आयकर अपीलीय अधिकरण, **'डी' न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.3080/Chny/2018**
निर्धारण वर्ष **/Assessment Year: 2012-13**

The Dy. Commissioner – of Income Tax, Central Circle-2(2), Chennai.	**v.**	Mr.Rama Narayanan (Late) L/H Mr.Narayanan-Ramasamy, No.14/19, Saraswathi Street, Mahalingapuram, Chennai-600 034. [**PAN:** ACHPR 5912 K]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Department by	:	Mr.P.Sajit Kumar, JCIT For Dr.S.Palanikumar, CIT
Assessee by	:	Mr.S.Sridhar, Adv.
सुनवाई की तारीख/Date of Hearing	:	11.11.2022
घोषणा की तारीख /Date of Pronouncement	:	08.02.2023

आदेश **/ O R D E R**

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 20.07.2018 and pertains to assessment year 2012-13.

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

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(A) erred in directing the AO to deleted the addition of Rs.5,92,92,527/-, by holding that the land sold by the assessee was agricultural land.

2.1 The learned CIT(A) ought to have appreciated the fact that in the Website of the Registration Department, Tamil Nadu, the land has been classified as 'Residential Area Class-Ill'.

2.2 The learned CIT(A) ought to have appreciated the fact that ITI's report has also described the surrounding circumstances to draw the inference that no agricultural activity had taken place in the said land.

2.3 The Id.CIT(A) failed to note that the Hon' Chennai Tribunal in the case of Pallavaram Kothandaraman Ramesh has held that once a land is classified in the website of the Registration Department as 'residential', it is a vital factor to come to the conclusion that the impugned sale is not agricultural and in such a case, classification in the revenue records is not material.

2.4 The learned CIT(A) ought to have appreciated the fact that the decision of the Hon' Chennai Tribunal in the case of Pallavaram Kothandaraman Ramesh squarely applies to the facts of the instant case.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that a search action u/s.132 of the Act, was conducted in the case of Mr.N.Ramaswamy on 30.09.2015. During the course of search proceedings, an incriminating material in the form of agreement to sale of properties found and as per said agreement, the assessee has received sale consideration of Rs.6.16 Crs. On verification of assessment records, it was noticed that the assessee has declared sale consideration of Rs.1.76 Crs. only. Consequent to search, the case was centralized and notice u/s.153C of the Act, issued on 18.07.2017. In response to notice u/s.153C of the Act, the assessee's legal heir Mr.N.Ramaswamy filed return of income on behalf of assessee on 11.09.2017, declaring total income of Rs.5,98,640/-. During the course of assessment proceedings, the AO noticed that the assessee has sold a land

at Padappai in Survey No.284/1B for a consideration of Rs.6.16 Crs. However, he has offered a sum of Rs.1.76 Crs. only. The difference amount of Rs.4.40 Crs. was not declared to tax. Therefore, called upon the assessee to file necessary evidences to justify non-declaration of excess consideration as per agreement. In response, the assessee submitted that the land sold by him in Survey No.384/1A & 284//1B is an agricultural land situated beyond 8 kms from the nearby municipal limits and having a population of less than 10000 and thus, same is outside the scope of sec.2(14) of the Act, and hence, no capital gains has been offered towards above said sale. The AO, however, was not convinced with the explanation offered by the assessee and according to the AO, the land sold by the assessee at Padappai to M/s.Alwin Public School, is a capital asset in terms of provisions of Sec.2(14)(iii) of the Act, because, said land is situated within 8 kms from the jurisdiction of municipality having a population of more than 10000. The AO further noted that as per the report of Inspector of Income Tax, the land is situated within radius of 5 kms from the municipal limits. Further, the assessee did not carried out any agricultural activities in the said land. The land has been sold for non-agricultural purpose. Therefore, the AO opined that the impugned land sold by the assessee is a capital asset and accordingly, consideration received for sale of land is assessable under the head 'capital gains'. Therefore, rejected the arguments of the assessee and assessed excess consideration received over and above sale consideration shown in Deed amounting to Rs.4.40

Crs. has been treated as income from other sources and added back to total income. The relevant findings of the AO are as under:

7. The reply of the assessee was verified and in this case the facts of the case were as under.

The assessee has filed the Original ROI on 13.03.2013. As per this ROI the assessee has sold the lands at Padappai to M/s.Alwin Public School and the sale consideration was admitted as long-term capital gain and claimed the entire amount as exemption stating as Agricultural lands. But while passing the order U/s.143(3) the AO has rejected the assessee claim and computed the same as long term capital gain income. The lands sold during the assessment year and the details of agricultural land as per the sale deed is as follows:

S.No.	*Date of document*	*Document No.*	*Sale consideration*	*Purchase cost*
1	*01.06.2011*	*3112/2011*	*Rs.38,5000/- (balance 50% for assessee's wife)*	*Not known*
2	*08.06.2011*	*3308/2011*	*Rs.76,00,000/-*	*Rs.2,00,000/-*
3	*10.08.2011*	*4801/2011*	*Rs.1,00,00,000/-*	*Rs.40,75,465/- (prop cost for 1 acre)*

As per the provisions of Sec 2(14)(iii) only the following agricultural lands situated in any of the following areas is considered as a capital asset :

(a) In any area which is comprised within the jurisdiction of a municipality or a Cantonment Board and which has a population of not less than 10,000 according to the latest preceding census of which the figure have been published before the first day of the previous year.

OR

(b) In any area within such distance, not being more than 8 KMS. From the local limits of any Muncipality or Cantonment Board referred to above as the Central Government may having regard to the extent of and scope for urbanization of that area and other relevant consideration specified in this behalf by Notification in the official gazette.

8. The land owned by the assessee was at Padappai Village which is not within the jurisdiction of a Muncipality or a Cantonment Board having a population of more than 10,000 and it is also beyond 8 KMS from the local limits of any Muncipality or Cantonment Board.

9. Since the lands owned by the assessee is situated in rural area and beyond 8 KMS from the municipal limit and also the population of the village is less than 10,000, it is not a capital asset and the gains arising out of the above is exempt from tax.

10. To examine the land and present activities going on this land the office Inspector was deputed. The Inspector had made detailed enquiries and submitted a report stating that the land had not been cultivated from the year 1994. He has also stated that the land is located within 5 KMS radius from the municipal limits. Accordingly, the claim of exemption of Long Term Capital Gains is found untenable. presently in this land a school was constructed by mane M/s.Alwin International Public School at Padappai ".

11. From the above report it is clear that the land is situated within the 5 kilometers from the Municipal limits and accordingly the land cannot be treated as Agricultural land. The contentious issue the case under consideration is the classification of the asset sold during the year to be agricultural in nature and make it remain outside the scope of section 2(14) of the IT Act, 1961.

12. As per the letter submitted during scrutiny also accepted that agricultural operations had not been undertaken. The existence of trees is incidental. and does not by any stretch of imagination grant an automatic stamp that the land is agricultural in nature. Mere mention in the records of the Revenue Authorities also, is not an essential requisite to term the land to be agricultural. The lack of agricultural operations for the past many years is evidenced by the returns of income of the assessee in which neither income nor expenditure towards cultivation in the impugned land is exhibited. The Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs. Nand Kumar Agarwal & Others in its Judgment dated 19.11.1997 held that simply because land is entered in the revenue record would not mean that it is being used mainly for the purpose of agriculture. It went on to add that it is not material if a small portion of the land was being used for the purpose of agriculture as well.

13. The Gujarat High Court in the same case being CIT Vs. Sarifabibi Mohmed Ibrahim reported in (1982) 136 ITR 621 (Guj) held that the fact that a particular piece of land is entered as agricultural land in revenue records and assessed as such under the Land Revenue Code would raise a presumption that the land is agricultural land, but the presumption can be rebutted by other circumstances pointing to the contrary conclusion. The facts that raise a presumption that the land is non-agricultural are -

Situation of the land, for example, land situated in an urban area within the municipal limits in the proximity of buildings and building sites;

Sale of land to a non-agriculturist for non-agricultural purpose.

Sale of land on a square yard basis at a price comparable to prices fetched by building sites.

Sale at a price at which no bona fide agriculturist would purchase for genuine agricultural operations, and

When the price is such that no prudent owner would sell it at a price worked out on the capitalization method taking into accounts its optimum agricultural yield in the most favorable circumstances.

I4. Applying the above tests to the facts of the present case, clearly the impugned lands have to be held as non-agricultural in nature, for the following reasons:

The land is situated within the radium of 5 KMS from the Municipal limits. Agricultural activities was never undertaken on the land.

The sale consideration of Rs.1 crore per acre is high, which is a price normally obtained in the sale of building sites.

The land has been sold at an astronomical price at which no bona fide agriculturist would purchase nor could afford to purchase for genuine agricultural operations, given other constraints faced by agriculturists in that area like non-availability of assured water supply for irrigation, non-availability of labour for agricultural operations etc.

15. When the question arises as to the real nature of land in the context of land situated in suburban areas, the crucial two-fold test would be to find out if any prudent agriculturist would purchase the land in order to carry on agricultural operations having regard to the price he would have to pay and whether the owner of such land would sell it by valuing it as property yielding agricultural produce on the capitalization method even on the basis of optimum yield and maximum sale price. In the case under consideration, the test is found to be negative.

16. The actual user of the land for agricultural purposes or absence thereof at the relevant time is undoubtedly one of the crucial tests for the determination of the issue. It is well settled that the nature and character of land may undergo a change depending upon its situation, growth of the locality or zone in which it is situated and its potentiality. The fact that the land is sold or transferred to a non-agriculturist for a non-agricultural purpose of that it is likely to be used for non-agricultural purposes soon after its transfer is also a

relevant factor germane to the determination of the issue. Merely because the land was used for agricultural purposes on the remote past or it continues to be assessed to land revenue as agricultural land is not decisive. In order to ascertain the true character and nature of the land it must be seen whether the land had been put to use for agricultural purposes for a reasonable span of time prior to the relevant date and further as to whether on the date of the transfer the land in question was intended to be put to use by the purchaser for agricultural purposes for a reasonable span of time in future.

17. The Bombay High Court in CIT Vs. V.A.Trivedi (1988) 172 ITR 95 (SC) observed that to ascertain the true character and the nature of the land, it must be seen whether the land had been put to use for agricultural purposes for a reasonable span of time prior to the relevant date and further as to whether on the date the transfer the land in question was intended to be put to use by the purchaser for agricultural purposes for a reasonable span of time in future. The relevancy of the test of factual user of the land for agricultural purposes was emphasized by the Division Bench of the Bombay High Court in Trivedis case (ibid) after interpreting and applying the ratio of the Judgment of the Supreme Court in the case of CWT Vs. Officer-in-charge (Court of Wards), Paigah (supra). The said test was duly approved by the Supreme Court in its latest decision in Sarifabibis case (supra).

18. Even at the time of sale, the impugned property was classified as Residential Area Class - III. This classification clearly fastens the liability to tax on transfer, since the jurisdictional ITAT under similar circumstances has held that the classification shown in the official website of the Registration Department attains preponderance in defining the nature of asset. The 'C' Bench of Chennai ITAT in the case of Shri Pallavaram Kothandaraman Ramesh in ITA No.1808/Mds/2011 -A.Y.2008-09 had confirmed the above finding of fact; The concluding portion of the order is reproduced below for easier comprehension.

> ***when the assessee had purchased the land no single penny was offered as agricultural income. Nothing was brought on record to contradict the findings given by the Assessing Officer. The entire finding of the learned CIT(Appeals) mainly based on the certificate issued by the VAO. When the Tamilnadu Government itself has notified the area in which the land in question is situated as a residential area, the certificate issued by the VAO cannot supersede the classification given by the Tamilnadu Government.***

19. Hence, based on the elaborate discussion made above, the character of land sold is substantiated to be non-agricultural in nature and does not fall under the exception provided u/s. 2(14). Accordingly, the net Capital gain was worked out at Rs.1,52,92,527/- while passing the order U/s.143(3) dated 30.03.2015.

20. During the course of search proceedings an agreement of sale was found and as per this agreement copy the assessee has received an amount of Rs.6,16,00,000/- on sale of the above two properties. But as per the sale deed copies (Registered) the cost of the above two properties was at Rs.1,76,00,000/-. After search the assess filed the ROI on 11.09.2017 and admitted the entire amount of Rs.6,16,00,000/- as sale consideration and claimed entire amount as exception on the plea that agricultural lands. But the original ROI filed on 13.03.2013 converted into scrutiny and the scrutiny assessment was also completed U/s.143(3) on 30.03.2015 treating the sale consideration of the above properties were at Rs.1,76,00,000/- on the basis of sale deed copies.

21. Hence the difference amount of Rs.4,40,00,000/- cannot be considered as property sale receipt. The difference amount of Rs.4,40,00,000/- will be treated as unexplained receipt to the assessee. The difference amount only came to the notice after search and the assessee also not admitted the difference amount in the original ROI filed before search. After search now the assessee claiming the difference amount also part of capital gain. The assessee claim of capital gain not accepted and the difference amount of Rs.4,40,00,000/- added back to the assessee total Income treated as other source of income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee reiterated his arguments made before the AO. The assessee further contended that although, all evidences filed before the AO clearly proves that impugned land sold in Sy.Nos.384/1A & 284/1B is an agricultural land, but the AO treated the said land as capital asset in terms of sec.2(14)(iii) of the Act, only on the basis of Inspector Report, which was taken in the year 2017, when the re-assessment proceedings were taken up. Therefore, on the basis of report of Inspector, evidences filed by the assessee cannot be discarded and land in question cannot be treated as capital asset. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts held that evidences filed by the assessee, including Patta Adangal and Certificate from Revenue Authorities clearly shows that land was classified as agricultural land. The Ld.CIT(A) further observed that the land is situated in a village which is beyond 8 kms from local Municipality Cantonment Board, which is having a population of less than 10000 as per latest census. The lands were sold only as agricultural land which is evidenced by the Sale Deed registered by Sub-Registrar Office. Therefore, he opined that consideration received for transfer of land is not taxable, because, said land was not a capital asset in terms of sec.2(14)(iii) of the Act. The Ld.CIT(A) further noted that once the land in question sold by the assessee was an agricultural land, any consideration received for sale of said land, including excess consideration, if any, even

if such consideration is not reported same partakes the nature of consideration received for transfer of agricultural land, which is outside the scope of provisions of Sec.2(14) of the Act. Therefore, deleted the additions made by the AO towards excess consideration received towards sale of land amounting to Rs.4.40 Crs. under the head 'income from other sources'. The relevant findings of the Ld.CIT(A) are as under:

> *12.1. The said land is entered in the Revenue records as agricultural land right from the time, the assessee has purchased the said land till the time, the appellant has sold such agricultural land to the buyer. The asset acquired was agricultural land as per the evidence brought on record.*
>
> *12.2. As far as the classification of the land transferred as per the revenue records is agricultural land, irrespective of it users, it would remain an agricultural land even if no agricultural activities are performed on the said land.*
>
> *12.3. The lands are sold and handed over to the buyer as agricultural lands. 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 appellant has not converted any portion of the land for non-agriculture purpose. sale of agricultural land by the assessee and realization of good price would not alter the basic nature and characteristic of the transaction. In the case of the appellant, land was acquired by the assessee and treated as fixed assets. 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.*
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> *12.4. Similarly, what is the purpose of which the lands have been sold also is not of much consequence because the stage to consider for the purpose of capital gain is the day the land is sold; what was the nature of the land on that day and not what it would be in future. The conversion of the land for commercial purpose by the purchaser was not within the control of the assessee and hence no adverse inference can be drawn. Merely because the buyer desired to put the subject land, for non-agricultural use, after the date of transfer, the land does not cease to be agricultural land. The A.O. had placed reliance on two factors. One was the personal visit by the Inspector of Income Tax and the other was the website of Govt.of Tamilnadu, Stamps & Registration Department. As correctly pointed out by the AR, the Inspector of Income-tax had visited the spot much more than 3 ½ years later from the date of sale and therefore any information gathered at that point of time from any one cannot be relied upon. The character of the land also would have undergone major changes. If would be highly unsafe to rely on a spot visit by the Inspector of such circumstances to overrule the initial presumption available from the revenue records that the lands were agricultural lands.*
>
> *12.5. Report of the departmental inspector vis-a-vis certificates of the revenue authorities, produced before the AO, the latter should be given weightage and accepted unless the contrary is proved.*

12.6. Again, where the land is being assessed as agricultural land, then, normally, although it is not being put to actual agricultural use, it may be presumed that it continues to be agricultural land; unless it can be shown that it has been in fact put to some non-agricultural use.

13. In view of the above discussion, I am of the considered view that, any surplus money arising to an assessee on sale of agricultural land would always partake the character of agricultural income itself. The consideration stated in the Registered sale deed was agricultural income. Likewise, "the on money" also should be treated as agricultural income. As far as the classification of the land transferred as per the revenue records is agricultural land whatever may be the value of the land it may not make any impact since no portion of the sale value can be taken for computation of LTCG. I also place reliance on the order of the Cochin Bench of the Tribunal in the case of ITO. vs. Dr.Koshy George wherein it was held by the Tribunal that any surplus money arising to an assessee on sale of agricultural land would partake the character of agricultural income itself. Accordingly, the addition made treating the asset as non-agricultural land is directed to be deleted as the classification of the asset as per the revenue record is agricultural land. Therefore, the ground of appeal is allowed.

5. The Ld.DR, submitted that the Ld.CIT(A) erred in deleting additions made towards consideration received for sale of agricultural land under the head 'income from other sources' without appreciating the fact that the additions made by the AO is in the nature of on-money received for sale of land, which cannot be considered as consideration received for sale of land. The Ld.DR further referring to information obtained from the website of Registration Department, Government of Tamil Nadu, submitted that land sold by the assessee has been classified as residential area Clause-II right from 01.08.2007 itself. Further, the assessee never carried out any agricultural operations on the land. Although, the patta adangal, etc., shows that the land in question was an agricultural land, but, fact remains that said land has been sold for commercial exploitation, which is evidence from the fact that land has been purchased by M/s.Alwin Public School. The assessee had sold for huge price, which means, the area in which land situated comes within urban conglomerate. The AO after considering relevant facts has rightly treated consideration received over and above

what was stated in Sale Deed as on-money and assessed under the head 'income from other sources', but the Ld.CIT(A) without considering relevant facts simply held that on-money received for sale of land partakes the nature of consideration received for sale of land if such land is an agricultural land.

6. The Ld.DR further referring to the decision of ITAT Chennai Benches in the case of Shri Pallavaram Kothandaraman Ramesh in ITA No.1808/Mds/2011 for the AY 2008-09 dated 17.10.2012, submitted that the Tribunal had consider an identical issue and held that when the Tamil Nadu Government itself has classified the area in which the land in question is situated as a residential area, then Certificate issued by the VAO cannot supersede the classification given by the government. Since, the facts in the present case are identical to the facts considered by the Tribunal, the order of the Ld.CIT(A) should be set aside and additions made by the AO should be sustained. In this regard, he relied upon the decision of the Hon'ble Karnataka High Court in the case of B.M.Muniraju v. CIT reported in [2015] 62 taxmann.com 345 (Karnataka). The Ld.DR had also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Kanav Khanna v. CIT-II, Amritsar, reported in [2014] 46 taxmann.com 121 (Punjab & Haryana).

7. The Ld.Counsel for the assessee supporting the order of the Ld.CIT(A) submitted that there is no dispute with regard to the fact that the land sold by the assessee is an agricultural land, if you go by Revenue records like

Patta Adangal, etc. Further, as per Sale Deed registered with Office of Sub-Registrar clearly shows as per schedule of property that said land is an agricultural land. Further, consideration received by the assessee for sale of land is also in accordance with guideline value fixed by the authorities for payment of stamp duty. The Certificate issued by VAO clearly says that land is an agricultural land which is situated beyond 8 kms from nearest local municipal limits. The assessee has carried out agricultural operations in the land which is evident from the Revenue records, as per which, the land was cultivated with coconut and other planation trees. Therefore, the Ld.CIT(A) after considering relevant facts has rightly held that the land sold by the assessee is an agricultural land and consequently consideration received including additional consideration if any partakes the nature of consideration received for sale of agricultural land, which is outside the scope of sec.2(14)(iii) of the Act. As regards, the documents submitted by the Ld.DR from the website of Registration Department, the Ld.Counsel for the assessee submitted that no doubt land sold by the assessee may fall within residential area under Clause-II as classified by the State Government. But, fact remains that whether impugned land has been converted into non-agricultural purpose or not, is to be seen. In case, the land has not been converted into non-agricultural purpose, then the land continued to be remain in the status of agricultural land, even if such land falls within the residential area as classified by the State Government. Therefore, merely for the reason that land sold by the assessee has been

classified as residential area which does not mean that land held by the assessee was also converted into residential purpose. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO and their orders should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that during the Financial Year relevant to the AY 2012-13, the assessee has sold land at Padappai in Sy. Nos.384/1A & 284/1B, situated in Padappai, Sriperumbudur Village, Kancheepuram District and claimed that consideration received for transfer of land is exempt u/s.2(14) of the Act. The AO has assessed consideration received towards sale of land under the head 'capital gains' on the ground that said land is a capital asset which is exigible to tax. A survey action u/s.132 of the Act, was conducted in the case of Mr.N.Ramaswamy on 30.09.2015 and during the course of search, an agreement to sale for sale of property at Padappai was found and seized. As per agreement to sale, the land at Padappai was proposed to sell to M/s.Alwin Public School for a consideration of Rs.6.16 Crs. Consequent to search, notice u/s.153C of the Act, was issued and in response to the notice, legal heir Mr.N.Ramaswamy filed return of income on 11.09.2017 declaring total income of Rs.5,98,640/-. In the said return, the assessee has claimed exemption from tax towards additional consideration received for sale of land at Padappai, on the ground that said land is an agricultural land which is situated beyond

8 kms from the limits of local municipality. The AO assessed excess consideration received over and above, amount shown in the Sale Deed amounting to Rs.4.40 Crs. as unexplained income of the assessee on the ground that land sold by the assessee is a capital asset in terms of sec.2(14) of the Act, and consequently, on-money received towards sale of land is assessable under the head 'income from other sources'. The AO has given various reasons to come to the conclusion that said land is a capital asset, but not agricultural land and according to the AO, the land is situated within 5.5 kms from the limits of local municipality and further, there was no agricultural operations were carried out in the said land in the impugned assessment years as well as in the past assessment years. The AO further noted that the land has been classified as residential area Clause-II by Stamps & Registration Department, Government of Tamil Nadu, right from 01.08.2007 itself. The AO has taken support from Inspector's report, which suggest distance of land is less than 8 km from the limits of local municipality and also there was no agricultural operations were carried out in the impugned land.

9. We have given our thoughtful consideration to the reasons given by the AO in light of various arguments advanced by the Ld.Counsel for the assessee and we ourselves do not subscribe to the reasons given by the AO to arrive at a conclusion that said land is a capital asset and is liable for capital gains tax for simple reason that, as per registered Sale Deed executed by the assessee in favour of buyers, it was clearly stated in the

Schedule that lands are agricultural lands. Further, various Revenue records including Chitta, Adangal very clearly says that said lands are agricultural lands as per Revenue records. The assessee had also produced certificate from VAO which clearly states that lands are agricultural lands located beyond 8 kms from nearest Tambaram Municipality. Therefore, from the documents submitted by the assessee like registered Sale Deed, Conveyancing Title in favour of the buyers and VAO certificate clearly shows that lands in question are agricultural lands and situated beyond 8 kms from the limits of nearest municipality. Therefore, we are of the considered view that there is no error in the conclusion arrived at by the Ld.CIT(A) that said lands are agricultural lands which are situated beyond 8 kms from the nearest municipality.

10. Having said so, let us come back to various observations of the AO. The Ld.DR has made detailed written submissions on the issue in light of observations of the AO and argued that the land in question is a capital asset and also situated within 8 kms from the limits of nearest municipality. The AO is mainly taking support from the report of Inspector, which was taken during the course of assessment proceedings nearly 3½ years later to sale of asset. As per said report, it was stated that lands in question were situated within 5.5 kms from the limits of nearest municipality. The AO relied upon the Inspector Report, whereas, the assessee has taken support from Certificate issued by the VAO. If you consider both the documents i.e. report of the Inspector and Certificate of VAO, there is no

doubt, certificate of VAO is given more weightage, because, in our considered view, Revenue authorities are competent to evaluate and measure the distance of land from the limits of municipality than the Inspector of Income Tax Department. This legal position supported by the decision of the ITAT Cochin Bench in the case of ITO v. Dr.Koshy George reported in 190 Taxman 4. Therefore, in our considered view, conclusion arrived at by the AO on the basis of report of Inspector is devoid of merits and thus, we cannot find fault with the reasons given by the Ld.CIT(A) to arrive at a conclusion that the land in question is situated beyond 8 kms from the limits of nearest municipality.

The second observation of the AO is nature of land in light of agricultural operations carried out by the assessee and according to the AO, the assessee has not carried out any agricultural operations in the impugned land and thus, he cannot claim exemption u/s.10(37) of the Act. In this case, the assessee has claimed consideration received towards sale of land is exempt as per provisions of Sec.2(14) of the Act, on the ground that the land is an agricultural land, which is situated beyond 8 kms from the limits of local municipality. Therefore, to decide taxability in receipt from sale of land, whether the assessee has carried out agricultural operations or not, is really not relevant. Be that as it may. The assessee claimed that the land in question was agricultural land and he was carried out agricultural operations before selling the lands. Further, in order to decide the nature of land whether it is agricultural land or capital asset, the

first and foremost condition is whether such land is capable to carry out agricultural operations or not, but it is not relevant whether any agricultural operations or cultivation or tilling of the land is carried out and this legal proposition is supported by the decision of the Hon'ble Calcutta High Court in the case of CIT v. Borhat Tea Co. Ltd., reported in [1982] 138 ITR 783 (Cal). In so far as the third observation of the AO with regard to subsequent land held by the purchaser, the AO observed that the assessee has sold land to M/s.Alwin Public School, for non-agricultural purpose to arrive at conclusion that impugned lands are not agricultural lands. In our considered view, once again, the findings of the AO are devoid of merits for the simple reason that what was relevant to decide the nature of land is whether on the date of sale, it was an agricultural land or not? but, lands used for other than agricultural purpose by the buyer would not alter the character of the agricultural land as held by the Hon'ble Gujarat High Court in the case of Gordhanbhai Kahandas Dalwadi v. CIT reported in [1981] 127 ITR 664 (Guj). Therefore, in our considered view, the observations made by the AO to arrive at conclusion that said lands are non-agricultural lands, is not supported well reason.

11. As regards the observations of the AO in light of classification of land by the Chennai Metropolitan Development Authority (in short "CMDA") as residential area Clause-II, we find that no doubt, CMDA has classified the area where the land of the assessee is situated comes under residential

area Clause-II. But, fact remains that whether the impugned lands have been converted into non-agricultural purpose or not, has to be seen. No doubt, CMDA is an authorized agency to notify the particular area into residential zone, industrial zone, agricultural zone and other zones, taken into account over all developments of the city and after considering relevant facts, said agency will classify various areas into different zones. That means, once a particular agency notifies a particular area into different zones, land situated in that zones should be used only for that purpose. In case, any person wants to change his land use from agricultural to non-agricultural purpose, then, he/she needs to convert land into non-agricultural purpose. But, it cannot alter the nature of land from agricultural to non-agricultural purpose, when such land has not been converted into non-agricultural purpose by an official order by the competent authority. As long as a person keeps his land as agricultural land without there being any change in land use by an official order from the concerned authority, then said lands remain continued to be agricultural land, even though, said land falls within the territorial jurisdiction of classification made by the authority. In this case, the AO is harping upon classification made by one authority without considering the fact that the land in question was never converted into non-agricultural purpose by the another competent authority by an official order. Therefore, in our considered view, merely for the reason that impugned land is situated in a residential zone, it does not mean that said land has been converted into non-agricultural purpose and

it is a residential land liable for capital gains tax. Therefore, we are of the considered view that reasons given by the AO to arrive at a conclusion that impugned land is a capital asset fails in all aspects and the Ld.CIT(A) has negated observations of the AO by a valid reason and thus, we are inclined to uphold the reasoning given by the Ld.CIT(A) to delete the additions made towards consideration received for sale of land.

12. As regards the case law relied upon by the Ld.DR in the case of Sri Pallavaram Kothandraman Ramesh in ITA No.1808/Mds/2011 dated 17.10.2012, we find that, the facts of said case are different to the facts of the present case. The Tribunal has recorded categorical findings that the assessee has never carried out any agricultural operations and never admitted agricultural income. In the present case, facts are entirely different and thus, the case law relied upon by the Ld.DR is not applicable to the facts of the present case. The Ld.DR was also relied upon by the decision of the Hon'ble Karnataka High Court in the case of B.M.Muniraju v. CIT(A)-V, Bangalore, reported in [2015] 62 taxmann.com 345, when it was held that carrying agricultural operations is necessary to classify land as agricultural land to entitle the benefit u/s.10(37) of the Act. In our considered view, said case law is not applicable to the facts of the present case. In this case, the assessee never claimed deduction u/s.10(37) of the Act, but in fact claimed exemption u/s.2(14) of the Act itself. The other case laws relied upon by the Ld.DR is also not applicable, because, it goes on record that to treat a particular land as agricultural land, it is necessary

to carry out agricultural operations. As we have already stated in earlier part of this order in light of certain judicial precedents that what is important to see is whether the land is capable to carry out any agricultural operations or not? in order to classify said land as agricultural land, but not carry out real agricultural operations. Therefore, we find that said case laws have no application to the facts of the present case.

13. In so far as the arguments of the Ld.DR in the case of ITO v. Dr.Koshy George reported in 190 Taxman 4 (Cochin), we find that the Ld.CIT(A) relied upon said judgment and held that once consideration received for transfer of any land is treated as capital receipt, which is not liable for capital gains tax, then on-money, if any, received for transfer of said land and also partakes the nature of capital receipt not liable for tax. The Ld.DR tried to distinguish the case law relied upon by the Ld.CIT(A) on the ground that in the said case, the assessee has disclosed consideration received for transfer of land in the return of income, but does not disclose on-money received for transfer of land. Under these facts, the Tribunal came to conclusion that once the land in question has been treated as agricultural land, consideration received towards transfer of said land including on-money, if any, will also be in the nature of consideration received for transfer of land, is exempt from tax. But in the present case, the assessee has admitted the fact that on-money received towards sale of land is undisclosed investment in 'capital gains' and the same was assessed under

the head 'income from other sources' and thus, said case law has no application. We find no merit in the arguments of the Ld.DR for the simple reason that facts of present case are squarely covered by the decision of the ITAT Cochin Bench. In the present case, the assessee has disclosed consideration received for transfer of land in the return of income for the relevant assessment year and claimed exemption from tax. The AO has assessed consideration under the head 'capital gains', but the Ld.CIT(A) has deleted the additions made by the AO on the ground that the land transferred by the assessee is an agricultural land. If you consider the facts of the present case with that of facts of ITAT Cochin Bench in the case of Dr. Koshy George, we find that facts are identical and in both cases, the assessee's have declared consideration received as per Sale Deed in the return of income, but on-money received for transfer of land has not been declared. Further, on-money received for transfer of land has been held to be taxable by the AO in the present case, whereas before the Tribunal in the case of Dr. Koshy George was also the AO has held that on-money received towards sale of land is taxable under the head 'income from other sources'. The Tribunal held that once consideration received towards transfer of land has been held to be consideration received for transfer of agricultural land, then on money, if any, received towards transfer of said land will also partake the nature of consideration received for agricultural land and is exempt from tax. Therefore, we are of the considered view that

the case law relied upon Ld.CIT(A) is squarely applicable to the facts of the present case and thus, we reject the arguments taken by the Ld.DR.

14. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to delete the addition towards computation of capital gains towards consideration received for sale of agricultural land and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

15. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 08th day of February, 2023, in Chennai.

Sd/-	***Sd/-***
(वी. दुर्गा राव**)**	**(**जी. मंजूनाथा**)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 08th February, 2023.
TLN

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