

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.146/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Pandit Vettrivel B-272, Ground floor, B-Block Rear Flat, Greater Kailash Part I, New Delhi-110 048.	बनम / Vs.	ACIT Central Circle-3(4) Chennai-34.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AJZPP-4861-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri N.V. Balaji (Advocate)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri S. Senthil Kumaran (CIT)- Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	27-07-2023
घोषणाकी तारीख / Date of Pronouncement	:	22-09-2023

आदेश / ORDER

PER BENCH:

1. The captioned appeal of the assessee was heard along with other appeals filed by the assessee for Assessment Years (AY) 2006-07, 2008-09 and 2009-10. In AY 2006-07, Ld. AO has made allegation of payment of on-money and made addition of unexplained investment by the assessee in certain parcel of land. The assessee contested the same before this Tribunal vide ITA No.279/Chny/2020. The appeal for AY 2006-07 has already been adjudicated by us vide our order dated 21-09-2023 wherein we have deleted the addition of alleged on-money on

purchase of certain parcel of land by the assessee. In this year, the assessee has sold those parcels of land and claimed the sale consideration to be exempt on the ground that the land was agricultural land. The Ld. AO has disputed the claim of the assessee and brought the sale consideration to tax. The Ld. AO has also alleged that the assessee has sold the land at a price much above the registered / stamp duty value. The Ld. CIT(A) has confirmed the assessment against which the assessee is in further appeal before us. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 27-09-2019 in the matter of an assessment framed by learned Assessing Officer (AO) u/s 143(3) r.w.s. 153A of the Act on 30-12-2016. The elaborate facts of the case and the circumstances in which the assessee had acquired the parcels of land have already been enumerated by us in our order for AY 2006-07.

2. The Registry has noted delay of 35 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of an affidavit of the assessee. It has been submitted that the delay has accrued due to adverse medical conditions being faced by the assessee. The Ld. CIT-DR has opposed the condonation of delay. However, keeping in view the period of delay and the contents of the affidavit, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced argument to support the case of the assessee. The Ld. AR has relied on various judicial decisions, the copies of which has been placed on record. The Ld. CIT-DR has controverted the arguments made by Ld. AR and supported the orders of lower authorities. The written submissions have also been filed by both the

sides which have duly been considered by us while adjudicating the appeal. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

Proceedings before Ld. AO

4.1 The assessee being resident individual is an astrologer by profession and stated to have earned income from real estate. This is second round of appeal since the matter, in the first round, was set-aside by Tribunal to the file of Ld. AO for fresh adjudication. The assessee was subjected to search action u/s 132 on 23.08.2007 which led to an assessment u/s 153A r.w.s. 144 on 14.12.2009 which reached up-to the level of Tribunal wherein the assessment was set aside for fresh adjudication since the assessment was made on best judgment basis. Pursuant to the same, present assessment was framed which is in further challenge before us.

4.2 In the second round of assessment order, Ld. AO, noting the background in which the assessee acquired certain parcel of land at Changapalli in Erode District during financial year 2005-06, alleged that the assessee paid on money while purchasing the said land and made addition of unexplained investment for AY 2006-07. In this year, the assessee has sold those parcels of land and claimed to the same to be exempt on the ground that the land was agricultural land. However, this claim has been denied by Ld. AO.

4.3 The Ld. AO has held that the aforesaid land was barren land. The irrigation was only through seasonal rains and wells. Depending upon the quantum of seasonal rains, the wells hold water for some period only. Due to this, the land could not be used for raising any crops or trees. To

support the same, revenue records were summoned and certified copies were obtained. Swon statement was recorded from Shri M. Duraiswamy, Village Administrative Officer (VAO). It was observed that no crops were grown except on a small area wherein fodder plants (corn) was grown. Therefore, the claim made by the assessee that the land was agricultural land was not acceptable. Even during the course of search proceedings, the assessee could not produce any evidence in connection with agricultural operations. Neither assessee nor his brother Shri Arulvelu (who is stated to have carried out agricultural operations) could produce evidence to establish carrying out of agricultural operations on the said land. Reliance was placed, inter-alia, on the decision of Hon'ble Apex Court in the case of **CIT vs. Raja Benoy Kumar Sahas Roy (32 ITR 466)** to support the conclusion that the land was not used for agricultural operations.

4.4 However, the assessee relied on the decision of Hon'ble High Court of Madras in the case of **Shakuntala Vedachalam (369 ITR 558)** wherein it was held that since the assessee produced a copy of Adangal and the letter from Tehsildar which showed that the land was agricultural in nature, the same has to be accepted as agricultural income. As per Adangal records, the land was classified as agricultural land and therefore, the exemption could not be denied to the assessee. It was further held by Hon'ble Court that the manner in which adjacent lands were used by the owner would not be a ground to come to a conclusion that the assessee's land was not agricultural in nature. Relying on the same, the assessee produced following documentary evidences in support of its claim: -

1. Agricultural Income Receipts dated 10/11/2006 & 10/08/2006 – 2 Nos.
2. Adangal Extract Copies- 8 Nos. issued by Office of the Tahsildar, Perundurai dated 21/11/2007 where the Agricultural Crop "Corn" is shown as cultivated in the Agricultural Land.
3. Electricity Board Receipts - 3 Nos. where 3 Borewells were used for agricultural purpose and subsidy was given by the EB Department on Electricity Charges.
4. Land Test Report mentioning soil content and nature of crop Which can be grown in the Land (I had obtained opinion on the type of Crop which can be grown in the Land)
5. Land Revenue Tax Receipt dated 29.03.2007 for Fasli Year 1416-Perundurai Taluk
6. Village Administrative Officer Letter dated 29/03/2007 stating population of less than 1600 people in the Village Kengayapalaym

The Ld.AO rejected the same on the ground that the documents do not confirm that the land was an agricultural land and the assessee never conducted any agricultural activity on the said land. The Ld. AO also sent notices u/s 133(6) to certain purchasers of agricultural produce but the same remained responded. The assessee is stated to be have sold the agricultural produce to these purchasers for Rs.1.40 Lacs out of agricultural produce of Rs.4.25 Lacs. The Ld. AO also held that the assessee failed to file the receipts of sale of agricultural produce to the extent of Rs.2.85 Lacs. Therefore, it was to be concluded that the assessee never conducted any agricultural activity. The documents would merely show that the land could be utilized for agricultural activity. The cited case law of Hon'ble High Court of Madras was held to be distinguishable on facts since in the present case, the assessee had never undertaken any agricultural activity. Therefore, the agricultural income of Rs.4.25 Lacs was brought to tax u/s 68 as unexplained cash credit.

4.5 The Ld. AO further held that the land was purchased with an intention to resell the same and therefore, the entire transaction was to

be regarded as an adventure in the nature of trade. The Ld. AO sought fortification of the same by making elaborate discussion on the business potential of the area wherein the land was situated. The Erode District where the impugned land was situated was well known for textile products. A large number of textile industries were coming up in Erode district and there was good scope of development of readymade garment sector which is backed by adequate infrastructure in the form of transport and communication. Considering all these factors as well as considering the factual matrix of AY 2006-07, Ld. AO held that the transaction was in the nature of an adventure in the nature of trade and therefore, aforesaid income was to be assessed as 'Business Income'.

4.6 Finally, the claim of exemption of Long-Term Capital Gain was rejected and profit on sale of land was brought to tax as business income. The agricultural income of Rs.4.25 Lacs as reflected by the assessee was also brought to tax u/s 68. While computing the business income, Ld. AO also alleged that actual sale consideration was Rs.1003.62 Lacs as against Rs.132.96 Lacs declared by the assessee before registration authority.

4.7 The assessee was directed to substantiate the cash deposit of Rs.4.45 Lacs in the Laxmi Vilas Bank Account. In the absence of any explanation forthcoming from the assessee, in this regard, the said deposit was added as unexplained cash credit u/s 68.

4.8 The search proceedings revealed that several credit entries in bank accounts were not disclosed. In the absence of any explanation forthcoming from the assessee, in this regard, the peak credit of the bank aggregating to Rs.512.62 Lacs was added to the income of the

assessee. The same has been tabulated on page-47 of the assessment order. Finally, the returned income of Rs.17.98 Lacs was assessed at Rs.1195.35 Lacs and the assessment was completed.

Proceeding before Ld. CIT(A)

5.1 The assessee vehemently assailed the assessment order during first appellate proceedings. Regarding peak credit addition, the assessee pointed out that the source was duly explained vide letter dated 20-12-2018. The peak credit appearing in two ICICI Banks was also furnished. The assessee supported the agricultural income of Rs.4.25 Lacs on the strength of Test Report on Land Soil, Adangal Extract and Ploughing expenses receipts. The deposit of Rs.4.45 Lacs was stated to be made out of professional income.

5.2 On the issue of denial of exemption of LTCG on sale of land, the assessee relied on the same decision of Hon'ble High Court of Madras in the case of **Shakuntala Vedachalam (369 ITR 558)**. The assessee also referred to the decision of Hon'ble Calcutta High court in **Borhat Tea Com. Ltd. (138 ITR 783)**. The assessee fortified that same on the ground that it has also produced copy of Adangal and letter from Tehsildar which showed that the lands were agricultural in nature. The assessee submitted that the land was classified as an agricultural land in the revenue records. Undisputedly, the land was situated beyond 8 kms from nearest municipality. As per revenue records, agricultural activities were being carried out on the land. The aforesaid land was always classified as agriculture land in the revenue records. The intention of the purchaser of land would be immaterial. The assessee also drew

attention to following additional documentary evidences filed by it in support of the claim: -

1. Copy of Patta - Where land is mentioned in "Punjai"- Wet Land
2. Land Photos - 4 Nos.
3. Ploughing Expense Receipts from Surya Earth Movers mentioning details of man power used and confirmation letters from them.

5.3 However, Ld. CIT(A) chose to confirm the impugned additions by observing as under: -

6. Grounds of Decision:

6.1. I have gone through the Assessment order, the grounds of appeal and the written submission made in this regard. The main point of contention of the appellant is the claim of sale of agricultural land that the assessing officer has not agreed to. The A.O. has rejected the claim of sale of agricultural land and also the claim of the appellant of the same being exempted from income tax. The A.O. in his assessment order has brought out various facts and figures to show that the claim of the appellant of agricultural land is not correct. The A.O. has relied on the classification of the land under question which is stated to be a barren land where agricultural produce cannot be done. It is for this reason that the said tract of land was selected for industrial purposes which can be reinforced by the fact that SIPCOT (the arm of TN govt. for promoting small industries) had acquired some land adjacent to the land in question. The A.O. also refers to the 'revenue records summoned and inspected during the assessment proceedings and also the statement recorded of Shri. M Duraisamy, Village Administrative Officer. These enquires conformed that it was not yielding any agricultural produce. It has also been further emphasized that the available returns of income of the appellant has regulated by the A.O. in page 6, 7 & 8 of the Assessment order nowhere the appellant has shown any agricultural income except for A.Y. 2007-08.

6.2. Here it would be relevant to look into the context of this entire transaction. As per the statements recorded during the course of Assessment proceedings and as per also the facts narrated in the assessment order of the assessing office for A.Y. 2006-07 the property has been acquired in December 2005 by arranging the purchase from the original land owners through property dealer and his brother Arulvelu. There is no intention on part of the appellant to acquire this land for agricultural purposes. The intention is to sell the land to the company and make profit out of the same. The A.O. has discussed among other things the physical characteristics of land in part B of the order and has discussed the developmental use of land in adjoining areas in part C of the order and discussed about the price in part D of the order and has also discussed whether the land is assessed for agricultural purposes in part E of the order. In all these discussions it has been concluded on the basis of the facts that the contention of the appellant that the land in question is agricultural land is not delivered and therefore the sale of the land attracts the Income Tax Act and he has assessed the same as capital gains. The part F of the order discusses above the decision of the CIT vs Ventakaswamy Naidu 29 ITR 529 wherein it was held that the onus was on the appellant to prove that the income sought to be taxed was agricultural income exempt from taxation and other related case laws. In part G of the order the A.O.

discusses about the materials relied upon by the appellant to substantiate his case for claim of agricultural income. The A.O. has point wise dealt with these as follows:

[Quote]

I. With regards to the evidences filed vide letter dated 26.08.2016, it is seen that the assessee has given extract of revenue records of land, lab test report, population certificate from the village Administrative Officer and "Agricultural Income" receipts dated 10.11.2006 and 10.08.2006(2 Nos)

II However, the above documents do not confirm to the fact that:

III.Land was a "agricultural land"

IV.The assessee ever conducted any agricultural activity on the said land.

V.In order to verify the genuineness of the receipts filed by the assessee vide letter dated 26.08.2016, which the assessee had submitted in support of its claim towards sale of "agricultural produce", notices u/s.133(6) were issued to the "alleged purchasers" of the agricultural produce. The said notices were returned unserved by postal authorities. Further, the total amount of the agricultural produce which has been submitted by the assessee to be sold. to these two individuals was amounting to Rs. 140000/- where as the agricultural income claimed by the assessee in its return of income is Rs.425140-. The above aspect was brought to the notice of the assessee vide letter dated 04.11.2016, with the directive to the assessee to furnish an explanation/clarification failing which the assessee was informed that the said claim of agricultural income would be rejected. The assessee has not submitted any reply to the said notice dated 04.11.2016 in this regard as under:

VI. Hence, it is very clear from the preceding paras that the assessee has failed to filed receipts of sale of agricultural produce to the extent of Rs. 285140-. The assessee has not been able to substantiate its claim with regards to the sale of the agricultural produce with regards to the receipts filed totalling to Rs. 140000/-. Hence it can be fairly inferred that the assessee has never conducted any agricultural activity. The documents submitted by the assessee only indicate that the land 'could be utilised' for agricultural activity as the law does not bar any agricultural activity to be carried out on any piece of land, including any non-agrarian land.

VII. The assessee in its submission dated 09.06.2016 has cited judgment of Madras High Court in case of Mrs. Sakunthala Vedachalam 369 ITR 558(MHC), in support of its claim with regards to land sold by the assessee, which the assessee proclaims to be an agricultural land. The submissions of the assessee have been carefully perused and also the case law cited has been examined.

VIII. However, the facts of the case under consideration are. distinguishable from the facts of the case law cited. In the case of Mrs. Sakunthala Vedachalm the AO had confirmed that the/and were agricultural land, as casuarina crops were grown. In the case under consideration the revenue is contending that the land is not an agricultural land as it was never even utilized for agricultural activity by its previous owner. It was also established by the revenue that the assessee has never ever undertaken any agricultural activity and which was never supported by any documentary evidences.

IX. The assessee has submitted receipts totalling to Rs.1,40,000- as bills for "sale" of agricultural produce. The claim of the assessee with regards to the agricultural income as per return of income filed was Rs.425140/-. Thus there was difference of around Rs.285140/-. Also to ascertain the genuineness of the replies, notice us/133(6) from the alleged buyers and the difference of Rs.285140/- was brought to the notice of the assessee vide letter dated 04.11.2016 and was directed to explain the same. The assessee has not submitted any reply.

X. The submissions of the assessee in this regard have been perused and the same clearly establish that the assessee never under-took any agricultural activity and the amount of

Rs.425140/- (being shown as agricultural income) was nothing but income from undisclosed sources and hence the same is being added back to the total income u/s 68 of the income tax Act, 1961 penalty proceedings u/s. 271AA is initiated for furnishing of inaccurate particulars of income.

XI. The assessee has failed to substantiate its claim with regards to "sale of agricultural produce", and its agricultural income, as has been established by the revenue in the subsequent paras. In view of the above, facts and circumstances of the case, it is humbly submitted that, with due respect and regards to the judgment cited by the assessee of the jurisdictional Hon'ble High Court, (Cited supra) the case law in the case of Mrs. Sakunthala Vedachalam is not squarely applicable in the case under consideration.

XII. Accordingly the claim of exemption of Long Term Capital Gains of the sale of land at village Palayam is hereby rejected and the profit on sale of land brought to tax under the head 'Income from Business'. Penalty u/s. 271AA on this issue is being initiated separately.

[Unquote]

6.3. The A.O. has fairly rebutted the claim made by the appellant and I also see no reason to interfere with the conclusion arrived at by the AO. The addition made by the AO by rejecting the claim of the appellant of sale of agricultural land at Rs.65603940/- is hereby upheld. And the ground of appeal of the appellant is dismissed.

6.4. Secondly, the cash deposits appearing in the Lakshmi Vikas Bank account of the appellant of Rs.447000/- are held to be unaccounted by the AO. The same was asked to be explained by the appellant during the assessment proceedings but no reply of the same was furnished. Therefore, the AO was held no option than to treat the same as unexplained. The AO has also rejected the claim of the appellant of agricultural income of Rs.42510/- because the appellant was not able to substantiate that he was engaged in agricultural operation and could have earned agricultural income. The same has been elaborately discussed in the order and on the basis of the same the AO has concluded and rightly saw that the land referred to by the appellant is not capable of agricultural produce and therefore the claim of agricultural income is not correct and such income has to be assessed as income from other sources. The addition made by the AO both on account of cash deposits in bank and of agricultural income are hereby upheld and **the ground of appeal of the appellant in this regard is dismissed.**

6.5. During the course of search undisclosed bank account of the appellant were deducted and these bank accounts were having unexplained Credits. The AO had asked the appellant to furnish narration of the entries made in these accounts. But the appellant did not furnish and the explanation regarding the same. However the AO on his own worked out the peak credit of each of the bank account and added back the same. I find no reason to interfere with his decision in the absence of any explanation **coming from the AO.**

6.6. In the nutshell the appeal of the appellant is DISMISSED."

It could thus be seen that Ld. CIT(A) has primarily concurred with the conclusions drawn by Ld. AO and addition made on the basis of the same. Aggrieved as aforesaid, the assessee is in further appeal before US.

Our findings and Adjudication

6. First, we deal with the denial of exemption of Long-Term Capital Gain on sale of land. It could be seen that the assessee has purchased the land during financial year 2005-06 and sold the same after retaining the ownership for approx. 13 months. Previously, the assessee has not held any agricultural land and thus no agricultural income has been reflected by the assessee in the past. The assessee has reflected agricultural income of Rs.4.25 Lacs in this year which has been rejected by Ld. AO. The land has also been held as capital asset and brought to tax as business income. The same is on the ground that the land was not an agricultural land and no agricultural operations have been carried out by the assessee on the aforesaid land. The same was in the background of the fact that the area where the land was situated had commercial potential and the intention was to reap the benefit of the same by way of adventure in the nature of trade. The intention was not to hold the land as agricultural land. Further, the assessee had not carried out any agricultural operations on the land. In the written submissions, Ld. CIT-DR has highlighted all these points as narrated by Ld. AO in the assessment order. Accordingly, Ld. CIT-DR has pleaded for confirmation of assessment as framed by Ld. AO.

7. However, the case of the assessee rest on the fact that the land had always been classified as agricultural land in revenue record. The land was situated beyond 8 kms from nearest municipality. As per revenue records, agricultural activities were being carried out on the said land. The intention of the purchase of land would be immaterial. The

assessee has filed following documentary evidences in support of its case: -

1. Agricultural Income Receipts dated 10/11/2006 & 10/08/2006 – 2 Nos.
2. Adangal Extract Copies- 8 Nos. issued by Office of the Tahsildar, Perundurai dated 21/11/2007 where the Agricultural Crop "Corn" is shown as cultivated in the Agricultural Land.
3. Electricity Board Receipts - 3 Nos. where 3 Borewells were used for agricultural purpose and subsidy was given by the EB Department on Electricity Charges.
4. Land Test Report mentioning soil content and nature of crop Which can be grown in the Land (I had obtained opinion on the type of Crop which can be grown in the Land)
5. Land Revenue Tax Receipt dated 29.03.2007 for Fasli Year 1416-Perundurai Taluk
6. Village Administrative Officer Letter dated 29/03/2007 stating population of less than 1600 people in the Village Kengayapalaym
7. Copy of Patta - Where land is mentioned in "Punjai"- Wet Land
8. Land Photos - 4 Nos.
9. Ploughing Expense Receipts from Surya Earth Movers mentioning details of man power used and confirmation letters from them.

The assessee has also relied on the decision of jurisdictional High Court in **Shakuntala Vedachalam (369 ITR 558)** as well as the decision of Hon'ble Calcutta High Court in the case of **Borhat Tea Com. Ltd. (138 ITR 783)** to support its submissions.

8. We find that the assessee has furnished Adangal Extract Receipts issued by Tahsildar, Perundurai dated 21-11-2017 where the agricultural crop 'corn' is shown as cultivated on the agricultural land. The assessee has also furnished Electricity Board Receipts. The assessee has been granted subsidy on electricity charges. The assessee has also furnished Land Test Report mentioning soil content and nature of crop which could be grown on the land. The copy of Land Revenue Tax Receipt dated 29.03.2007 for Fasli Year 1416-Perundurai Taluk has also been placed on record. The Village Administrative Officer Letter dated 29-03-2007 confirm that the village Kengayapalaym has population of less than 1600 people. In the Patta, land has been classified as "Punjai" wet land. The assessee has furnished agricultural Income Receipts dated 10-11-2006

& 10-08-2006 in support of agricultural produce. The Ploughing Expense Receipts has also been placed on record. All these documents supports the case of the assessee. However, the lower authorities has not placed on record any contrary document to rebut the same rather they have gone on the prime reasoning that the area where the impugned land was situated, had commercial potential and the land was acquired only as a part of real estate business to reap the benefits of commercialization. However, the fact that the land was classified as agricultural land in the revenue record remain uncontroverted before us though the assessee may not be successful in establishing that the whole parcel of land was put to agricultural activities during the year. However, the said fact, in our considered opinion, would not jeopardize the claim of the assessee and would not alter the character of land as an agricultural land. Upon perusal of all these documents, it could be concluded that the assessee has fairly established that the land was agricultural land and had duly discharged the onus as casted upon him, in this regard. The onus, now, was on revenue to rebut the documentary evidences of the assessee and bring on record adverse material to suggest that the land was not classified as an agricultural land. However, nothing of that sort is available on record.

9. The Hon'ble High Court of Madras in the case law of **Shakuntala Vedachalam (369 ITR 558)**, considering the decision of Hon'ble Apex Court in **Raja Benoy Kumar Sahas Roy (32 ITR 466)**, held as under: -

9. The issue involved in the above Tax Case (Appeals) lies on the narrow compass, viz., whether the lands sold by the assessees are agricultural lands and whether they are entitled to the benefit of exemption from capital gains tax.

10. It is on record that in a report has been submitted by the revenue authorities, it is admitted that the lands are classified as agricultural lands in the revenue records and they are dry lands. The remand report of the Assessing Officer in this regard reads as follows:

"During the time of assessment proceedings itself, a confirmation was obtained from the Headquarters Deputy Tahsildar, Thirukazhukundram who has certified in his letter dated 23.12.2010, referred to at 2 above, that in the lands in question casuarinas are grown for the past one and a half year and hence the same are agricultural lands. He has also confirmed in the said letter that the lands are situated at one kilometer distance from the Town Panchayat of Mamallapuram (i.e. within the specified distance from the outer limits of the nearest municipality/town panchayat) and the population of the Mamallapuram Town Panchayat as per 2001 census was 12,345".

11. The assessee has also produced a copy of the adangal and the letter from the Tahsildar, which showed that the lands were agricultural in nature and the Revenue has also accepted that the lands are falling within the restricted zone in terms of Section 2(14) of the Income Tax Act.

12. Hence, the only point that has to be considered is that whether the test as laid down in the decision reported in Siddharth J. Desai (supra) has been satisfied by the assessee. In the said decision, in paragraph 11, it is held as follows:

"On a conspectus of these cases, several factors are discernible which were considered as relevant and which were weighed against each other while determining the true nature and character of the land. It may be useful to extract from those decisions some of the major factors which were considered as having a bearing on the determination of the question. Those factors are:

(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

(5) Whether, the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and, by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent, or temporary nature?

(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situated in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under s. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non agriculturist ? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agri-cultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

At the risk of repetition, we may mention that not all of these factors would be present or absent in any case and that in each case one or more of those factors may make appearance and that the ultimate decision will have to be reached on a balanced consideration of the totality of circumstances."

13. According to the Tribunal that if the above tests are applied, the assessee could not satisfy any of the conditions except condition Nos.1,5,11 and 12. The Tribunal held that the assessee could not prove that the lands was actually or ordinarily used for agricultural purposes. This reasoning does not appear to be correct in view of the above-said decision of the Gujarat High Court, wherein it was clearly held in Clause (1) in paragraph 11 that whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue has to be considered for grant of exemption.

14. Thus it is evident from the above, which clearly states that any one of the above factors can be present in a case to qualify for the benefit of classification as agricultural lands. In this case, the assessee has qualified under clause 11(1) since as per the adangal records, these lands were classified as agricultural lands and the assessee has also paid revenue kist, namely, revenue payment. Therefore, the Tribunal has misconstrued the judgment of the Gujarat High Court (supra) that all conditions laid down in paragraph 11 should be satisfied, which is not a correct interpretation.

15. To get exemption, the assessee has to satisfy the conditions laid down in Section 2(14) of the Income Tax Act, which reads as follows:

'2(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him:

Explanation. -- For the purposes of this sub-clause, "jewellery" includes -- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel ; (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(iii) agricultural land in India, not being land situate –

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette ;

(iv) 6@ per cent. Gold Bonds, 1977, or 7 per cent. Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government ;

(v) Special Bearer Bonds, 1991, issued by the Central Government ;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government'

16. Once the Tribunal has accepted that the classification of lands as per the revenue records are agricultural lands, which are evidenced by the adangal and the letter of the Tahsildar and satisfies other conditions of Section 2(14) of the Income Tax Act, we are of the view that the Tribunal has misdirected itself as stated above.

17. Yet other reason given by the Tribunal is that the adjacent lands are put to commercial use by way of plots and therefore, the very character of the lands of the assessees is doubted as agricultural in nature. The manner in which the adjacent lands are used by the owner therein is not a ground for the Tribunal to come to a conclusion that the assessee's lands are not agricultural in nature. The reason given by the Tribunal that the adjacent lands have been divided into plots for sale would not mean that the lands sold by the assessee were for the purpose of development of plots. Also the reasoning given by the Tribunal "No agriculturists would have purchased the land sold by the assessee for pursuing any agricultural activity" is based on mere conjectures and surmises.

18. The plea of the learned standing counsel appearing for the Revenue that there was no agricultural operations prior to the date of sale is of no avail as the definition under Section 2(14) of the Income Tax Act has the answer to such a plea raised. Further more, it is also on record that the lands are agricultural lands classified as dry lands, for which kist has been paid.

19. The view of the assessee is fortified by the decision reported in Raja Benoy Kumar Sahas Roy (supra), wherein, it is held as follows:

"There was authority for the proposition that the expression "agricultural land" mentioned in Entry 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in its wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry (See Sarojinidevi v. Shri Krishna Anjaneya Subrahmanyam and other(1) and Megh Raj v. Allah Rakhia (2))."

20. For the foregoing reasons, we pass the following order:

(i) On the question of law raised, we are of the view that the Tribunal was not justified in rejecting the exemption. Accordingly, the questions of law are answered in favour of the assessee;

(ii) Consequently, the order of the Tribunal dated 11.4.2013 is set aside. In the result, both the above Tax Case (Appeals) are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed

The above case law clearly supports the case of the assessee. The Hon'ble Court has held that once the factum of agricultural land is

evidenced by Adangal and the letter of Tahsildar, the assessee could not be deprived-off its claim. The manner in which the adjacent lands were used would not jeopardize the claim of the assessee. The manner of usage by purchaser would also be not much material. Considering this binding decision, the claim of the assessee was to be allowed.

10. Similar is the decision of Hon'ble Calcutta High Court in the case of **Borhat Tea Com. Ltd. (138 ITR 783)** which, inter-alia, held that for the purpose of land being agricultural land, actual agricultural operations or cultivation or tilling of the land is not necessary. It is to be seen whether such land is capable of agricultural operations being carried on. Thus, even if the land is capable of agricultural operations, the same would retain the character of agricultural land as such. This case law further supports the case of the assessee.

11. Therefore, considering the facts and circumstances of the case, the denial of exemption on Long-Term Capital Gains, as earned by the assessee, could not be held to be justified.

12. Another conclusion of Ld. AO was that the said transaction has to be considered as an adventure in the nature of trade and therefore, the resultant income has to be considered as 'Business income'. However, we find that this is a simple case of purchase and sale transaction and the assessee never intended to acquire the land as a business venture. The assessee has not undertaken any substantial improvement on the land or done fragmentation thereof which would indicate that the intention of the assessee was to carry on the business of sale and purchase of land. Therefore, this conclusion cannot be upheld.

13. Finally considering the facts and circumstances of the case, the Ld. AO is directed to delete the impugned addition of Rs.656.03 Lacs as well as the addition of Rs.4.25 Lacs. The corresponding grounds raised by the assessee stand allowed.

14. So far as the remaining addition of Rs.4.45 Lacs representing cash deposit as well as another addition of Rs.512.62 Lacs representing peak credit in bank accounts, is concerned, we find that the impugned additions have been made since the assessee has failed to substantiate the same. The Ld. AR has submitted that the credits in the bank accounts are fully explainable and therefore, the additions u/s 68 could not be sustained. The Ld. AR has submitted that all the deposits have been made from proceeds received from sale of land and professional income. The Ld. AR made another legal submission that the addition of Rs.4.45 Lacs was not made in the first round and therefore, Ld. AO has exceeded the jurisdiction in travelling beyond the issues which were part of the grounds in the original appeal before the Tribunal.

15. Upon perusal, the legal argument urged by Ld. AR is not to be accepted since the assessment, in the first round, was framed on best judgment basis and the assessee was in further appeal before Tribunal primarily on the ground of violation of natural justice, Accordingly, the assessment was set aside and Ld. AO was directed to frame de novo assessment. Therefore, this addition, in such a case, could very well be made by Ld. AO in the set aside proceedings. The legal grounds as urged by the Ld. AR stand dismissed.

16. Having considered facts of the case, the impugned addition of Rs.4.45 Lacs as well as addition of Rs.512.62 Lacs stand restored back

to the file of Ld. AO for de novo adjudication with a direction to the assessee to substantiate its case by establishing the source of credit entries in the bank account. The corresponding grounds stands allowed for statistical purpose.

Conclusion

17. The appeal stands partly allowed in terms of our above order.

Order pronounced on 22nd September, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :22-09-2023

DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF