

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **2627/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2013-14

&

धनकर अपील सं/ **WTA Nos.: 61/CHNY/2017 & 75/CHNY/2018**

निर्धारण वर्ष /Assessment Years: 2009-10 & 2010-11

Shri Mailanchikkal Abdul
Muneem,
FF-1, 48, Chander Plaza Arcot
Road, Saligramam,
Chennai – 600 093.

The Income Tax Officer /
v. **The Wealth Tax Officer,**
International Taxation Ward
1(2),
Chennai.

PAN: AALPM 4410F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Guru Bashyam, CIT

सुनवाई की तारीख/Date of Hearing

: 19.04.2022

घोषणा की तारीख/Date of Pronouncement

: 25.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

The appeal in ITA No.2627/Chny/2017 by the assessee is arising out of the orders of Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.35/CIT(A)-16/2013-14 dated 01.08.2017. The assessment was framed by the ITO, International Taxation Ward 1(2), Chennai u/s.143(3) of the Income Tax Act, 1961

(hereinafter the 'Act') for the assessment year 2013-14 vide his order 29.03.2016. The appeals by the assessee in WTA Nos.61/Chny/2017 & 75/Chny/2018 are arising out of different orders of Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.74/CIT(A)-16/2009-10 & 33/CIT(A)-16/AY 2010-11 dated 21.08.2017 & 07.05.2018. The assessments were framed by the WTO, International Taxation Ward 1(2), Chennai u/s.16(3) r.w.s. 17 of the Wealth Tax Act, 1957 (hereinafter the 'WT Act') for the assessment years 2009-10 & 2010-11 vide orders dated 29.12.2016 & 29.12.2017 respectively.

ITA No.2627/CHNY/2017

2. At the outset, the Id.counsel for the assessee stated that the CIT(A) has not adjudicated the issue whether the land in question is agricultural land or not, as claimed by assessee before him. The Id.counsel for the assessee took us through the first ground in Ground Nos.2 & 3 raised before us which reads as under:-

2. The CIT(Appeals) erred in rejecting the fresh claim backed by the evidence filed before him was wrongly adjudicated and ought to have appreciated that the proceedings before him should be construed as continuation of assessment proceedings thereby vitiating the findings recorded in page 7 of the impugned order.

3. The CIT(Appeals) failed to appreciate that the original asset/transferred asset should be reckoned as exempted asset within the scope of section 2(14) of the Act and ought to have appreciated that the issue relating to the claim of deduction u/s 54F of the Act and the entire computation of Long Term Capital Gains consequently would become academic.

3. The Id.counsel for the assessee took us through the CIT(A)'s order and the relevant Ground No.2 which reads as under:-

“2. The ITO erred in disallowing the claim of exemption pertaining to the said lands within the exception carved out in section 2(14) of the Act overlooking the evidences filed in relation thereto in the computation of taxable total income without assigning proper reasons and justification.

The Id.counsel explained the facts that the AO during the course of assessment proceedings noticed that the assessee during financial year 2012-13, relevant to assessment year 2013-14 sold an immovable property i.e., vacant land to the extent of 3 acres and 68 cents situated at 127, A Block, Panruti Village, Sriperumbudur Taluk, Kanchipuram District on 06.06.2012 for sale consideration of Rs.2,76,00,000/-. The assessee after arriving at long term capital gain at Rs.21,95,913/- after claiming of indexation claimed deduction u/s.54F of the Act but the AO computed long term capital gains tax at Rs.3,62,48,000/- after disallowing the assessee's claim of exemption u/s.54F of the Act. Before CIT(A), the assessee raised this issue that the land in question is agricultural land and CIT(A) after noticing the same noted and the same reads as under:-

“Ground of appeal No.2, 3 & 4 On the issue of assessee's claim u/s.2(14) of the Act that the land in question is agricultural land”

The CIT(A) noted that the assessee is making a fresh claim and he observed as under:-

“the assessee has not claimed in the return of income that the land sold is agricultural land and hence the gains is exempt u/s. 2(14) of the Act. The assessee has not admitted any agricultural income in any of the previous years (at least the past three years) from the above land. The above claim was also not made initially when the scrutiny proceedings were commenced. As such any fresh claim can not be made without revising the return of income filed. It is only when the show cause notices informing the assessee about withdrawal of his claim of deduction u/s.54F, the assessee has made a fresh claim that the land sold is an agricultural land and hence gain is exempt u/s.2(14) of the Act. The assessee on his own in the return of income has admitted Long Term Capital Gains to the extent of Rs.21,95,913/- which was further revised subsequently vide assessee’s submissions dt.09-03-2016 to the extent of Rs.98,23,000/- on issue of show cause notice by the assessing officer on dated 29-02-2016. Thus, assessee’s now making a fresh claim is not maintainable on the ground that assessee can make any fresh claim only by way of revising the original return and not otherwise. Therefore, respectfully following the decision of Apex Court in the case of *Mk/s. Goetze India vs. CIT* (284 ITR 323-C), wherein it was held that as under:

“Whether an assessee can amend a return filed by him for making a claim for deduction other than by filing a revised return – Held no”

Therefore, in the absence of any revised return, the alternate claim, which is an after-thought, cannot be entertained and hence it is rejected. Therefore, for the purpose of computing long term capital gain, the assessee’s claim that the land sold in question is agricultural land u/s 2(14) of the Act is rejected. Therefore, it is a capital asset for levying LTCG. The ground of appeal on this account is therefore dismissed.”

3.1 The Id.counsel for the assessee took us through the assessment order para 5 and stated that the assessee has filed details that the land sold is agricultural land and claimed exemption u/s.2(14) of the Act and the assessee filled following details but the

AO rejected the assessee's claim that the assessee has sold agricultural land.

- “1. Xerox copy of the certificate issued by Head Quarters Deputy Tahsildar, Sriperumpudur.
2. Xerox copy of the certificate issued by President No.127, Panruti Village and Census Records extract.
3. Chitta and Adangal issued by the Village Administration Officer, Panruti.
4. Revised statement of income for the A.Y.2013-14.

3.2 The Id.counsel for the assessee filed copy of Tribunal order in ITA No.2626/Chny/2017, order dated 11.07.2018 in the case of Smt. Majeeda Shahida Begum and stated that the assessee's another family member has sold exactly adjacent land and Tribunal after accepting the claim remanded the matter back to the file of the AO vide para 8 as under:-

8. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed by the assessee that nature of land which was sold giving rise to the gains was never an issue before Id. Assessing Officer nor raised by her before him. It is also true that assessee herself had computed capital gains from the sale of such property and claimed deduction u/s.54F of the Act in her return of income. Nevertheless, assessee did prefer a claim before the Id. Commissioner of Income Tax (Appeals) that the land sold was agricultural in nature and would not be capital asset within the meaning of Section 2(14) of the Act. In support of this assessee placed before Id. Commissioner of Income Tax (Appeals) a number of records to substantiate such claim. Id. Commissioner of Income Tax (Appeals) declined to admit the claim made by the assessee, citing a reason that Rule 46A did not permit admission of additional evidence, due to assessee's failure to produce the evidence before the Id. Assessing Officer . However, a reading of the assessment order clearly show that assessee's representative had mentioned loss of documents

provided by the client to him in the Chennai floods. Letter dated 29.12.2015, filed by the Id. Authorised Representative before Id. Assessing Officer which is relevant and it is reproduced hereunder:-

“We are in receipt of your notice dt.11.12.2015 and noted the contents and in that connection, we wish to state as follows: We have received documents/records from the client, due to recent floods our office is worst affected. We are recovering all documents/records using room heaters/ hot air blowers etc. We are facing uphill task since our office is submerged with 5 feet water for two days. We request you to give us two week's time to recover the documents/records. We regret the inconvenience caused to you”

If the land sold by the assessee was indeed agricultural in nature, gains arising from such sale would not be exigible for capital gains tax, since agricultural land is not a capital asset under Section 2(14) of the Act. We are of the opinion that the question whether the land sold was agricultural or not was a fundamental issue and this claim ought not have been brushed aside by the Id. Commissioner of Income Tax (Appeals), citing Rule 46A of the Income Tax Rules, 1962. When a particular receipt is not taxable under the Act, it would not become taxable solely for a reason that an assessee returned such income on a wrong understanding of law. Whether a receipt is taxable is to be determined by testing it against the provisions of the Act. Considering the facts and circumstances, we are of the opinion that assessee's claim that land sold was agricultural in nature requires consideration. We therefore set aside the orders of the lower authorities and remit the issue whether land sold by the assessee was agricultural or not and whether it was exigible to capital gains to the file of the Assessing Officer for consideration in accordance with law. Needless to say the question whether assessee's claim u/s. 54F of the Act merited admission is kept open.

In view of the above, the Id.counsel stated that exactly on identical lines, the matter can be remitted back to the file of the AO and issues on merits be kept open.

4. On the other hand, the Id.CIT-DR could not controvert the above factual situation and however, he relied on the assessment order and that of the CIT(A).

5. After hearing rival contentions and going through the facts, we noted that the assessee sold the land at 127, A Block, Panruti Village, Sriperumbudur Taluk, Kanchipuram District and the adjacent land sold by assessee's family member Smt. Majeeda Shahida Begum having same address 'No.127, Panruti Village, Sriperumpudhur Taluk, as the Tribunal in that matter has remanded the matter back to the file of the AO, taking a consistent view, we also restore this issue back to the file of the AO with identical directions. The issue on merits is kept open. Hence, this appeal of assessee is allowed for statistical purposes.

WTA Nos.61/CHNY/2017 & 75/CHNY/2018

6. Coming to Wealth Tax Appeals in WTA Nos.61/CHNY/2017 & 75/CHNY/2018, whereas only dispute is as regards to this land, whether this is agricultural land or land liable to wealth tax in term of Section 2(ea) of the Wealth Tax Act, 1957. Since the matter is restored back to the file of AO in the income tax proceedings, the

matter relating to wealth tax in these two appeals is also restored back to the file of the AO. In case, the land is agricultural land in term of section 2(ea) of the WT Act, wealth tax will not be levied and in case it is an asset in term of section 2(ea) of the WT Act, the AO will levy wealth tax accordingly. Hence, both the appeals of assessee are allowed for statistical purpose.

7. In the result, the appeals filed by the assessee in ITA No.2627/CHNY/2017 & WTA Nos.61/CHNY/2017 & 75/CHNY/2018 are allowed for statistical purposes.

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

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th April, 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. |