आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.780/Chny/2022**
निर्धारण वर्ष/Assessment Year: 2013-14

Keshav Sunderam Rajam, New No. 27, Old No. 11, Sathya Narayana Avenue, Off Boat Club Road, R.A. Puram, Chennai 600 028. **[PAN:ATOPR1473P]**	Vs.	The Income Tax Officer, International Taxation 2(1), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri S.V. Venkateshwaran, FCA
प्रत्यर्थी की ओर से/Respondent by	:	Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	20.12.2022
घोषणा की तारीख /Date of Pronouncement	:	31.01.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 16, Chennai dated 29.06.2022 relevant to the assessment year 2013-14.

2. The appeal filed by the assessee is delayed by ten days in filing the appeal, for which, the assessee has filed a petition for condonation of the delay in the form of an affidavit, to which; the ld. DR has not raised any serious objection. Consequently, since the assessee was prevented by

sufficient cause, the delay of two days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that in this case assessment under section 143(3) of the Income Tax Act, 1961 was completed on 21.03.2016. The assessee is a Non-Resident sold a capital asset on 08.01.2013 in which the assessee' share of sale consideration was ₹.3,70,00,000/-. After adjusting the indexed cost of acquisition and improvement, brokerage and expenses in connection with sale, the long term capital gain was computed to be ₹.3,58,24,032/-. The assessee had invested the long term capital gain relating to section 54B of the Act to the extent of ₹.2.43 crores in capital gains account scheme and ₹.1.20 crores was paid to his father Shri Srinath Rajam to acquire agricultural land at Burliar Village, Coonoor. Accordingly, the taxable long term capital gain was brought to NIL. The case was selected for scrutiny and the assessment was completed by disallowing the deduction claimed under section 54B of the Act amounting to ₹.3,08,24,032/-. During the course of original assessment, after considering the details furnished by the assessee such as chitta and adangal, by following the decisions of the ITAT in the case of Aboobuker in ITA No. 1793/Mds/2013 AY 2006-07 dated 31.12.2015 and Pallavaram Kothandaraman Ramesh in ITA No.

1808/Mds/2013 AY 2008-09 dated 17.10.2012, the Assessing Officer has concluded that the property sold by the assessee being the plot No. 9, Rajiv Avenue, Injambakkam, Chennai 600 041 measuring 20093.5 sq. Ft. is not 'agricultural land' and rejected the claim of deduction under section 54B of the Act of ₹.3,08,24,032/-. On appeal, the ld. CIT(A) decided the issue in favour of the assessee. On further appeal by the Revenue before the ITAT, vide order in ITA No. 1758/Mds/2017 dated 28.12.2017, the Tribunal has directed the Assessing Officer to re-examine the matter in the light of the material that may be produced by the assessee more particularly the adangal extract and other relevant documents and decide the issue afresh in accordance with law.

4. In pursuance to the directions of the ITAT, considering the submissions of the assessee as called for and filed by the assessee and also considering the judgement of the Hon'ble Madras High Court in the case of PCIT v. A. Lalichan in T.C.A. No. 504 of 2018 dated 11.10.2018, the Assessing Officer issued a notice proposing to disallow the claim of deduction under section 54B of the Act. After considering the submissions of the assessee and also in view of the decision in the case of PCIT v. A. Lalichan (supra), the Assessing Officer has concluded that the property sold by the assessee is not an agricultural land and no agricultural activity

was carried on the said land and disallowed the claim of deduction under section 54B of the Act of ₹.3,08,24,032/-. On appeal, by considering various case law of various Courts, the ld. CIT(A) confirmed the disallowance and dismissed the appeal filed by the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee has submitted that the assessee had used the land only for agricultural purposes based on the adangal and other documents produced. By strongly relying upon the decision of the Tribunal in I.T.A. No. 1758/Mds/2017, the ld. Counsel for the assessee prayed for deleting the addition made towards disallowance of the claim of deduction under section 54B of the Act.

6. On the other hand, the ld. DR has submitted that the assessee has not satisfied the condition stipulated under sub-section (1) of section 54B of the Act. He has further submitted that there is no scope for raising any agricultural crop in the land just adjacent to the sea and sea water is not useful for any agricultural purposes and strongly supported the orders of authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper

book filed by the assessee. The only issue involved in this appeal is whether the piece of land sold by the assessee is eligible for claiming exemption under section 54B of the Act or not. The case of the assessee is that the assessee has inherited a piece of land and the same was sold in which assessee's share of sale consideration was ₹.3,70,00,000/- and the assessee has claimed exemption under section 54B of the Act on the ground that the land was used for agricultural purposes for many years. He also submitted that the adangal clearly shows that there are coconut trees. The case of the Assessing Officer is that to claim benefit under section 54B of the Act, the assessee has to satisfy first condition that prior to the date of sale, the assessee should carry agricultural operation except, adangal, there is no evidence to show that the assessee carried agricultural operation and denied the claim of deduction under section 54B of the Act. On appeal, the ld. CIT(A) decided the issue in favour of the assessee. On further appeal by the Revenue before the ITAT, vide order in ITA No. 1758/Mds/2017 dated 28.12.2017, the Tribunal has directed the Assessing Officer to re-examine the matter in the light of the material that may be produced by the assessee more particularly the adangal extract and other relevant documents and decide the issue afresh in accordance with law.

8. In the second round of litigation, when the Assessing Officer has called for the details, except stating that the assessee has already submitted the adangal, the assessee has not produced any other document to claim that the assessee has carried any agricultural activities. By following the decision in the case of PCIT v. A. Lalichan (supra), the Assessing Officer has concluded that the property sold by the assessee was not an agricultural land and no agricultural activity was carried on the said land and disallowed the claim of deduction under section 54B of the Act, which was confirmed by the ld. CIT(A).

8.1 The piece of land sold by the assessee is within the purview of Coastal Regulation Zone [CRZ] adjoining to sea. The case of the assessee is that he has carried agricultural operation. Except adangal, there was no evidence bought on record that the assessee carried agricultural operations. The adangal filed by the assessee shows that there were few coconut trees. Simply because, there are coconut trees, it does not mean that the assessee carried agricultural operation, particularly, when the assessee has not reported any agricultural income. Apart from that, the said extent of land was just adjacent to the sea not useful for any agricultural purposes, whereas, the assessee's statement is that he has carried agricultural operation. To carry agricultural

operation water is very much required and sea water is not useful for carrying any agricultural activities or to raise any agricultural crop. Under these facts and circumstances of the case, we are of the considered opinion that the assessee has not carried any agricultural activities and thus, we find no infirmity in the orders of authorities below and accordingly, the appellate order passed by the ld. CIT(A) is confirmed. Various case law relied on by the assessee have no application to the facts of the case.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 31st January, 2023 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 31.01.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy 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.