing Officers in the assessment as well as the re-assessment proceedings, there is no error leading the proceedings as erroneous and resulting into loss of revenue, in so far as it is prejudicial to the interest of the revenue. Accordingly, we set aside the order of the learned Principal Commissioner of Income Tax u/s.263 of the Act and upheld the re-assessment order made u/s.143(3) r.w.s.147 of the Act, dated 28.12.2018.

14. As regards, the second appeal of Shri. Srinivasan Mohan in ITA No.136/Chny/2021, identical issue is involved. Since, we have already decided this common issue on the identical set of facts in the case of

Smt. Sudha Mohan in ITA No.135/Chny/2021 in the preceding paragraph, we hereby apply the same decision and set aside the order of the learned Principal Commissioner of Income Tax u/s.263 of the Act. The grounds of appeal in these appeals are allowed.

15. In the result, the appeals of the Assessees are allowed.

Order pronounced in the court on 4th March, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 4th March, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलर्षी/Appellant
2. प्रत्यर्षी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF