

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.1428/Chny/2017

निर्धारण वर्ष /Assessment Year: 2012-13

The DCIT,
Corporate Circle-4(2),
Chennai – 600 034.

K. Dhandapani and Co. Ltd.,
No.C-20, TVK Industrial Estate,
Vs. Guindy, Chennai – 600 032.

PAN: AAACK 1318C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

C.O No.109/Chny/2017

[in ITA No.1428/Chny/2017]

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PAN: AAACK 1318C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by

: Shri M. Rajan, CIT

निर्धारिती की ओर से/Assessee by

: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 05.09.2022

घोषणा की तारीख/Date of Pronouncement

: 28.10.2022

आदेश / O R D E R

Per Mahavir Singh, Vice President :

This appeal by the Revenue and Cross Objection by the assessee, both are arising out of the order of Commissioner of Income Tax (Appeals), Chennai, in ITA No.27/2015-16 dated 29.03.2017. The assessment was framed by the Dy. Commissioner of Income Tax(OSD), Corporate Circle-4, Chennai for the assessment year 2012-13 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 20.03.2015.

2. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by A.O on account of profit on sale of land earned by the assessee at Mannur near Sriperumbudur holding the same as taxable income as against claimed by the assessee as agricultural land exempt from capital gains tax. For this, the Revenue has raised the following grounds No.2 to 2.5:

“2. The CIT(A) erred in deleting the addition made by the Assessing Officer of Rs 18,58,00,000/- u/s 2(47) r.w. section 45.

2.1. The CIT(A) erred in not appreciating the contention of the AO that the land sold is not an agricultural land thereby falling within the definition of Capital Asset u/s 2(47) r.w.section 45.

2.2 The CIT(A) failed to note that the assessee has not filed the conveyance deed for acquiring as well as for disposal of the impugned

lands before the AO either during the assessment proceedings or when the issue was remanded to the AO.

2.3 The CIT(A) failed to note that the conditions stipulated in section 2(14) cannot be established unless the particulars of the land are known.

2.4 The CIT(A) failed to appreciate that the assessee did not produce any documentary evidence for the agricultural activity carried out by the assessee, sale of agricultural produce etc.

2.5 It is verified from the returns filed by the assessee that the assessee company has not offered agricultural income for the AYs 2009-10, 2010-11, 2011-12 and in this assessment year and the CIT(A) failed to note this important fact.”

3. The brief facts of the case are that the assessee sold 33.92 acres of agricultural land at Mannur near Sriperumbudur for a total sale consideration of Rs. 19.60 Crores. The assessee has declared the book value at Rs. 1.01 Crore in the assessee company's books of accounts. The A.O noted that the difference of Rs. 18.58 Crores was directly credited to general reserve account being profit on sale of agriculture land held by the assessee for common business purpose. According to A.O, this profit was not credited to profit and loss account as the assessee had treated the same as capital receipt. The A.O required the assessee to produce the purchase and sale data and necessary details to prove that the land in question is agriculture land and asked details such as nature of land, location of cultivation, sale of produce, chitta, patta, adangal, revenue records etc., The assessee replied vide

letter dated 19.03.2015 that the assessee's agriculture land at Mannur is 10 K.M from Sriperumbudur and the said land is used for agriculture purpose by the assessee company. It was contended that the land in question is not situated within 8 KM from the nearest municipal limit and hence, the assessee has rightly claimed the same as agriculture land. The A.O has not accepted the contention of the assessee for the reason that the assessee has not provided purchase documents to substantiate the asset holding, ownership proof of property, proof for agriculture operation to the fact that operations were carried out on the lands in the previous year relevant to the assessment year under consideration, copy of revenue records to show that agriculture operations were actually carried on. The A.O after discussing noted the fact at Page 7 of its assessment as under:

“In the instant case there is no evidence on record that the assessee has made actual agricultural operations in the lands continuously by himself or by his predecessor nor by his successor, M/s. Agility Logistics Private Ltd, Mumbai within 3 years before the date of sale since the assessee has obtained approval for conversion of agricultural lands to non-agricultural use. The buyer company purchased the land for commercial purpose, as is evident from the records i.e. DTCP approval for construction for a building for logistics business.”

4. Finally, the A.O assessed the profit arising out of the sale of this property as capital gain u/s. 2(14) r/w s. 45 of the Act by observing as under:

“Thus, on examination of facts in this case, it is clear that on the date of sale, the agricultural operations were in fact, not at all carried on the land. Moreover, the assessee has failed to substantiate his claim with documentary evidence for agricultural operations in fact earned on the said lands and proof of sale of agricultural produce etc.

The profit on sale of land should have been credited to profit and loss account, even if the assessee wants to claim any exemption from tax. The book depreciation chart also does not reveal whether this asset is included in the WDV of hand. Further, there is no break-up and details for Long term capital assets and short term capital assets. The assessee has not produced any documentary evidence in support of their claim despite specifically calling for vide this office letter u/s. 142(1) dated 09.01.2015 and also during the course of assessment proceeding. Moreover, no agricultural income was admitted in the return of income to claim that "electrical goods manufacturing company" has been carrying on the agricultural operation nor produced any certificate from revenue authorities or any documentary proof whatsoever in nature to claim this as a capital asset and profit therefore is a capital receipt. In the absence of concrete documentary proof, it is clear that section 2(47) r.w.s 45 attracts in this case and hence profit on sale of the asset is brought to tax under the head “Capital Gain”.

In view of facts, judicial pronouncements and in the circumstances of the cases cited supra, it is clear that on the date of sale, the land sold is not agricultural land thereby falling within the definition of “Capital Assets” u/s. 2(14) r.w.s 45 of the Income Tax Act, 1961.”

Aggrieved, the assessee preferred appeal before the CIT(A).

5. The CIT(A) after considering the submissions of the assessee and various case laws, concluded that the land in question is agricultural land and allowed the claim of the assessee by observing in Para 4.4 to 4.4.1 as under:

4.4 Ground No.4 is with regard to treatment of profit on sale of land - claimed as agricultural land by the appellant - as taxable capital gains by the Assessing Officer. The Assessing Officer observes that the appellant has sold 33.92 acres of agricultural land at Mannur, having book value of Rs.1.01 crores, for a sale consideration of Rs.19.60 crores and the

transaction was treated as tax-exempt by the appellant. The Assessing Officer brought the net amount of Rs. 18.58 crores to tax stating that the land sold is not agricultural land and thereby falls under the definition of capital asset u/s 2(14) r.w.s. 45 since the appellant failed to furnish the necessary details with regard to nature of land, location proof of agricultural activity, patta, chitta and adangal. On the other hand, the appellant contends that agricultural activities were carried on in earlier years on the said land, that agricultural income was admitted to tax in the preceding assessment years, and that, the land remained agricultural land as on the date of sale.

Further, in the course of appellate proceedings the appellant furnished copies of certificate issued by Village Administrative Officer (VAO) certifying that the agricultural lands belonging to the appellant-company are located at 9 kms and 13 kms away from Sriperumbudur Municipality and Tiruvallur Municipality respectively - the nearest municipalities from the location of the land in question. The appellant also furnished the Chitta Adangal in connection with the land in support of their claim that lands were indeed agricultural in nature. The additional evidence furnished in the course of appellate proceedings was forwarded to the Assessing Officer for his comments. The Assessing Officer in his remand report dated 25.01.2017 reiterated his stand stating that no documentary proof for the agricultural activity carried out during the relevant period was furnished by the appellant were not sufficient to establish that the land is agricultural in nature.

4.4.1. The Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohamed Ibrahim v. CIT (204 ITR 361)(SC) declared as under:

Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of the Supreme Court and the High Court, but all of them are more in the nature of guidelines. 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. The Court has to answer the question on a consideration of all of them a process of evaluation. The inference has to be drawn on cumulative consideration of all the relevant facts.

With regard to the diverse guidelines issued by various Courts, I find that the appellant conforms to a majority of these. As regards the character of the land and capacity of being used as agricultural land are concerned, these are in favour of the appellant as seen from the details of agricultural income admitted for the Previous Years relevant to the Assessment Years 2009-10 to 2011-12 by the appellant. Further, it is also seen from the Schedules of the sale deeds that the sale of land was made by a measure with reference to Acres and Cents and not Square Feet /

Yards. As far as the view of the Assessing Officer that agricultural activities were not in vogue at the time of sale is concerned, it is pertinent to refer to the decision of the Hon'ble High Court of Gujarat in the case of CIT v. Madhabhai H. Patel (208 ITR 638) (Guj.) wherein it was observed as follows:

What is required to be considered is: Was it agricultural land, when it was sold? If the land is recorded as agricultural land in the revenue records and if till the date of its sale it is used and exploited as agricultural land and if the owner of the land has not taken any step, which would indicate his intention to exploit the land thereafter as non-agricultural land, then such a piece of land will have to be regarded as agricultural even though it is included within the municipal limits or that it is sold on per square yard basis and not acreage basis. The purpose for which such a land is sold, though relevant, will not have that much importance.

Besides, if an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not used for the agricultural purpose as observed by the Hon'ble High Court of Bombay in the case of Commissioner of Income Tax, Panaji-Goa v. Smt. Debbie Alemao [2011] 331 ITR 59 (Bom). Further, the Constitutional Bench of the Hon'ble Supreme Court in the case of CWT vs. Officer-in-charge (Court of Wards) 105 ITR 133 (SC) declared as follows:

Entries in revenue records are, not conclusive and such entries can raise only a rebuttable presumption, they are, however, good prima facie evidence.

Following the view endorsed by the Constitutional Bench of Supreme Court the Hon'ble High Court of Madras in a similar case of Sakunthala Vedachalam v Asst Commissioner (369 ITR 558) (Mad) declared that where the classification of lands as per the revenue records are agricultural lands, which are evidenced by the adangal and the letter of the Tahsilar and satisfies other conditions of section 2(14) then the assessee was liable to be exempted from capital gain tax. This view was further fortified by the jurisdictional High Court in the case of CIT v Mansi Finance Chennai Ltd (388 ITR 514)(Mad.) wherein it was observed that where a land has been classified as agricultural land and such land was not converted into non-agricultural land prior to its sale then it can be concluded that the land retained its character as agricultural land till the time of the sale.

After a cumulative consideration of all the relevant facts as above, I hold that the land in question has to be treated as agricultural land for the purposes of v Section 2(14) and the appellant is not liable for any capital

gains tax on the sale. The addition of Rs.18,58,00,000/- made by the Assessing-Officer in this regard is deleted. The appellant succeeds on this ground.”

Aggrieved, the Revenue is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. The facts of the case are that the assessee company has been carrying on business of manufacturing and trading of electrical goods. The AO noted that in this assessment year, the assessee has sold 33.92 acres of agricultural land at Mannur near Sriperumbudur for a sale consideration of Rs.19.60 crores, the book value of which is declared at Rs.1.01 crores. The AO doubted that the land sold is not agricultural land due to proximity to municipal distance of Sriperumbudur and no agricultural activities were carried out by the assessee on this land. As per the Village Administrative Officer's (VAO) certificate submitted by assessee, the land in question is certified as agricultural land, which is enclosed in assessee's paper-book at page 59. Even the Revenue records submitted by the assessee in its paper-book from pages 44 to 54 indicates that the land in question is agricultural land i.e., in patta, chitta and adangal. Even the distance mentioned by VAO is that the land is 10 Kms. Away from the municipal of Sriperumbudur

and as per google map enclosed in assessee's paper-book, page 43, the land is more than 8 kms. Hence, the location of asset i.e., the agricultural land is beyond 8 kms., which is evident from the VAO's certificate and hence on this count, this cannot be held as urban land and this clearly agricultural land. From the revenue records i.e., patta, chitta and adangal papers issued by Revenue Department of TamilNadu that use of the land owned by assessee is for the purpose of agricultural operation. The assessee has also filed the financials of financial year 2008-09, 2009-10 & 2010-11 relevant to assessment years 2009-10, 2010-11 & 2011-12 which indicates that assessee has offered agricultural income and disclosed in the financials and accepted by the Income-tax Department in these years. The assessee has filed complete particulars of agricultural income as under:-

Particulars	FY 2008-09	FY 2009-10	FY 2010-11
Farm Division income	25,000	1,30,495	1,80,000
Miscellaneous receipts	74,997	1,11,208	8,996
Total Miscellaneous income	99,997	2,41,703	1,88,996

The contest of the Revenue that this agricultural income are not declared in the returns of income is totally contrary on facts that these incomes are declared in the financials, which has been produced before us and verified by us, which are not contradicted

by Id. CIT-DR. It means that the assessee has declared agricultural income varying from Rs.25,000/- to Rs.1,80,000/- and as per revenue records, the assessee has grown crops in the land and earned some agricultural income. The assessee is able to prove that the land is kept for agricultural activity and it has actually carried out agricultural activity, as the evident shows. In view of these facts and circumstances, we are of the view that the CIT(A) has rightly treated this land as agricultural land and held that the same is not assessable to capital gains. We affirm the findings of CIT(A) on this issue and Revenue's appeal is dismissed.

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7. Coming to cross objection of the assessee, the first effective issue is as regards to the order of CIT(A) partly sustaining the addition u/s.43B of the Act towards service tax of Rs.2,33,237/-.

8. We have heard rival contentions on this issue and gone through facts and circumstances of the case. The Id.counsel for the assessee before us submitted that the matter can go back to the file of the AO for verification, whether the assessee has paid this amount or not within the due date, as prescribed under Service Tax Act. To this proposition, the Id.CIT-DR has not

objected. We also noted that the CIT(A) has confirmed the disallowance only on the absence of any evidence not produced by assessee in regard to payment of service tax within the due date. Since, the assessee is now requesting for producing evidence, we are setting aside this issue to the file of the AO, who will verify the payment of taxes within the due date and accordingly, decide the claim. This issue of assessee's cross objection is allowed for statistical purposes.

9. The next issue in the cross objection of the assessee is as regards to the order of CIT(A) confirming the disallowance of diminution in the value of DFL shares at Rs.96,46,739/- and claiming the same as loss.

10. Brief facts are that the AO on perusal of profit & loss account noted that the assessee has made a provision for diminution in value of DFL shares at Rs.96,46,739/- and claiming the same as loss. The AO noted that the loss is only notional loss and a mere provision has been made and hence, he disallowed the same. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO that the assessee failed to produce any evidence to substantiate its claim that the investment

in shares of DFL actually declined to Rs.2 and in the absence of evidence, he confirmed the disallowance by observing as under:-

“The appellant failed to furnish any evidence with regard to their claim that the value of the shares made as an investment in DFL actually declined to Rs.2 per share – either in the course of assessment proceedings before the Assessing Officer or before me in the course of appellate proceedings. As rightly observed by the Assessing Officer, the mere provision for diminution in the value of shares cannot be allowed as a deduction. In the absence of evidence to the contrary, the disallowance of Rs.1,06,46,741/-, claimed as provision for diminution in the value of investment, is sustained. The appellant fails on this ground.

11. Before us, the Id.counsel for the assessee made submissions that assessee company has invested in DFL group concern, a listed company with BSE in 1985 in the shares for an amount of Rs.1,06,46,741/-. The total shares purchased were 50,00,000. The Id.counsel stated that in the initial years the DFL performed extremely well and the assessee company received substantial dividend but subsequently due to severe competition and stringent RBI regulations particularly on public deposit and NPA norms, the business of the company did not do well and hence, there is a fall in the share market. But, Id.counsel for the assessee could not produce any evidence before us that how and to what extent the shares fall to Rs.2 and what is the basis for the same. In the absence of any evidence, we also are of the view that the

disallowance made by the AO and confirmed by the CIT(A) is to be confirmed. This issue of assessee's cross objection is dismissed.

12. In the result, the appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28th October, 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 28th October, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |