

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.:370/CHNY/2016  
निर्धारण वर्ष /Assessment Year:2006-07

**Shri M. Duraivel,**  
2/156, Ponniamman Koil Street,  
Injambakkam, Chennai – 600 041.

**The Income Tax Officer,**  
v. Business Ward-III(3),  
Chennai-34.

**PAN: AWMPD 2931R**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 18.05.2022

घोषणा की तारीख/Date of Pronouncement

: 25.05.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of Revision order passed by Principal Commissioner of Income Tax, Chennai in C.No.6119(17)/PR CIT-6/2014-15 dated 05.11.2015. The assessment was framed by the ITO, Business Ward III(3), Chennai for the assessment year 2006-07 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 11.02.2014.

2. The only issue in this appeal of assessee is as regards to revision order of PCIT that PCIT has erred in revising the assessment order framed u/s.143(3) r.w.s. 147 of the Act, as the AO has conducted enquiry in regard to the nature of land sold by assessee that being agricultural land. For this, assessee has raised the following three grounds:-

1. The order of the Hon'ble Commissioner of Income-Tax is erroneous in law and contrary to the facts and circumstances of the case.
2. The Hon'ble commissioner of Income-Tax has erred in setting aside the original order of assessment passed by the Learned Income-tax Officer, Business ward III(3), Chennai u/s 143(3) r.w.s. 147 dated 11.02.2014.
3. For these grounds and such other grounds which may be adduced at the time of hearing the Appellant praise the Hon'ble Income-tax Appellate Tribunal to intervene, cancel the order u/s 263 and render justice.

3. Despite service of notice, none is present from assessee's side. However, Revenue is represented by Id. Senior DR. This matter travelled up to Hon'ble High Court and the Hon'ble High Court in T.C.(A) No.938 of 2019 and CMP No.24840 of 2019 vide order dated 09.07.2020 has directed the Tribunal to decide the appeal of assessee afresh after considering the material placed by assessee on the assessment record. The Hon'ble High Court directions in para 6 & 7 reads as under:-

“6. The Assessee has filed the copies of the revenue records in the typedset of papers, and on perusal of the same, the seal of the Assessing Officer is found at the bottom of the Photostat copies of the documents. Therefore, it is clear that the documents were part of the assessment file. Considering the fact that the Tribunal had proceeded exparte on account of non-appearance of the Assessee, and though the Tribunal might have been

justified by doing so, yet, considering the fact that the assessment order is of the year 2015, and the Assessing Officer has already perused the records and given relief to the Assessee, and the appeal filed by the Assessee before the Tribunal arises out of the order passed under Section 263 of the Act, this court is of the view that the matter can be remanded back to the Tribunal for fresh decision on merits, after affording an opportunity to the Assessee.

7. For the above reasons, the Tax Case Appeal is allowed, the impugned order is set aside and the matter is remanded back to the Tribunal for fresh decision on merits. The Tribunal may issue appropriate directions to the Revenue to produce the entire Assessment file, and after affording an opportunity of hearing to the assessee, take a decision on merits in accordance with law. Consequently, the substantial questions of law are left open. No costs. Connected miscellaneous petition is closed.”

4. On query from the Bench, the Id. Senior DR stated that he is ready with the assessment records including the documents filed by assessee during original assessment proceedings. Brief facts of the case are that original assessment was completed by the ITO u/s.143(3) r.w.s. 147 of the Act vide order dated 11.02.2014. The assessee during the relevant year under consideration sold two properties i.e., land for an amount of Rs.1.01 crores and Rs.97.6 lakhs registered vide document Nos.3733/2005 and 5569/2005 with SRO, Neelankarai. The assessee during the course of original assessment proceedings before the AO claimed that the said land sold were agricultural lands and hence, does not fall under the definition of capital asset in term of section 2(14) of the Act. The AO required the assessee to file the details during original assessment proceedings, which we obtained from Id. Senior DR and

from the assessment record produced before us. Even the AO in the original assessment proceedings noted that "in support of his claim, the assessee also produced the copy of chitta-adangal received from the State Revenue Authorities and also argued that the land is an agricultural land situated beyond 8 Kms from municipal limits". We noted that even during original assessment proceedings, the assessee has filed copy of chitta, adangal and the certificate from State Revenue Authorities that the agricultural land situated is beyond 8 kms from the municipal limit. The Id. Senior DR filed copies of these chitta, adangal before us. Accordingly, the AO while framing original assessment accepted the argument of assessee that the land is agricultural land and not fall under the definition of capital asset in term of section 2(14) of the Act and exempt from long term capital gain.

5. The PCIT while going through the assessment proceedings noted that the AO has simply concluded the assessment without proper enquiry, application of mind and due verification. The PCIT also noted that the assessment record do not contain the details of crops harvested and details of sale of agricultural harvest along with expenses incurred. Thus in the opinion of PCIT, the assessment framed is erroneous and prejudicial to the interest of Revenue.

Therefore, he invoked the provisions of section 263 of the Act and set aside the assessment with a direction to the AO to redo the assessment with respect to specific issue contained in the body of the revision order after providing due opportunity to the assessee. Aggrieved, assessee came in appeal before the Tribunal.

6. The Id. Senior DR now before us stated that the assessee vide letter dated 24.11.2016 submitted the extract of Revenue records pertaining to Fasli years 1411, 1412 & 1413 which stated that during the relevant period paddy was cultivated in the impugned land. The relevant Fasli year corresponding to two dates of transactions are as under:-

26.06.2005 - Fasli year 1414 (01.07.2004 to 30.06.2005)  
25.09.2005 - Fasli year 1415 (01.07.2005 to 30.06.2006)

The Id. Senior DR stated that in the relevant Fasli year, the assessee has not carried out any agricultural activity or in the preceding two years prior to the date of transaction, no agricultural activity was carried out. The Id. Senior DR further filed a document, Encumbrance Certificate downloaded from website of the TN Registration Department in respect of both the transactions in Doc Nos.3733/2005 and 5569/2005 of SRO, Neelankarai reflect the type of property as "House Site". According to the above and according

to Id. Senior DR, the type of property as on the transfer date was not agricultural land and hence, the PCIT has only set aside the assessment order and redirected the AO to redo the same after providing reasonable opportunity of being heard to the assessee and according to law. According to the Id. Senior DR, the order of revision passed by PCIT may be upheld.

7. We have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the assessee has carried out agricultural activity which is assessee's family traditional vocation. It is clear that in the sale deed 3373 of 2005 & 5569 of 2005, the properties clearly defined as agricultural land in the schedule of property. Even the AO during original assessment proceedings noticed the chitta and adangal i.e., records for the relevant Fasli year and same was accepted by the AO during assessment proceedings. The assessee has cultivated this land and grown paddy from 2001 to 2004 and for this produced a copy of the adangal record for S.No.255 & 256 issued by the Tehsildar office, Solinganallur Taluk, Kancheepuram Dist for the following fasli years:-

Fasli Year	English Calendar year	Crop cultivated
1411	July 2001 to June 2002	Paddy
1412	July 2002 to June 2003	Paddy
1413	July 2003 to June 2004	Paddy

From the above, it is clear that the assessee's land is agricultural land and he has cultivated till 2004 but sold this land in 2005. Even otherwise the AO has considered all these documents and formed an opinion that the land sold is agricultural land. Now, the PCIT want to review the order on same set of facts, which according to us is not permissible under law. The AO has taken one view and that is the only permissible view in view of the above given facts that the land sold by assessee is agricultural land and we find no error in the assessment order or prejudicial in the assessment order to the Revenue. Hence, we reverse the revision order passed by PCIT and uphold the assessment order.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25<sup>th</sup> May, 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 25<sup>th</sup> May, 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.            |