

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3306/Chny/2016
निर्धारण वर्ष /Assessment Year: 2013-14

Dr. (Mrs.) A. Ezhil Malar,
#583, Thiruvotriyur High Road,
Tondiarpet, Chennai-600 081.

[PAN: AAAP 0904 B]
(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख /Date of Pronouncement

v. The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-4(1),
Chennai.

(प्रत्यर्थी/Respondent)

Mr.V.S.Jayakumar, Adv.
Mr. AR.V.Sreenivasan,
Addl.CIT

: 14.12.2022

: 21.12.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 28.09.2016 and pertains to assessment year 2013-14.

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

1. *The order of the Commissioner of Income Tax (Appeals) in as much as it is against the Appellant is opposed to law and contrary to the facts and circumstances of the case.*

2. Sale of Agricultural land - Capital Gains:

2.1. *The Commissioner of Income Tax (Appeals) grossly erred in upholding the action of the Assessing Officer treating the sale of agricultural land at Morai Village, Thiruvallur District as a capital asset as per sub-clause (b) of Section 2(14)(iii) and the sale proceeds of the same are exigible to Capital Gains.*

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2.2. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the Agreement for Sale and Power of Attorney, both dated 24.08.2012 clearly describes the land sold as agricultural land in the Schedule.*

2.3. *The Commissioner of Income Tax (Appeals) ought to have appreciated that transfer was complete within the meaning of Section 2(47) as Agricultural land and therefore the subsequent conversion and usage by the Purchaser has no relevance in deciding the nature of the land while in the possession of the Assessee.*

2.4. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the Assessing Officer grossly erred in placing reliance on the letter from Avadi Tahsildar and the report of the Inspectors of Income Tax Department, even without affording an opportunity to the Appellant to counter the same.*

2.5. *The Commissioner of Income Tax (Appeals) grossly erred in placing reliance on the letter from Avadi Tahsildar stating that the distance of the land from Avadi Municipality is 6.5 Kms. and the report of the Inspectors of Income Tax Department who had probably inspected during 2016.*

2.6. *The Commissioner of Income Tax (Appeals) grossly erred in relying on the report of the Inspectors as this inspection related to a period after the date of handing over possession.*

2.7. *The Commissioner of Income Tax (Appeals) ought to have appreciated that no evidence is admissible without testing the veracity of the same unilaterally, obtained behind the back of the Appellant and the same is in gross violation of principles of natural justice.*

2.8. *The Commissioner of Income Tax (Appeals) ought to have appreciated that Morai Village is situated beyond 8 kms from the limits of Avadi, the nearest Town / Municipality.*

3. *The Appellant contests all the findings of fact and law made against the Appellant by the Commissioner of Income Tax (Appeals).*

4. *The Appellant craves leave to file additional grounds of appeal at or before the time of hearing.*

3. The brief facts of the case are that the assessee is a Doctor by profession, filed her return of income for the AY 2013-14 on 26.04.2014 admitting total income of Rs.34,74,400/-. During the Financial Year relevant to the AY 2013-14, the assessee has made cash deposits of Rs.67,25,500/- in her bank account. The assessee was asked to submit the source for cash deposits and in response, the assessee submitted that she had sold her agricultural lands measuring 1.30 acres situated at Morai Vilalge, Ambattur Taluk on 23.08.2012 for a consideration of Rs.72 lakhs and out of said consideration, she has deposited cash into her bank account. The assessee further claimed that the land sold by her is

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agricultural land, which is outside the scope of taxation. The AO, however, was not convinced with the explanation of the assessee and according to the AO, the distance of the land sold by the assessee is within 8 kms from the municipal limits of Avadi as ascertained from Revenue authorities. Therefore, made additions towards capital gains derived from sale of lands amounting to Rs.1,61,22,266/-. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 28.09.2016 has rejected explanation furnished by the assessee and sustained the additions made towards computation of capital gains on sale of agricultural lands on the ground that the lands sold by the assessee is within 8 kms from the limits of local municipality. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the sole dispute between the assessee and the AO is distance of land sold by the assessee and as per assessee, the land sold by her is beyond 8 kms from limits of local municipality, whereas the AO claims that the distance of land sold by the assessee is less than 8 km from the limits of local municipality. Therefore, to ascertain the correct facts with regard to distance of land, the matter may be set aside to the file of the AO to re-consider the issue in accordance with law.

5. The Ld.DR, on the other hand, fairly agreed that the matter may be set aside to the file of the AO to decide the issue in accordance with law.

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6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the nature of land sold by the assessee and in fact the AO himself admitted the fact that the land sold by the assessee is agricultural land. But, only dispute is with regard to the distance of land sold by the assessee as prescribed u/s.2(14) of the Act. The assessee claims that the land held by her is beyond 8 kms from the limits of local municipality and thus, it is outside the scope of definition of capital asset as defined u/s.2(14) of the Act. According to the AO, the land sold by the assessee is within 8 kms from the limits of local Avadi Municipality. The distance of land from local municipality is a matter of fact which needs to be ascertained with reference to correct evidences. The AO neither relied upon the appropriate evidence nor considered the distance of land by considering evidences filed by the assessee, but has only relied upon the report of the Inspector and the Avadi Tahsildar to come to the conclusion that the distance of land is 6.5 kms from the limits of Avadi Municipality. Therefore, we are of the considered view that the matter needs to be further verified by the AO in light of arguments of the assessee that the distance of land sold by the assessee is beyond 8 kms from the limits of local municipality. Hence, we set aside the issue to the file of the AO and direct the AO to re-consider the issue in light of various averments made by the assessee and also, if necessary, obtain correct measurement of land sold by the assessee to decide whether it is an agricultural land situated

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beyond 8 kms from limits of local municipality or a capital asset which can be brought to tax under the Act. The AO is directed to provide reasonable opportunity of hearing to the assessee to substantiate her case with all evidences. Needless to say, the assessee shall furnish necessary evidences to justify her case.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 21st day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21st December, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF