

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, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.862/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

| | | |
|---|----------------------|------------------------------------|
| A. Nagarajan 7 th Ward, Ariyur Street, Pethanaickenpalayam Post, Attur. | बनाम/ Vs. | ITO Ward-1(2), Salem. |
| स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AJQPN-7180-D | | |
| (पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|---|---|--|
| अपीलार्थी की ओर से/ Appellant by | : | Shri. T. Vasudevan (Advocate) – Ld. AR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri ARV Sreenivasan (Addl. CIT) –Ld. DR |

| | | |
|--|---|------------|
| सुनवाई की तारीख/ Date of Hearing | : | 11-05-2022 |
| घोषणा की तारीख / Date of Pronouncement | : | 05-08-2022 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals), Salem [CIT(A)] dated 29.12.2017 in the matter of assessment framed by the Learned Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 30.03.2016. The grounds raised by the assessee read as under:

1. The order of the Commissioner of Income-tax (Appeals) dismissing the appeal on jurisdiction and also on merits is contrary to law, erroneous and unsustainable on the facts of the case.

A. JURISDICTION :

2. The CIT(A) erred in upholding the reopening of the assessment by issue of notice u/s.148 and the completion of assessment u/s.147 of the Act.

3. The CIT(A) failed to appreciate that the return of income was filed on 11.2.11 and the notice issued u/s.148 on 28.3.15 lacks in jurisdiction, in the absence of any failure to disclose the material facts by the assessee.

4. The CIT(A) further failed to appreciate that the notice for reopening constitutes a mere change of opinion on the same set of facts available in the return of income, which does not clothe the officer to reopen the assessment and hence the proceedings are bad and unsustainable in law.

5. The CIT(A) further failed to appreciate that the compensation received on land acquisition are part of the original return filed by the assessee and hence there was no 'reason to believe' that income had escaped assessment by reason of the failure on the part of the assessee.

B. MERITS :-

6. The CIT(A) erred in confirming the addition of Rs.13,22,240 as income from Long Term Capital Gains arising out of compulsory acquisition of lands of the assessee.

7. The CIT(A) failed to appreciate that the assessee received an amount of Rs.22,40,960 based on the award of the land acquisition officer for the acquisition of 2360 sq. mtrs. of agricultural lands and hence the entire compensation amount was eligible for exemption under sec.10(37) of the Act.

8. The CIT(A) further failed to appreciate that the working of the compensation amount given by the Special Tehsildar was only for computation purposes and would not negate the eligibility of the assessee for exemption u/s.10(37) of the entire amount received as compensation on compulsory acquisition of lands.

9. The CIT(A) further failed to appreciate that the compensation received was for the entire lands classified as 'Dry lands' in the revenue records and hence there was no justification in excluding the smaller area of land (called as plot), within the said lands and the farm house situated therein, from the benefit of exemption statutorily available to the assessee.

10. The CIT(A), in any view of the matter, was not justified in excluding a substantial portion of the compensation received by assessee from the statutory eligibility to exemption u/s.10(37) and hence the levy of LTCG on such amounts was unjustified and needs to be deleted.

As evident, the assessee is aggrieved by computation of income under the head Capital Gains. The assessee also challenges the reassessment jurisdiction of the authorities.

2. The Ld. AR assailed the validity of reassessment proceedings on the ground that it was on mere change of opinion. On merits, Ld. AR submitted that the farm house on which deduction u/s 10(37) has

been denied, was part and parcel of agricultural land and it was used for storing vegetable products. The Ld. AR advanced arguments to submit that the 'agricultural income' as defined in Sec.2(1A) include any income derived from any building which is used as dwelling house, a store-house or other out-building. Reliance has been placed on various decisions, the copies of which have been placed on record. The Ld. Sr. DR, on the other hand, submitted that farm house was not entitled for deduction u/s 10(37) since land alone would be entitled for exemption from capital gains. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident individual was assessed for the year u/s 143(3) on 18.03.2013 wherein returned income of Rs.3.50 Lacs was accepted. However, the case was reopened and notice u/s 148 was issued on 28.03.2015 which is within 4 years from the end of relevant assessment year. The same stem from the reason that the assessee received compensation of Rs.22.40 Lacs for acquisition of assessee's land by government.

3.2 The assessee was having an agricultural land and a farm house. A portion of the agricultural land measuring 1228 sqm. in survey no.121/3B2 and 60 sqm. in 121/4B were acquired along with a farm house in survey no.120/6B with appurtenant land of 618 sqm. was acquired by National Highway Authority of India (NHAI) during financial year 2009-10. The assessee was paid compensation of Rs.22.40 Lacs for acquisition of agricultural land and farm house and trees. The assessee computed gains of Rs.3.44 Lacs and offered the same to tax. While computing the gains, indexed cost of acquisition

was claimed. The return was accepted. However, the case was reopened wherein the assessee claimed exemption u/s 10(37) arising out of compulsory acquisition of land and farm house. The Ld. AO denied the exemption u/s 10(37) on the ground that the benefit could not be given on plot of land. Though the assessee claimed indexed cost of land as well as building as on 01.04.1981, however, Ld. AO calculated indexed value for the farm house taking into account the indexation relevant to the year 1992 being the year of construction based on license granted by Panchayat for the same.

3.3 The compensation as paid to the assessee was computed as follows: -

| No. | Description of property | Plot value (In Rs.) | Agri. Land value (in Rs.) |
|-----|---|---------------------|---------------------------|
| 1. | The land value for 618 Sq.metres @ Rs.1,560/- for plot situated in Survey No.120/6B and 1,228 Sq. Mts. @ Rs. 62/- for Agri. Land situated in Survey No.121/3B2 & 60 Sq.Mts. @ Rs. 62/- for Agri. Land situated in Survey No.121/4B. | 9,64,080 | 79,856 |
| 2. | Value of RCC structure situated in Survey No.120/6B | 10,73,156 | |
| 3. | Tree value | | 42,136 |
| | Total | 20,37,236 | 1,21,992 |
| | ADD: 10% Addition value users' right compensation | 2,03,724 | 12,199 |
| | Grand Total | 22,40,960 | 1,34,191 |

The Ld. AO held that the vacant land was valued at Rs.1560/- per sqm. whereas agricultural land was compensated at Rs.62/- per sqm though the lands were adjacent land. The compensation awarded for vacant land was much higher than compensation paid for agricultural land. Therefore, the assessee was held ineligible for deduction u/s 10(37). Finally, the income was determined at Rs.13.27 Lacs. Upon further appeal, Ld. CIT(A) dismissed the legal grounds as well as the

grounds on merits and upheld the computations made by Ld. AO. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. Upon careful consideration of factual matrix, it emerges that the assessee's land has been acquired by NHAI for which the assessee has been compensated at certain rates. On one of the parcels of land, a farm house is situated for which separate compensation has been paid. The primary argument of Ld. AR is that the farm house also partakes the character of agricultural land for the reason that agricultural income as defined in Sec.2(1A) of the Act would include any income derived from any building owned and occupied by the receiver of the rent or revenue of agricultural land provided the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store- house, or other out-building. Similar exemption has been provided under the wealth tax act. Therefore, such house appurtenant would be integral to the land and therefore, the compensation should be considered as agricultural income only.

5. It is undisputed fact that the land under consideration is agricultural land and it has RCC structure for which the assessee has separately been compensated. Nevertheless, this structure, in our considered opinion, was integral to the land which was used for agricultural purposes and could not be separated from the land and therefore, qualifies to be agricultural income. We concur with the arguments advanced by Ld. AR. Merely because the valuation has

been done separately, it could not be said that they have separate and independent existence on agricultural land. Therefore, Ld. AO fell in error to deny the exemption as claimed by the assessee. We direct Ld. AO to accept the returned income of the assessee. The assessee succeeds on merits and therefore, the legal grounds as urged in the appeal have been rendered infructuous.

6. The appeal stand allowed.

Order pronounced on 05th August, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 05-08-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF