

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
**श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष**  
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**  
**AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.219/Chny/2018**

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mr. D. Shakshadipathy, Plot No.124, 5 <sup>th</sup> Street, Pallava Gardens, Zamin Pallavaram Chennai-600 117.	Vs	The Income Tax Officer Non-Corporate Ward-23(3) Tambaram.
PAN:CMLPS 5156A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Anand Babunath, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mrs. R.Uma Maheswari, JCIT

सुनवाई कीतारीख/Date of hearing	:	31.05.2022
घोषणा कीतारीख /Date of Pronouncement	:	01.07.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-10, Chennai, dated 30.10.2017 and pertains to assessment year 2011-12.

2. The assessee has raised following grounds of appeal:-

*"1.1 Learned A.O erred in assessing LTCG of Rs.1,29,06,236/- being profit on sale of ancestral agl.lands in the status of individual instead of assessing it in the status of appellant- HUF.*

*1.2. In spite of submissions in 2015 and again on 29-11-2016 that the lands sold were ancestral agl.lands and proof by way of (1) partition deed dt.25-7-1967, (2) 1-7-1985 (3) and settlement deed dt.4-12-2008, having been filed, and the A/O having agreed that appellant inherited ancestral lands [vide para 3.1 of the asst.order], has*

*erred in assessing the LTCG in the status of "individual" instead of "HUF".*

*2. Without prejudice to the above, Contrary to facts and in spite of evidence filed Authorities below erred in rejecting the claim of the appellant that the land sold were agl.lands and hence LTCG is not exigible to tax.*

*3. Authorities below erred in not allowing, fully, claim of the appellant u/s 54F of the Act."*

3. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2011-12 on 07.6.2011 declaring total income of Rs.3,18,870/-. The case has been subsequently reopened u/s.147 of the Income Tax Act, 1961, for the reasons recorded as per which information received from the Directorate of Intelligence & Criminal Investigation, Chennai, reveals that the assessee along with 5 other persons had sold land measuring 2.92 acres situated in the village of Jalladianpettai, Sholinganallur Taluk, Kancheepuram District, on 26.11.2010 for net consideration of Rs.5.84 crores. It was further noticed that the assessee has received his share of consideration at Rs.1.46 crores. The reasons recorded further reveals that although, land sold by the assessee is mentioned in the document as agricultural land, but it was sold to M/s.Airmid Infrastructure Ltd., New

Delhi, for non-agricultural purposes and thus, the Assessing Officer was of the opinion that income chargeable to tax had been escaped assessment within the meaning of section 147 of the Act. During the course of assessment proceedings, the Assessing Officer noticed that land sold by the assessee although classified as agricultural land in patta, chitta & adangal etc., but said land is situated within the territorial jurisdiction of Greater Chennai Corporation and thus, comes under capital asset as defined u/s.2(14) of the Income Tax Act, 1961 and thus, computed long term capital gain on consideration received for transfer of land. Further, the Assessing Officer has admitted fresh claim made by the assessee towards deduction claimed towards section 54F of the Act for purchase and construction of house property, however, allowed relief only in respect of purchase of plot of land and rejected cost of construction incurred by the assessee for the purpose of house property. The assessee carried matter in appeal before the first appellate authority, but could not succeed. The learned CIT(A), for the reasons stated in his appellate order dated 30.10.2017 rejected contention of the assessee and sustained additions made by the Assessing

Officer towards computation of long term capital gain solely on the ground that impugned land capital asset as defined u/s.2(14) of the Act, and consequently, the assessee needs to compute capital gain from sale of land. The learned CIT(A) also rejected claim of the assessee towards deduction claimed u/s.54F of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The learned A.R for the assessee submitted that the learned CIT(A) erred in assessing long term capital gain on sale of agricultural land without appreciating fact that land sold was agricultural land and further, it is situated beyond 8 kms from the territory jurisdiction of Greater Chennai Municipal Corporation. The learned A.R for the assessee further submitted that the Assessing Officer had relied upon G.O.(Ms) No.280 dated 09.11.2010 issued by Municipal Administration & Water Supply (Election) Department, in succession to subsequent G.O.(Ms) No.256 dated 26.12.2009, whereas said notification has been superseded by issue of G.O. dated 08.02.2011, as per which the area in which land situated was included within limits of Chennai Corporation. However, the

assessee has sold land before publication of said notification in the official gazette. Therefore, when the land sold by the assessee it was in the nature of agricultural land and situated 8 kms beyond the limits of Chennai City Corporation and thus, same cannot be brought to tax under the head 'capital gains.'

5. The learned DR, on the other hand, referring to G.O (Ms) No.280 dated 09.11.2010 submitted that w.e.f 09.11.2010 Chemmanchery village has been included within the jurisdiction of Chennai Municipal Corporation. Further, the land sold by the assessee is within limits of Chennai City Municipal Corporation and thus, the Assessing Officer has rightly held that although, lands sold by the assessee is classified as agricultural land in revenue records, because it is situated within limits of Chennai City Corporation, same comes under definition of capital asset as defined u/s.2(14) of the Act, and thus, rightly computed capital gains on sale of property.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to nature of land sold by

the assessee. In fact, the Assessing Officer himself had admitted fact that as per revenue records, land in question was agricultural land. The only reason for the Assessing Officer to bring sale consideration received for transfer of impugned land under the head 'capital gains' is land has been sold for non-agricultural purpose and further, impugned land is situated within jurisdiction of Chennai City Municipal Corporation. The Revenue considered G.O. (Ms) No 280 dated 09.11.2010 issued by Municipal Administration & Water Supply (Election) Department, Govt.of Tamil Nadu, and argued that land sold by the assessee comes under jurisdiction of Chennai City Municipal Corporation. On the other hand, the learned A.R for the assessee relied upon Gazette Notification published by Tamil Nadu Government dated 19.07.2011 and argued that Semmancherry village, where impugned lands was situated comes under Chennai City Corporation limits from 19.07.2011 only. Since, the assessee has sold land in question on 26.11.2010 itself and further, when the land which was sold by the assessee, nature of land was agricultural land, same cannot be included within definition of capital asset as defined u/s.2(14) of the Act.

7. Having considered arguments on both the sides, we find that there is no dispute with regard to nature of land, because in the revenue records, the land has been classified as agricultural land. The assessee has also furnished various evidences to prove that his father has carried out agricultural operations for many years. The only dispute with regard to distance in which such land is situated from the limits of Chennai Municipal Corporation and from which date said distance has been extended to the village in which impugned land is situated. The assessee claims that village in which impugned land situated was included in the Chennai City Corporation limits from 19.07.2011 onwards, whereas the Revenue claims that place has been included within Chennai City Corporation limits on 09.11.2010 itself. In case, the G.O referred to by the Assessing Officer is correct, then nature of land has to be examined with reference to said G.O. and distance of the place to determine nature of the asset. In case G.O. referred to by the assessee is correct, then impugned land in question is definitely as agricultural land which is outside scope of capital asset as defined u/s.2(14) of the Act. This fact needs to be verified by the Assessing Officer in light of two

Government orders referred to above. Hence, we set aside the issue to the file of the Assessing Officer and direct the A.O to decide the issue after considering necessary facts and also by referring to G.Os brought on record by both the parties and also decide the issue in accordance with law.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 1<sup>st</sup> July, 2022

Sd/-

(राहुल चौधरी)

(Rahul Chaudhary)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 1<sup>st</sup> July, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member