

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.708/Chny/2016
(निर्धारण वर्ष / **Assessment Year: 2006-07**)

ACIT Non Corporate Circle-3, Chennai.	बनाम / Vs.	Smt. Ayishathu Jailani, No.47, Model School Road, Thousand Lights, Chennai-600 006.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AEWPJ-9087-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri S. Sridhar (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri ARV Sreenivasan (Addl. CIT)-Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	15-06-2022
घोषणा की तारीख / Date of Pronouncement	:	03-08-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2006-07 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] dated 28-12-2015 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 10-03-2014. The grounds raised by the Revenue are as under:

1. The order u/s.250(6) of the Ld. CIT(A) is contrary to law and opposed to the facts of the case.
2. The Learned CIT(A) did not appreciate the facts of the particular case as enforced by the Supreme Court in the case of CWT vs. Officer-in-charge (Court of

Wards) [1976] 105 ITR 133 (SC) and merely went by the location and the particulars in the revenue records to grant relief to the assessee.

3. The Ld CIT(A) erred in failing to appreciate the case laws relied upon by the ITAT in the case of Shri Aboo Bucker (s/o the assessee), wherein the impugned asset being land was found to be non-agricultural in nature.

4. The Ld CIT(A) failed to appreciate that the development activity in the vicinity, the real estate worth, the magnitude of transaction making agricultural operations unviable, purpose of transfer, intention of the buyer etc, defines the property transferred as Capital Asset and not agricultural land.

5. For these and other grounds that may be permitted to be presented at the time of hearing, the Hon'ble ITAT may set aside the order of the Learned Appellate Commissioner, restore the order u/s.143 (3) of the Assessing Officer and thus render justice.

As evident, the revenue is aggrieved by relief provided by Ld. CIT(A) in the impugned order qua capital gain earned by the assessee on sale of agricultural land.

2. The Ld. Sr. DR, at the outset, submitted that the issue stood covered in revenue's favour by the decision of this Tribunal in the case of joint owner of the property in **ITO V/s Shri Aboobucker, ITA No.1793/Mds/103 order dated 31.12.2015**. A copy of the order has been placed on record. The Ld. Sr. DR submitted that the assessee and her son Shri. Aboobucker transferred land measuring 7 acres at Navaloor village. The owners claimed the above land to be agricultural land. However, Ld. AO held that the land was capital assets and accordingly, brought the sale proceeds to tax as long term capital gain (LTCG). Upon further appeal, the additions were deleted by Ld. CIT(A) for the reasons stated in the impugned order. The Ld. Sr. DR submitted that in the case of co-owner, similar additions were made in respect of the same transaction which was deleted by learned first appellate authority. However, Tribunal has reversed the order of learned first appellate authority and restored the assessment framed by Ld. AO. The Tribunal held that the property is not an agricultural land. The Ld.

Sr. DR submitted that since the present assessee is the co-owner of the same property, the decision of the coordinate bench may be followed.

3. The Ld. AR, on the other hand relied upon the decision of Hon'ble Madras High Court in **CIT Vs Hi Tech Arai Ltd (321 ITR 477; 01.09.2009)** which held that the Tribunal is not bound to follow its earlier decision if such earlier decision does not reflect the correct position of the law. In the said background, Ld. AR relied on various case laws on merits to submit that the land was an agricultural land and therefore, the impugned order was to be upheld. The copies of the decisions have been placed on record.

In the above factual background, our adjudication would be as under.

Assessment Proceedings

4.1 It is undisputed fact that the assessee and her son Shri Aboobucker are the joint owners of the land measuring 7 acres at Navaloor Village, Chennai. During the year, land was sold to M/s. Menakur Infrastructure Pvt. Ltd for sale consideration of Rs.600 Lacs. To tax the same, the assessee's case was reopened and an assessment was framed u/s 143(3) r.w.s. 147 on 10.03.2014. The assessee held 80% share in the land. During assessment proceeding, the assessee submitted that the land is an agricultural land and not a capital asset u/s 2(14) since it is beyond 8 kilometers from the city limit and the population of the area was less than 10000. It was also submitted that the land was used for agricultural purpose till the date of sale and agricultural income was offered to tax.

4.2 However, rejecting the same and noticing that the sale consideration roughly works out to be Rs.86 Lacs per acre and

considering the fact that the purchaser of the property was a real estate company, Ld. AO held that the land was not an agricultural land. The decision of first appellate authority favoring assessee in the case of Shri Aboobucker was held to be not acceptable. Finally, the sale proceeds of Rs.480 Lacs was brought to tax as Long Term Capital Gains.

Appellate Proceedings

5. Upon further appeal, Ld. CIT(A) reversed the stand of Ld. AO and held that the land was agricultural land only. The assessee purchased the land as agricultural land, held them as agricultural land, used them for agricultural activities and finally sold them as agricultural lands only. To adjudicate, Ld. CIT(A) also noted that similar issue was decided in favor of joint owner by learned first appellate authority. The facts of the present case were quite same and therefore, there was no logic and cogent basis to differ with the findings of or predecessor rendered in the case of Shri Aboobucker. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

6. We find that the revenue successfully assailed the findings of learned first appellate authority in the case of Shri Aboobucker vide **ITA N.o.1793/Mds/2013 dated 31.12.2015**. The relevant findings of the co-ordinate bench were as under: -

05. We have heard both the parties and perused the material on record. The AR submitted that the sale transaction effected by the assessee in respect of the above land constituted only sale of agriculture land, and by no stretch of imagination it can be treated as transfer of capital asset and so as to treat the same as 'capital gain' for the following reasons:

(i) Purchase and holding of land for a long period and subsequent sale thereof itself cannot be an indicator to hold it as non-agricultural land, the assessee was to carry on business with those assets.

(ii) The assessee held land for considerable time. The asset acquired was agriculture land as per the evidence brought on record. Thus, the assessee held the agriculture land for more than 3 years. During that period the assessee carried on regular agricultural operations. In the light of favourable market conditions the assessee thought it good to sell the asset to realize a good amount. Realization of better price in a booming market cannot be considered as an adventure in trade

(iii) Realization of investments consisting of purchase of agricultural land and resale, though profitable are clearly outside the domain of capital gain.

(iv) The assessee treated the assets as investment in agricultural land. Therefore disposal of the same would not convert, what was a capital accretion. To make it more clear, sale of agricultural land by the assessee and realisation of good price would not alter the basic nature and characteristic of the transaction. In the case of the assessee, land was acquired by the assessee and treated as fixed- assets.

(v) Whether a transaction in respect of an asset is capital or not depends on the facts and circumstances of the case. The mere fact that the person has purchased a land and subsequently sold it, giving rise to a substantial profit cannot change the character of the transaction. It is the general human tendency to earn profit out of capital asset. No one invests to incur a loss. If the market condition suddenly goes up or down, it is always the tendency of a person to take a quick decision so that the realization on the investment is maximum or the loss is minimum.

(vi) As already mentioned the assessee carried on regular agricultural operations in the said agriculture land.

(vii) By the above agriculture land the assessee earned agriculture income which were brought into the account books of the assessee. Such income was offered to income tax.

5.1 He submitted that in the present case there is no dispute that the assessee acquired agricultural land. There is also no dispute that there was agricultural operation in this land before sale of this land.

5.2 The Departmental Representative submitted that the amount received on sale of this property is nothing but on account of sale of capital asset and the same was brought into income from capital gain. In this case, the Authorised Representative submitted that the land always treated as investment and not at all converted into stock-in- trade. The character of the land in the hands of the assessee has not changed.

5.3 Now the question as to whether a land is agricultural land or not is essentially a question of fact. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. We have to answer the question on a consideration of all of them, a process of evaluation and the inference has to be drawn on a cumulative consideration of all the relevant facts. It may be stated here that not all the factors or tests would be present or absent in any case and that in each case one or more of the factors may make appearance and that ultimate decision will have to be reached on a balanced consideration of the totality of the circumstances.

5.4 The expression 'agricultural land' is not defined in the Act, and now, whether it is agricultural land or not has to be determined by using the tests or methods laid down by the Courts from time to time.

5.5 The Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim v. CIT [1993] 204 ITR 631/70 Taxman 301 has approved the decision of a Division Bench of the Gujarat High Court in the case of Siddharth J. Desai 139

ITR 628 and has laid down 13 tests or factors which are required to be considered and upon consideration of which, the question whether the land is an agricultural land or not has to be decided or answered. We reproduce the said 13 tests as follows:

- "1. Whether the land was classified in the Revenue records as agricultural and whether it was subject to the payment of land revenue?
2. Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
3. Whether such user of the land was for a long period or whether it was of a temporary character or by any of a stopgap arrangement?
4. Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?
5. Whether, the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?
6. Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such lesser and/or alternative user was of a permanent or temporary nature?
7. Whether the land, though entered in Revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?
8. Whether the land was situated in a developed area? Whether its physical characteristics, surrounding situation and use of the land in the adjoining area were such as would indicate that the land was agricultural?
9. Whether the land itself was developed by plotting and providing roads and other facilities?
10. Whether there were any previous sales of portions of the land for non-agricultural use?
11. Whether permission under s. 63 of the Bombay Tenancy and Agricultural Land Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturists was for non-agricultural or agricultural user?
12. Whether the land was sold on yardage or on acreage basis?
13. Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

5.6 We will therefore proceed to examine the question as to whether the property can be said to be Agricultural land or not. In the case of CWT vs. Officer-in-Charge (Court of Wards), Paigah 105 ITR 133 (SC) in which question to be decided was whether acres of vacant land enclosed in compound walls of a palace situated by the side of a lake and classified and assessed to land revenue, which were neither cultivate nor had been put to non-agricultural use' in the past could be regarded as "agricultural land" within the meaning of that expression which occurred in the definition of "asset" in section 2(e) of the WT Act, 1957. The Hon'ble Supreme Court held that much weight cannot be given to mere "potentiality" of the land for use for agricultural purposes and what is really

required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of the land, by some possible future owner or possessor, for an agricultural purpose. It is not mere potentiality, but its actual condition and intended user which has to be seen. One of the objects for exemption is to encourage cultivation or actual utilisation of land for agricultural purposes and hence if there is neither anything in its condition, nor anything in the evidence to indicate the intention of its owners or possessors so as to connect it with an agricultural purpose, the land could not be "agricultural land".

5.7 In the case before the Supreme Court the following circumstances were emphasised viz. (i) area was Very large (108 acres) and was abutting a lake, (ii) there were two wells on it (iii) it was capable of being used (though not actually used) for agricultural purposes, (iv) it had not been put to any use which could change its character by making it unfit for immediate cultivation; and (v) it was classified and assessed to land revenue as "agricultural land" under the relevant revenue enactment. The Supreme Court held that first four circumstances relating to absence of non-agricultural user were neutral circumstances and only fifth circumstance was good prima facie evidence of land being agricultural land but presumption arising there from could be rebutted by other circumstances. In that case the assessee had not led any evidence about intended user because assessee was under mistaken impression that it was not necessary to do so in view of existence of prima facie evidence in the form of entries in the Revenue record and therefore the Supreme Court restored the matter to Tribunal to record a finding on the question of intended user and then decide the point whether the land in question was agricultural land. The Supreme Court disapproved the view that that land which is left barren but which is capable of being cultivated can also be agricultural land unless the said land is actually put to some other non-agricultural purpose like construction of buildings, or an aerodrome runway, etc. thereon which alters the physical character of the land rendering it unfit for immediate cultivation and observed that minimal test of agricultural land was credible evidence of at least appropriation or setting apart of the land for a purpose which could be regarded as agricultural and for which land was used without an alteration of its character.

5.8 The decision of Supreme Court in the case of Officer-in-Charge (Court of Wards) was analysed by the Gujarat High Court in CIT vs. Sarifabibi Mohammed Ibrahim 136 ITR 621(Guj) and the legal position was summed up as follows:-

(i) The fact that land is entered as agricultural land in revenue records and is assessed as such under the Land Revenue Code would be a circumstance in favour of conclusion that it is an agricultural land. However, this would raise only a prima facie presumption and said presumption can be destroyed by other circumstances pointing to the contrary conclusion

(ii) The fact that agricultural operations were carried on in the past or are carried on currently is a circumstance in favour of conclusion that land was agricultural land. However, this is not a decisive factor inasmuch as agricultural crop can be raised even on building site land (even on desert land as observed by the Supreme Court in said case) and sometimes, a crop is grown in order not to allow the land to remain idle awaiting sale for non-agricultural purposes to a non-agriculturist by way of a stop-gap arrangement or in order to avoid payment of revenue at a higher rate or in order to avoid payment of capital gains tax.

(iii) The fact that land is not converted to non-agricultural user would be a circumstance indicating that it is an agricultural land. However this is subject to same rider as is mentioned in (ii) above.

(iv) The following facts would indicate that land was not agricultural land:

(a) The land is situated (even in the year prior to asst.year 1970-71 when amendment came in force) in an urban area in the proximity of building sites. (From Asst. year 1970-71, agricultural lands situate within municipal limits are not outside the ambit of "capital assets").

(b) The land is sold to a non-agriculturist for non-agricultural purposes

(c) The land is sold on a per square yard basis at a price comparable to the price fetched by building sites

(d) The price is such that no bona fide agriculturist would purchase the same for genuine agricultural operations

(e) When the price is such that no prudent owner would sell it at a price worked out on the capitalisation method taking into account its optimum yield in the most favourable circumstances.

5.9 The above decision of Gujarat High Court has been affirmed in appeal by the Supreme Court in Sarifabibi Mohmed Ibrahim vs. CIT 204 ITR 631 (SC) in which the Supreme Court emphasised that all the circumstances were required to be weighted and that High Court has reached a correct conclusion.

5.10 The claim of the Assessee that agricultural operations were carried out over the property and the property was actually used for agricultural purpose was sought to be established by relying on the classification of the property as agricultural land in the revenue records, existence of mango trees for agricultural purpose. The Revenue contends that there is no evidence of the Assessee having carried out actual agricultural activities over the property. The Assessee has not claimed any expenses incurred in carrying out agricultural operations. There is no evidence of the Agricultural produce having been sold. The Hon'ble Kerala High Court in the case of Kalpetta Estates Ltd. 185 ITR 318 (Ker) it has been held by the Hon'ble Kerala High Court that the burden of proof that the land in question was agricultural land at the time of transfer to claim exemption was on the Assessee. As already observed the question whether the land was Agricultural land has to be decided on facts of each case and decided cases are only guidelines to be kept in mind. Facts and all the circumstances are to be considered as a whole and an overall view is to be taken in deciding whether the land was an agricultural land. In a given case large number of circumstances may be indicative of agricultural character but one circumstance may outweigh all of them and on its basis the land would be held to be a non-agricultural land. The case laws cited by the Assessee as well as the Revenue deal with situations where one or two factors was considered as the basis on which the conclusion that property was Agricultural land or was not Agricultural land had been arrived at. The case laws cited by the parties are therefore are not specifically considered. As we have already observed, the conclusion has to be arrived at based on consideration of all circumstances cumulatively as laid down by the Hon'ble Supreme Court in the decisions referred to in the earlier paragraphs.

5.11 The Assessee in the present case is not an Agriculturist. He has no background of agricultural activities and he is a non-resident. Strictly speaking it may not be necessary to have background of agricultural activities. We are making a reference to these circumstances only to weigh the cumulative

circumstances to come to a conclusion whether the property can be regarded as Agricultural Land. No evidence of having spent human labour in the sense of preparing the land, filling, sowing seeds, planting on a regular basis has been produced by the Assessee. The property is situated in fast developing area of Chennai. The property is located in developed/ developing area and has access to all modern amenities/living. There was Real estate activity in the area where the property is situated. The sale of the property by the Assessee is to a commercial organisation. The sale consideration paid would show that no bona-fide agriculturist would pay such a huge price of Rs. 6,09,60,000/- for 7.12 acres for acquiring of land which works out Rs. 86,00,000/- per acre.

5.12 We will now apply the tests laid down by the Hon'ble Gujarat High Court in the case of Sarifabibi Mohammed Ibrahim (supra) which was approved by the Hon'ble Supreme Court, to the facts and circumstances of the case:-

(i) The fact that land is entered as agricultural land in revenue records and is assessed as such under the Land Revenue Code would be a circumstance in favour of conclusion that it is an agricultural land. However, this would raise only a prima facie presumption and said presumption can be destroyed by other circumstances pointing to the contrary conclusion.

(ii) The fact that agricultural operations were carried on in the past or are carried on currently is a circumstance in favour of conclusion that land was agricultural land. However, this is not a decisive factor inasmuch as agricultural crop can be raised even on building site land (even on desert land as observed by the Supreme Court in said case) and sometimes, a crop is grown in order not to allow the land to remain idle awaiting sale for non-agricultural purposes to a non-agriculturist by way of a stop-gap arrangement or in order to avoid payment of revenue at a higher rate or in order to avoid payment of capital gains tax.

(iii) The fact that land is not converted to non-agricultural user would be a circumstance indicating that it is an agricultural land. However this is subject to same rider as is mentioned in(ii) above.

(iv) The following facts would indicate that land was not agricultural land:

(a) The land is situate in an area in the proximity of building sites.

(b) The land is sold to a non-agriculturist for non-agricultural purposes.

(c) The land is sold at a price comparable to the price fetched by building sites.

(d) The price is such that no bona fide agriculturist would purchase the same for genuine agricultural operations.

5.13 In the present case, the purchaser of the property was a company by name M/s. Menakur Infrastructure Private Limited which is a registered company under the Companies Act, 1956, incorporated on 04/08/2004 vide registration No.U45204TN2004PTC053884 with an intention to develop housing projects, Information Technology Buildings and family housing construction in and around Chennai. The property sold is situated in Navalur which is a suburb in Chennai, it is situated in Kanchipuram Districtt, Tamil Nadu, located south of the city of Chennai, along the Old Mahabalipuram Road. Navalur is located between Sholinganallur and Siruseri and is around 6 kms. from Sholinganallur and comes under Thirporur taluk. The place was once a village but with the advent of Information Technology Companies and the rapid development of the Old Mahabalipuram, it has become a bustling suburban. Navalur is an upcoming residential area with many number of Flats coming up, mostly professionals from Information Technology companies renting and buying apartments. As detailed above, the property sold by the assessee is in the midst of development activities

being carried out by builders in promoting housing/ Information Technology corridors, and no agricultural activities were being carried out either by the assessee nor by others in that area, the property is described as a mango grove as per the copy of the sale deed/patta, chitta adangal produced. In view of the same, the sale price received for the property has increased manifold which a normal agricultural land will not fetch. The price is in accordance with the development activities and changes happening in the nature of the land from agricultural to that of housing.

5.14 If we consider the above facts and circumstances of the present case as a whole and an overall view is to be taken in deciding whether the land was an agricultural land, we would come to a conclusion that the property cannot be considered as Agricultural land. Though the circumstance that the land is classified as Agricultural in the revenue records and the Village Panchayat President, Navallur, has certified that the land is away from municipality. In our view the other circumstances pointed out above outweighs all of the circumstances in favour of the Revenue and on the basis of those circumstances, we are inclined to conclude that the property was not an agricultural land. The Id. Authorised Representative for assessee also relied on the judgments of Sakuntha Vedachalam & Vanitha Manickavasagar vs. ACIT 369 ITR 558 and CIT vs. Malwa Texturising P. Ltd 292 ITR 488 (MP) which are distinguishable on facts. Accordingly, this appeal of the Revenue is allowed.

6. In the result, the appeal of the Revenue in ITANo.1793/Mds/2013 is allowed

7. Upon perusal of aforesaid adjudication, we find that very detailed findings / reasoning has been rendered by the coordinate bench in the case of the Joint Owner. After weighing all the surrounding circumstances as well as after considering the various judicial pronouncements, the bench reached a finding that the land could not be held to be an agricultural land. No change in facts have been demonstrated before us and facts are pari-materia the same in the present case before us. Nothing has been shown to us that the aforesaid order has been reversed in any manner by any higher judicial authority. Therefore, we see no reason to deviate from the findings of coordinate bench as above. Respectfully following the same, we reverse the order of Ld. CIT(A) and restore the assessment framed by Ld. AO.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 03rd August, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 03-08-2022
JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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