

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. Nos.107/Chny/2021 and 2417/Chny/2019  
निर्धारण वर्ष/Assessment Year: 2011-12

Shri D. Saivenugopal,  
Old No. 5, New No. 11, Sami Chetty  
Street, Pudupet, Chennai 600 002.

Vs. The Deputy Commissioner of  
Income Tax,  
Corporate Circle 6(1),  
Chennai 34.

**[PAN:BETPS6046G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sundaram, CA  
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 15.03.2023  
घोषणा की तारीख /Date of Pronouncement : 24.03.2023

**आदेश / O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

Both the appeals filed by the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai dated 27.06.2022 relevant to the assessment year 2011-12 passed against quantum additions as well as rejection of rectification petition under section 154 of the Income Tax Act, 1961 ["Act" in short].

2. The appeal in I.T.A. No. 107/Chny/2021 filed by the assessee is delayed by 579 days, whereas, the assessee has filed a petition for

condonation of delay in the form of an affidavit for 18 months. Since the assessee has not filed any other petition for condonation of delay of remaining periods, this appeal filed by the assessee is not maintainable and liable to be dismissed. When the appeal came up for hearing, the Id. Counsel for the assessee has prayed for withdrawal of the appeal. Accordingly, the appeal filed by the assessee is dismissed as withdrawn.

3. So far as appeal filed against quantum addition is concerned, the assessee has challenged upholding of reopening of assessment under section 147 of the Act.

3.1 Brief facts of the case are that the assessee has filed return of income for the assessment year 2011-12 belatedly on 14.10.2011 admitting total income of ₹.34,70,877/- including agricultural income of ₹.10,00,000/-. The return was processed under section 143(1) of the Act. Subsequently, from the tax computation sheet, the Assessing Officer has noted that the assessee has received rent from land at Kelambakkam and has offered the same as income from house property and claimed 30% deduction for repairs and maintenance. However, as per section 22 of the Act, the income from house property is only from buildings or land appurtenant thereto and not from land alone as offered by the assessee. Hence, the 30% notational deduction claimed on the rent received from

land was not in order and same has escaped assessment. Accordingly, the Assessing Officer issued notice under section 148 of the Act dated 27.03.2013 and duly served on the assessee. After following due procedures, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 31.03.2014 by making various additions. On appeal against reopening of assessment under section 147 of the Act, after considering the submissions of the assessee and by following various decisions, the Id. CIT(A) upheld the reopening of assessment.

3.2 On being aggrieved, the assessee is in appeal before the Tribunal and challenged the validity of jurisdiction of assessment under section 147 of the Act. The main contention of the Id. Counsel for the assessee is that once no additions have been made with respect to items which caused the reopening of the assessment, the Assessing Officer should have dropped the proceedings under section 148 of the Act and no further additions should have been made in the reassessment proceedings. It was also submitted that reopening of the assessment is not at all warranted as there was no fresh material to reopen the assessment and all the information and evidences were available in the original assessment and prayed for quashing the reassessment

proceedings under section 147 of the Act.

3.3 On the other hand, the Id. DR strongly supported the order passed by the Id. CIT(A) on this issue.

3.4 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the return filed by the assessee was processed under section 143(1) of the Act only and no scrutiny assessment under section 143(3) of the Act was taken up. Thereafter, the Assessing Officer issued notice under section 148 of the Act dated 27.03.2013 towards reopening of assessment under section 147 of the Act. Thus, we find that the assessment was reopened under section 147 of the Act within four years after processing of return of income under section 143(1) of the Act. It is pertinent to mention here that there is conceptual difference between section 143(1) of the Act and section 143(3) of the Act. During the course of assessment proceedings under section 143(3) of the Act, the Assessing Officer select the return filed by the assessee for scrutiny and after scrutiny, the Assessing Officer is concluding the original assessment order under section 143(3) of the Act. Admittedly, in the present case, scrutiny assessment under section 143(3) of the Act was not carried out. Thus, we are of the considered opinion that the Assessing Officer has validly reopened the assessment

under section 147 of the Act by issuing notice under section 148 of the Act.

3.5 So far as case law relied on in the written submissions of the assessee is concerned, the decision in the case of Martech Peripherals Pvt. Ltd. v. DCIT 394 ITR 733 (Mad) has no application to the facts of the present case, wherein, in that case, the Assessing Officer concluded the assessment under section 143(3) r.w.s. 147 of the Act without dealing with the objections filed qua the notice issued under section 148 of the Act, whereas, in the present case, the assessee has not raised any objection against the notice issued under section 148 of the Act.

3.6 Similarly, the decision in the case of M/s. Tractors and Farm Equipment Limited v. ACIT 409 ITR 369 (Mad) has no application to the facts of the present case, wherein, in that case, scrutiny assessment under section 143(3) of the Act was completed and thereafter, assessment was reopened under section 147 of the Act, whereas, in the present case, no scrutiny assessment under section 143(3) of the Act was done.

3.7 Under the above facts and circumstances and moreover, by following various judgements of the Hon'ble Supreme Court, the Id.

CIT(A) has rightly upheld the reopening of assessment and thus, we find no infirmity in the order passed by the Id. CIT(A). Accordingly, the ground raised by the assessee is dismissed.

4. The next ground raised in the appeal of the assessee relates to condition of addition of ₹.75,31,339/-. From the statement of income filed along with return of income of the assessee, the Assessing Officer has noted that the assessee has sold land property for ₹.75,90,000/- during the financial year 2010-11 and the same was shown as agricultural land and claimed exempt for the purpose of capital gain under section 2(14) of the Act. The assessee was asked to furnish the sale and purchase deed of the land claimed to be agricultural land by the assessee. The assessee has not furnished the sale deed of the land. However, he has furnished purchase deed which shows the land to be an agricultural land. However, before the Assessing Officer, the assessee has produced the copy of agreement to sell vide document No.8734 dated 06.09.2008. On perusal of document of agreement to sell, the Assessing Officer found that the following pieces of land situated at Thazhambur village, Chengalpattu taluk, Kancheepuram district (Tamil Nadu) was sold to M/s. Mohamed Sathak Trust.

Sl.No.	Survey No.	Extent in cent
1	115/17	36

2	116/6	10
Total		46 Cents
3	116/7	08
4	120/7	08
5	120/8	06
6	120/17	19
Total		41 cents

4.1 Under section 133(6) of the Act, the Assessing Officer has called for information from Mohamad Sathak Trust and in response to the same, Mohamad Sathak Trust submitted the registered Sell Agreement of above land in Doc. No. 9396/2010. On the above land site, there stands one A.J. College of Nursing (promoted by Mohamed Sathak Trust). In the adjacent area, there is one Mohamad Sathak Green Wood City. The entire area of village, which is nearly 1.5 – 2 k.m. adjacent to the OMR Road, a fast expanding area of Chennai, is dry in nature and there is no agricultural activity. A lot of commercial activities and construction projects are going on in this village. Real Estate projects like Casa Grand Pavillion, Oasis Sekhar Flats, Green Wood City are either completed or going on in full fledge. In the same area of village, School of Maritime Studies, T.S. Narayanswami College of Arts & Science are existing. Sri Venkateswara Dental College/Nursing College & Iravi Vellan Mellan Hospital (both VELS University) are also operating in the same area. This village is also in the vicinity of 1.5 – 2 km from the Satyabhama University. Moreover, in the website [www.tnreginet.net](http://www.tnreginet.net), the status of the above land shows as

“residential”.

4.2 Information u/s 133(6) vide this office letter dated 20.02.2014 was also called for from the Tahsildar, Thirupporur Taluk, Kancheepuram District (Tamilnadu). The Tahsildar, in his report dated 28.03.2014 has stated that no crops were grown on the above land sites from the period 2008 to 2013. He has also produced the certified copies of chitta, Addangal, FMB Sketch for the above mentioned survey Numbers, which shows that no agricultural activities have been carried out during this period.

4.3 Vide letter dated 28.01.2014, the Assessing Officer asked the assessee to produce the details of crops grown on the above land during the F. Ys 08-09, 09-10 & 10.11 and to produce the chitta & Adangal for the same period. He was also asked to submit the details of irrigation facility on the above land, details of pump sets if any, details of Electricity Bills thereof.

4.4 Whereas, vide the assessee's submission dated 05.02.2013, the assessee has stated that paddy has been grown on the land, the assessee has also shown agricultural income of ₹.10,00,000/- on the above land, whereas, as stated above, the Tahsildar Report states that

no crops have been cultivated on the above land, hence the Assessing Officer observed that assessee's claim is false and that he has generated ₹.10,00,000/- as agricultural income on the above land. In addition, the assessee has not produced any details of irrigation facility on the above land, neither he produced any electricity bills as asked by the Assessing Officer vide his letter dated 28.01.2014. In the same reply, the assessee has produced Chitta Adangal copies which are dated 29.09.2000 & 19.05.1987, which does not substantiate that any agricultural activity has been undertaken during the period as called for. The assessee has also not produced any details of sale of agricultural produce, neither he produce bills or any details for purchase of any inputs necessary for agricultural activity.

4.5 In view of the above as well as by relying upon various judicial pronouncements, the Assessing Officer has held that the assessee is not liable to have an exemption of Capital gains on sale of the above land. Accordingly the claim of the assessee that the above land were agricultural land, and hence not liable to capital gain under section 2(14) of the IT Act, 1961 was rejected. Capital gain of ₹.75,31,339/- claimed to have been exempt under section 2(14) was disallowed and brought to tax under the head Long Term Capital Gain.

4.6 The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and by following various judgements of various courts, the Id. CIT(A) confirmed the addition made by the Assessing Officer.

4.7 On being aggrieved, the assessee is in appeal before the Tribunal.

4.8 We have heard the rival contentions and also perused the written submissions filed by the assessee on this issue. With regard to the claim of exemption under section 2(14) of the Act towards capital gains, first of all, in his written submissions, the assessee could not controvert the report of Tahsildar dated 28.03.2014, wherein, he has categorically stated that no crops were grown on the pieces of land sites from the period from 2008 to 2013. Secondly, the assessee has not produced the details of crops grown on the above land during the financial years 2008-09 to 2010-11. Moreover, the assessee has not produced the details of irrigation facility on the land, details of pump sets, if any, details of electricity bills, etc., either before the Assessing Officer or before the Id. CIT(A) or even before the Tribunal. Moreover, in the website [www.tnreginet.net](http://www.tnreginet.net), the status of the above land shows as "residential".

4.9 So far as case law relied on by the assessee in the case of PCIT v. Mansi Finance Chennai Ltd. 388 ITR 514 is concerned, we find that in that case, the land was given on lease for agricultural purposes and the lessee also used the impugned land for agricultural purposes during the interregnum period by providing clear-cut clauses in the lease deed that to use the farm for agricultural purpose only and to farm cultivate manure and manage the farm in a good and husband like manner according to the mot approved methods of cultivation, so as to keep the farm in good condition. Whereas, in the present case, on land site sold by the assessee, there stands one A.J. College of Nursing, promoted by Mohamed Sathak Trust, who purchased the land site. Moreover, no evidence was brought on record that the purchaser used the land site for agricultural purposes. Thus, the above case law relied on by the assessee has no application to the facts of the present case.

4.10. Under the above facts and circumstances of the case, we are of the considered opinion that the Id. CIT(A) has rightly confirmed the addition made by the Assessing Officer and we find no reason to interfere with the order passed by the Id. CIT(A).

5. The next ground raised in the appeal of the assessee relates to confirmation of addition made under section 2(22)(e) of the Act of

₹.25,95,533/-. The assessee is one of the Directors in M/s. Saraswathi Broilers Pvt. Ltd. and he is having a substantial interest in the company. From the balance sheet of the assessee as on 31.03.2011, ₹.1,74,78,035/- has been shown as liability towards M/s Saraswathi Broilers Pvt. Ltd. Vide letter dated 20.03.2013, the assessee was directed to explain this and show caused as to why the same should not be taxed in his hand as deemed dividend under section 2(22)(e) of the Act. The assessee explained that this amount represent share application money to the company for which, allocation is pending. Ledger A/c of the assessee in the books of M/s. Saraswatht Broiler pvt. Ltd also shows that ₹.1,74,78,035/- in the different heads has been debited to the assessee. In view of the above, this amount falls under the definition of section 2(22)(e) and hence the same is taxable in the hands of the assessee restricted to the extent of accumulated profits in the company which is ₹.25,95,533. Accordingly, ₹.25,95,533/- was added back to the total income of the assessee under section 2(22)(e) of the Act. On appeal, the Id. CIT(A) confirmed the addition.

5.1 On being aggrieved, the assessee is in appeal before the Tribunal.

5.2 We have heard the rival contentions. In the assessment order, the Assessing Officer has concluded that the loan received by the assessee

has to be added as deemed dividend under section 2(22)(e) of the Act. Before the Id. CIT(A), the AR has contended that the assessee brought share application money to the company which he withdrew later on. However, the AR could not demonstrate in terms of accounts that the said loan transaction does not attract the conditions under section 2(22)(e) of the Act. By considering the submissions of the as well as remand report of the Assessing Officer, the Id. CIT(A) confirmed the addition.

5.3 Before us, the Id. Counsel for the assessee has reiterated the submissions as made before the Id. CIT(A). We have also perused the remand report of the Assessing Officer. During the remand proceedings, the assessee was asked to substantiate with details regarding subscription of shares in M/s. Saraswathi Broilers Pvt. Ltd. The assessee vide his submissions has stated the balance as on 31.03.2011 of ₹.2,40,60,000/- as appearing in the Share Application account of M/s. Saraswathi Broilers Pvt. Ltd. represented money given by him to M/s. Saraswathi Broilers Pvt. Ltd. towards subscription of shares. He also stated that a debit balance of ₹.1.74 crores was appearing in the above company's books in his name which represented the aggregate balance of the money drawn from the company on various dates. It was the contention of the assessee that since he has only contributed extra

money to the company, he is not liable for action under section 2(22)(e) of the Act. After considering the submissions of the assessee, the Assessing Officer has observed that the money advanced by the assessee to the company for subscription of shares and money received as advances from the company are completely two different transactions. Moreover, the personal loans taken by the assessee and for meeting the construction expenses of house property built by the assessee at Samychetty Street indicates that the above two transactions have no nexus and the outstanding debit balance of ₹.1,74,78,035/- appearing in the name of the assessee represents the advance received by the assessee for various personal purposes from the company in which he holds substantial interest. Therefore, the Assessing Officer has held that the transaction clearly falls within the ambit of the provisions of section 2(22)(e) of the Act and brought to tax the sum of ₹.25,95,533/- to the extent of the accumulated surplus available with the company as deemed dividend in the hands of the assessee. By considering the above observations of the Assessing Officer in the remand report, the Id. CIT(A) has rightly confirmed the addition made by the Assessing Officer under section 2(22)(e) of the Act. Thus, we find no infirmity in the order passed by the Id. CIT(A) and the ground raised by the assessee is dismissed.

6. The next ground raised in the appeal of the assessee relates to confirmation of addition made towards cash deposits in the bank amounting to ₹.3,54,000/-. A sum of ₹.13,54,000/- was added to the income as the assessee could not explain satisfactorily with evidences the source for the cash deposits appearing in the assessee's bank account. On appeal, after considering the submissions of the assessee as well as remand report, the Id. CIT(A) has confirmed the addition in the absence of any valid explanation.

6.1 We have considered the rival contentions. Out of ₹.13,54,000/-, the assessee has admitted only a sum of ₹.10 lakhs as his agricultural income during the year which has been credited to his capital account. However, no satisfactory explanation has been furnished by the assessee in respect of the balance amount of ₹.3,54,000/-. After considering the submissions of the assessee and the remand report, the Id. CIT(A) confirmed the addition of ₹.3,54,000/- as cash deposit was not explained satisfactorily.

6.2 Before us, the assessee has filed written submissions, wherein, it was contrarily mentioned in para 26 at page 6 that ₹.1,04,000/- was opening cash balance available as on 01.04.2010 and the remaining deposits as salary from sarasu chicken @ ₹.20,833/- per month from

30.04.2010 to 28.02.2011 and ₹ 20,837/- as on 31.03.2011 without any documentary evidence. However, in his counter reply to the remand report of the Assessing Officer, the assessee has made entirely different submissions, which are reproduced at page 44 of the appellate order. The assessee has explained the sources of funds with different break-ups in different places, which are nothing but an afterthought. Thus, the addition confirmed by the Id. CIT(A) under section 68 of the Act stands sustained.

7. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on 24<sup>th</sup> March, 2023 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 24.03.2023

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.