

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3004/Chny/2018**
निर्धारण वर्ष / Assessment Year: 2015-16

Shri. George Gee Varghese,
S-103, 4th Street, Anna Nagar,
Chennai – 600 040.

The Income-tax Officer,
v. Non Corporate Ward -7(2),
Chennai – 600 034.

[PAN:AHSPG-4301-K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. R. Viajayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 29.03.2023

घोषणा की तारीख/Date of Pronouncement

: 10.05.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 30.08.2018 and pertains to assessment year 2015-16.

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

1.The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and in the circumstances of the case.

2. The CIT (Appeals) erred in holding the lands in question

were not agricultural lands and thereby confirming the addition of long term capital.

3. The CIT (Appeals) erred in not properly appreciating the evidence showing that the lands sold are agricultural lands.

4. The CIT (Appeals), without considering the reply to the remand report filed by the Appellant on 29.09.2018, erred in merely relying on the remand report given by the Assessing Officer and concluding that the Appellant has not proved that the impugned land is indeed agricultural land.

5. The CIT (Appeals) erred in ignoring the Certificate from the Additional Tahsildhar and the Village Officer Manarcadu and copy of Receipt issued by the Kerala Government evidencing payment of Basic Land Tax and contribution towards agricultural Workers Welfare Fund according to which these are agricultural lands. Further there is no need for recovering the Tax Revenue to agricultural worker's benefit fund if the appellant's land is not under agricultural category.

6. The CIT (Appeals) ought to have appreciated that the entries in the revenue record are prima facie evidence to indicate that the land in question is agricultural land.

7. The CIT (Appeals) erred in holding the Certificate issued by Additional Tashildar, Kottayam, dt 20.09.2016 mentions the type of land as 'wet' and 'dry lands only and there is no mention of the being agricultural land.

8. The CIT (Appeals) ought to have appreciated that according to the Kerala Conservation of Paddy and Wetland Act, 2008, the word 'Nilam' was meant as Wet Land and the word 'Purayidam' as Dry Land. The Appellant was in possession of both Nilam and Purayidam' under different survey numbers and was regularly paying Agriculture Land Tax to the Government of Kerala as well as to Kerala Agriculture Workers Welfare Fund Board, (KAWWF) Thrissur. The Appellant has produced copies of both Land tax paid as well as tax paid to KAWWF from the period 2011-2012 to 2015-2016.

9. The Commissioner of Income Tax (Appeals) erred in holding that the Appellant has not given proof for carrying agricultural operations.

10. The Commissioner of Income Tax (Appeals) ought to have appreciated that the land in question was used for cultivating rubber plants. Due to drastic fall in the prices of Rubber latex and the shortage of labour for tapping, the previous owner stopped re-cultivating rubber plant. Appellant also decided not to use the land for replanting rubber trees as it takes a long time and may not be economically viable. Hence the appellant was using the land for cultivating seasonal smaller crops mainly plantains and Vegetables. This is evidenced by the certificate No. 1140/ 14 dated 21.03.2014 issued by Village Officer, Village Office , Manarcadu village.

11. The Commissioner of Income Tax (Appeals) ought to have appreciated that what is required is the classification of the land as agricultural purpose land in the Government records

and as long as the land has been cultivated in any of the earlier years, then the land has to be treated as agricultural land.

12. The CIT (Appeals) ought to have appreciated that once the land is classified as agricultural land, it would continue to be an agricultural land, as long as the appellant does not change the use or put the land for some other purpose.

13. The CIT (Appeals) ought to have appreciated that the purchase deed clearly mentions that the assessee bought agricultural land with coconut trees, mango trees, banana trees and rubber trees. The classification of land was not changed at any point of time subsequently till the sale.

14. The CIT (Appeals) ought to have appreciated that the appellant has sold the land as mutated by him upon purchase without any modification. It was agricultural land as certified by the VO that was sold by the Assessee as is where condition.

15. The CIT (Appeals) ought to have appreciated the Vendor (i.e) Rubber Board Employee Co-operative Housing Society Ltd has approached the appropriate authority for conversion of the Agricultural land for non agricultural purpose. If the said land is not an agricultural land what is the necessity to approach the appropriate authority for conversion. In the state of Kerala, conversion of Nilam for non-agricultural purpose is not allowed and Agricultural Purayadim can be converted subject to the approval of the appropriate authorities.

16. The CIT (Appeals) ought to have appreciated that If an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not agricultural land.

17. The Appellant submits that the surplus arising on sale of impugned agricultural land gave rise to agricultural income and was not assessable to capital gains tax

18. The Hon'ble Madras High Court in the case of Sakunthala Vedachalam 369 ITR 538 (Mad) has held that Assessee cannot be denied exemption from capital gains tax once it has been accepted by revenue authorities that the classification of lands as per the revenue records was agricultural lands and it satisfies other conditions of s 2(14) of the Income Tax Act in this regard.

19. in CWT Vs. S.S.Sangaralingam 162 CTR 400 (Mad), wherein it was held that Revenue records showed land to be agricultural in nature till it was sold and merely because agricultural operations were not done just prior to the sale, it would not be sufficient enough reason to treat the land as non agricultural.

20. In the case Shri M.J.Thomas vs DCIT ITA No 24/Coch/2011 dt 06.06.2014 it was held that from these material evidences it appears that the State Government has classified the subject land as agricultural land ; the Government is collecting tax as agricultural land which is evident from the basic tax register ; the Assessee is also contributing to the agricultural workers

welfare fund ; the village officer has certified that the subject lands were subjected to cultivation. hence, subject lands were agricultural lands beyond the municipal limits and cannot be treated as capital asset u/s. 2 (24) of the Act.

21. The Hon'ble High Court of Bombay, in CIT Vs. Debbile Alemao (Smt.) (2010) 331 ITR 59 (Bom.), agricultural land which was never sought to be used for non agricultural purpose by the assessee till it was sold, has to be treated as agricultural land, even though no agricultural income was shown by the assessee from this land, and therefore, no capital gain was taxable on the sale of the said land.

22. The Appellant craves leave to adduce additional grounds at the time of hearing."

3. The brief facts of the case are that, the assessee has filed his return of income for the assessment year 2015-16 on 26.08.2015, admitting an income of Rs. 4,17,310/-. The case was selected for scrutiny and during the course of assessment proceedings, it was noticed that the assessee has sold a vacant land measuring 5 acres & 41 cents to M/s. Rubber Board Employees Co-operative Housing Society for a total consideration of Rs. 6,81,66,000/-. The assessee has originally purchased said land on 14.07.2006. The assessee has computed nil capital gains on sale of land by stating that land sold during the year is an agricultural land which is outside the scope of capital asset as defined u/s. 2(14) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The Assessing Officer, called upon the assessee to file necessary details including relevant deeds for purchase and sale of land, revenue records to verify the nature of land to

ascertain whether it is a capital asset or agricultural land. In response, the assessee has filed various details including details for purchase and sale of land, copies of revenue records as maintained by the State Government records, certificate of Village Officer and also copies of tax paid to Kerala Agricultural Workers Welfare Fund Board. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not file necessary evidences to prove that said land is an agricultural land and used for carrying out agricultural operations. The Assessing Officer, further noticed that the assessee is by profession is an educational consultant and ordinarily resides at Chennai. Therefore, it cannot be said that the land were used for carrying out agricultural activities. The certificate issued by the Village Officer has not specified to the extent of land put into use for agricultural purposes. In the revenue records produced, no where any mention about the characteristics of the land as agricultural land. The assessee has invested an amount of Rs. 92 lakhs in the year 2006 for purchase of land, which is not commensurate with the return that the land has given. No income from agricultural is admitted in last 10 years. Therefore, the Assessing Officer

opined that land sold by the assessee at Manarcadu Village is not an agricultural land and sale consideration received towards sale of said land is taxable under the head 'capital gains'. Therefore, rejected arguments of the assessee and computed capital gains after allowing necessary expenses of transfer and indexed cost of acquisition.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee reiterated its arguments made before the Assessing Officer in light of certain judicial precedents and argued that land sold during the relevant financial year is an agricultural land as per revenue records and further, the assessee has carried out agricultural activities in the past. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents opined that, the appellant fails to convincingly pass the test of proving that the impugned land is indeed agricultural land. Therefore, rejected arguments of the assessee and sustained additions made towards computation of capital gain on sale of land. The relevant findings of the Id. CIT(A) are as under:

7.1 I find that heavy reliance has been placed on the Hon'ble ITAT, Cochin Bench order in the cases of (1) Shri M.J.Thomas

vs Deputy Commissioner of Income-tax, Ernakulam (A.Y.2007 08), (2) Shri George Thomas vs Deputy Commissioner of Income-tax, Kochi (A.Y.2007-08), (3) Assistant Commissioner of Income-tax, Kochi vs John A Poonkody (A. Y.2008-09) (4) Deputy Commissioner of Income-tax, Circle 2, Ernakulam vs Anita Zacharias, all of which were disposed off by a consolidated order dated 06.06.2014. The relevant extracts of the case are reproduced for ready reference:-

"29. Therefore, as observed earlier, what is required is the connection between the land and the agricultural purpose and if the land is cultivated in any of the earlier years, this Tribunal is of the considered opinion that the land has to be treated as agricultural land. The material evidence produced by the assessee are- (i) the certified issued by the Village Officer; (ii) certified issued by the Agricultural Officer; (iii) classification of land by State government as agricultural land; (iv) receipt for payment of contribution to agricultural Workers' Welfare Fund; and (v) Basic Tax Register. From these materials, it appears that the State government has classified the subject land as agricultural land. The government is collecting tax as agricultural land which is evident from the Basic Tax Register. The assessee are also contributing towards Agricultural Workers' Welfare Fund. The Village Officer certified that the subject lands were subjected to cultivation. In those circumstances, this Tribunal is of the considered opinion that the subject lands were agricultural lands beyond the municipal limits or beyond 8 Kms radius of the notified municipality. Therefore, the Subject land cannot be treated as capital asset Within the meaning of section 2(14) of the Act: hence not liable for capital gain tax Under the Income-tax Act."

7.2 The other case laws relied upon by the appellant in the order of the Hon'ble Madras High Court in Sakuntala Vedachalam Vs Vanitha Manickavasagam reported in (2014) 369 ITR 558 (Mad). In that case, the Hon'ble Court had held that as per Adangal records, lands were classified as agricultural lands and appellant had also made revenue payment and satisfied other conditions of Section 2(14) of the Income-tax Act. Therefore, the appellant could not be denied exemption from capital gains tax.

7.3 Now, we have to see whether the factual matrix in our appellant's case fit into that of the cases cited supra. The only material evidences furnished before me during appellate proceedings are as under:

i. Receipt issued by the Kerala Government evidencing

payment towards Agricultural Workers Welfare Fund. Sale Deed (vendor being the appellant) executed on 28.02.2015 of some portion of the impugned land.

ii. There is no mention anywhere of the said land being "agricultural".

iii. A copy of "Certificate" purported to be from the Village Officer, Manarcadu (English translation also given) claiming that land at survey No 401/11, 401/1, 402/16, 402/19, 402/21, 402/17, 402/20, 401/10 402/22 401/12 and 402/3 in Block No 33 of Mannarcadu Village is Agricultural land used for cultivating plantains, tapioca etc. It is observed that the certificate copy dated 21.03.2014 is handwritten and is not in official letter-head. Even the official seal is barely legible. Certificate copy purported to be from the Additional Tahsildar, Kottayam, dated 20.09.2016 stating the type of land viz. dry land or wet land. There is no mention of the same being agricultural land. Reference is also made to the Remand Report dated 03.07.2018 of the Assessing Officer, the Income-tax Officer, Non Corporate Ward 7(2), Chennai, reproduced in para 5 supra.

The relevant portion of the said report Whether the land was classified in the revenue records as agricultural and

"1) whether it was subject to the payment of land revenue?

Ans: From the details furnished before the CIT(A)-7, it could be seen that the payments were made to Kerala Agricultural workers welfare fund board, Trissur. In the receipt, no where it is shown as this is paid for the land revenue or land tax. The receipts produced before the undersigned were in Malayalam and could not be construed by the undersigned whether It is for the land tax or land revenue purpose. In the Revenue record also, the land portion sold were marked as "Purayidam" (housing) only.

2) Whether the land was classified or ordinarily used for agricultural purpose at or about the relevant time?

Ans: The assessee has neither produced any evidence during the assessment proceedings, before the CIT(A) or before the undersigned that agricultural activities such as ploughing, tilling and cultivation of any crops took place till the date of transfer. The assessee himself has admitted during the assessment proceedings that no crops have been cultivated, only some banana tress and vegetables have been grown and that too only in a small scale and used it for own use and distributed to the nearby people. No proof for having paid any wages to the agricultural laborers, expenses incurred on

manure, seeds or saplings etc, been provided by the assessee.

7.5 After considering the crucial observations made by the AO in the extracted portion of the Remand Report above and considering the submissions of material evidences during appellate proceedings, I am of the considered view that the appellant fails to convincingly pass the test of proving that the impugned land is indeed "Agricultural" land."

5. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in upholding the land in question was not agricultural land and thereby confirming the addition of long term capital gains tax. The Ld. Counsel for the assessee, referring to various documents, including details for purchase and sale of land submitted that the land has been classified as agricultural land when it was purchased in the year 2006. Further, the land was remained as agricultural land when it was sold in the impugned assessment year. The assessee has carried out various agricultural operations. Although, the assessee has not declared any agricultural income in the past, but fact remains that mere non-disclosure of agricultural income in the return of income does not change the characteristics of land. The assessee had also filed revenue records which clearly shows the nature of land as agricultural land. The certificate issued by the Village Officer clearly shows the nature of land as agricultural land and used for agricultural

operations. The assessee has paid tax to Kerala Agricultural Workers Welfare Fund Board. All these evidences clearly shows that the assessee's land in question was an agricultural land and used for agricultural operations in the past. The subsequent use of land by the buyer is not a relevant criteria to decide the nature of land when it was sold. But, what is important to see is when the land was sold whether it was an agricultural land or not. In this case, evidences filed by the assessee clearly shows that the land was agricultural land when it was sold. Therefore, the Ld. Counsel for the assessee, submitted the Id. CIT(A) is incorrect in holding that the assessee could not file necessary evidences to prove the nature of land. In this regard, he relied upon the decision of Hon'ble Madras High Court in the case of Sakunthala Vedchalam vs Vanitha Manickavasagam [2014] 369 ITR 0558 (Mad). The assessee had also relied upon the decision of ITAT Cochin Bench in the case of M.J. Thomas vs DCIT in ITA No. 224/Coch/2011 dated 06.06.2014.

6. The Id. Senior AR, P. Sajit Kumar, JCIT, submitted that the land has been classified as 'dry land' as per government records. The assessee could not file any evidences to prove

that the land was used for agricultural operations in the past. The land is connected by good roads and situated in a developed area. The land has been sold for non-agricultural purposes. The assessee has got huge price which is not commensurate with purchase of agricultural land. All these evidences clearly shows that land in question was not an agricultural land. The Assessing Officer and Id. CIT(A), after considering relevant facts has rightly denied exemption from capital gains tax and therefore, their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The factual matrix of the impugned dispute are that the assessee has sold a vacant land measuring 5 acres 41 cents to M/s. Rubber Board Employees Co-operative Housing Society for a total consideration of Rs. 6,81,66,000/-. The assessee has originally purchased said land on 14.07.2006. The assessee has claimed that impugned land sold during the financial year is an agricultural land used for agricultural operations and thus, it is out of the scope of capital asset as defined u/s. 2(14) of the Act. The Assessing Officer, computed long term capital gains on sale of land on the ground that land

sold by the assessee is not an agricultural land and assessee could not file any evidence to justify its stand that said land is in fact was agricultural land and used for agricultural operations. The Assessing Officer, has given various reasons to come to the conclusion that impugned land is not an agricultural land and according to the Assessing Officer, the revenue records could not convincingly prove the nature of land as agricultural land and further the profit derived by the assessee from sale of land is not commensurate with the investment he had made when he was purchased said lands. The Assessing Officer, had also given other reasons to come to the conclusion that land was sold for non-agricultural purpose and the assessee did not declare any agricultural income in the past.

8. We have given our thoughtful consideration to the reasons given by the AO in the light of various evidences filed by the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that, if an agricultural land is situated beyond a specified limits of municipality, notified area committee or by any other name or a cantonment board and which has a specified population,

then said land is outside the scope of definition of capital assets as defined u/s. 2(14) of the Act. Therefore, to decide whether a particular asset sold by the assessee is an agricultural land or capital asset, the distance of land, nature of land and the place where said land is situated needs to be examined. In the present case, the Assessing Officer never disputed the distance of land from the nearest municipality and the population of said municipality, but the dispute is only with regard to the nature of land. According to the Assessing Officer, land sold by the assessee is not an agricultural land. We do not subscribe to the reasons given by the Assessing Officer for the simple reason that as per revenue records, the land sold by the assessee is situated at Manarcadu Village, Kerala, is an agricultural land and used for agricultural operations. Certificate issued by the Additional Tahsildar and Village Officer at Manarcad Village and copy of receipt issued by the Kerala Government evidencing payment of basic land tax contribution towards Agricultural Workers Welfare Fund Board also clearly shows that said land was agricultural land. Further, as per revenue records, the land has been classified as 'Puraiyidam' land in the revenue records. The word 'Puraiyidam' means a dry land. In some survey numbers, the

land has been classified as 'Nilam' land, and 'Nilam' means wet land. From the above it is very clear that the assessee was having both wet and dry lands. The assessee had also filed various evidences to prove that the land was used for cultivating rubber plants, but because of decrease in rubber prices, the assessee stopped cultivating rubber plant and used land for cultivating seasonal crops like vegetables and plants, and this fact has been certified by the Village Officer at Marnacadu Village, vide his certificate dated 21.03.2014. Therefore, we are of the considered view that as per evidences filed by the assessee including revenue records, it is very clear that the land was an agricultural land when it was purchased in the year 2006 and remained agricultural land when it was sold in the year 2015. Further, the assessee had also filed various evidences to prove that the land has been used for agricultural purposes and also cultivation has been carried out in the past. Therefore, we are of the considered view that when the land has been classified as agricultural land, it would remain to be an agricultural land as long as the appellant does not change the use or put the land for some other purpose. Further, simply because the land is situated in a place where proper road connection exists and further the land was sold to

non-agriculturalist, it does not change the characteristics of land, for the purpose of taxation. In this case, although the land has been sold to M/s. Rubber Board Employees Co-operative Housing Society, for the commercial purpose, but fact remains that when the land was sold by the assessee it was remained as agricultural land and thus, subsequent use of land by the purchaser is not relevant to decide the nature of land when it was sold. Further, from the evidences filed by the assessee, it was noticed that the purchaser of the land, after purchase has approached a legal authority for conversion and from the above it is very clear, if it is not an agricultural land at the time of sale, then what is the necessity to approach appropriate authority for conversion of said land. In the state of Kerala, conversion of Nilam land for non-agricultural purpose is not allowed and only Puraiyidam land can be converted subjected to approval of appropriate authorities. Since, land sold by the assessee is Puraiyidam land, the purchaser might have put to use the land for non-agricultural activities. However, subsequent use of land by the purchaser has no connection to decide the nature of land, whether it is an agricultural land. As long as land was agricultural land

when it was sold, the assessee can rightly claim the benefit of exemption of capital tax.

9. At this stage, it is necessary to consider various case laws relied upon by the assessee. The assessee has relied upon the decision of Hon'ble Madras High Court in the case of Sakunthala Vedchalam vs Vanitha Manickavasagam [2014] 369 ITR 0558 (Mad), where it was held that assessee cannot be denied exemption from capital gains tax once it has been accepted by revenue authorities, that the land classified as per the revenue records was agricultural land and it satisfies other conditions of section 2(14) of the Act in this regard. The assessee had also relied upon the decision of Hon'ble Madras High Court in the case of CWT vs S.S. Sangaralingam 162 CTR 400, where it was held that revenue records showed land to be agricultural in nature till it was sold and merely because agricultural operations were not done just prior to the sale, it was not be sufficient enough reason to treat the land as non-agricultural. The Hon'ble High Court of Bombay in the case of CIT vs Smt. Debbie Alemao [2010] 331 ITR 59, had considered an identical issue and held that agricultural land which was never sought to be used for non-agricultural

purpose by the assessee till it was sold, has to be treated as agricultural land, even though no agricultural income was not shown by the assessee from this land and therefore, no capital gain was taxable on the sale of the said land.

10. The assessee had also relied upon the decision of ITAT Cochin Benches in the case of M.J. Thomas vs DCIT in ITA No. 224/Coch/2011, dated 06.06.2014, where it was held that once State Government has classified the subject land as agricultural land, the Government is collecting tax as agricultural land and further, the revenue authorities has certified that the said lands were used for cultivation, then said land cannot be treated as capital asset as per section 2(14) of the Act.

11. In this case, on perusal of material on record, it is abundantly clear that all evidences filed by the assessee including copies of purchase and sale deeds of land, revenue records maintained by the State Government, certificate issued by the Additional Tahsildar and Village Officer, clearly shows that the impugned land is an agricultural land and used for agricultural operations. The assessee had also filed other

evidences to prove that the land has been used for agricultural operations till it was sold. Therefore, we are of the considered view that land sold by the assessee is an agricultural land and which is outside the scope of definition of capital asset as defined u/s. 2(14) of the Act. Thus, we are of the opinion that the Assessing Officer and the Id. CIT(A) are completely erred in denying exemption from tax towards consideration received for sale of agricultural land. Hence, we direct the Assessing Officer to delete additions made towards computation of capital gains on sale of land.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 10th May, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 10th May, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF