

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

आयकर अपील सं./I.T.A. No.391/Chny/2023
निर्धारण वर्ष/Assessment Year: 2020-21

Rajendra Patel Saryu,
C/o. B. Anand & Associates,
Chartered Accountants, No. 5/4,
Rama Street, Nungambakkam,
Chennai 600 034.

[PAN:AASPS2456A]

Vs. The Income Tax Officer,
International Taxation Ward 2(2),
4th Floor, BSNL Building, Tower 1,
#16, Greams Road, Chennai 600 006.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Anandd Babunath, CA
प्रत्यर्थी की ओर से/Respondent by : Shri S. Senthil Kumaran, CIT
सुनवाई की तारीख/ Date of hearing : 23.08.2023
घोषणा की तारीख /Date of Pronouncement : 27.09.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ["Act" in short] dated 24.01.2023 relevant to the assessment year 2020-21 in pursuant to the directions of the Id. Dispute Resolution Panel-2, Bengaluru under section 144C(5) of the Act dated 27.12.2022.

2. The only issue involved in this appeal is whether the land sold by the assessee is an agricultural land or not. The assessee is a non-

resident Indian living in Virginia, USA for the past two decades. The assessee purchased immovable property vide Deed of sale dated 23.01.1994 measuring about 3.65 acres in Kanchepuram District, Tamil Nadu. The assessee sold the above property for a consideration of ₹.9,21,20,000/- to M/s. Gulf Heavy Equipments Rental Private Limited. The assessee filed the return of income for the assessment year 2020-21 on 06.01.2021 admitting a total income of ₹.4,18,502/- being income from other source of ₹.14,335/- and claimed a refund of ₹.2,21,64,197/-. The case was selected for scrutiny by CASS and notice under section 143(2) of the Act dated 29.06.2021 was issued and duly served on the assessee. The Assessing Officer asked the assessee to furnish various details such as crop grown, the details of harvest done and sale of agricultural produce, etc. However, the assessee could not file any details except Adangal. In the draft assessment order dated 30.03.2022, the Assessing Officer has stated that the assessee has left blank the details of crop grown, the details of harvest done and sale of agricultural produce are not recorded and only filed Adangal which shows that it is a "Bunjar" land. The assessee was not able to file any details before the Assessing Officer except stating that the assessee has appointed a person as caretaker who has said to have carried out some agricultural activities according to their requirement and no separate salary was given since whatever

agricultural income received, the caretaker has to take. Further, the assessee has not filed any details like name and contact details of the caretaker, how long the caretaker was working, crop grown, etc. Therefore, the Assessing Officer came to a conclusion that the land, which was sold by the assessee, is not an agricultural land.

3. On appeal against the draft assessment order dated 30.03.2022, vide its order dated 27.12.2022 the Id. DRP confirmed the draft assessment order since the assessee has not filed any detail except stating that the land was an agricultural land and caretaker was appointed and no details of caretaker, details of crops grown were filed. Accordingly, in pursuant to the directions of the Id. DRP, the Assessing Officer passed final assessment order under section 143(3) r.w.s. 144C(13) of the Act dated 24.01.2022, against which, the assessee carried the matter in appeal before the Tribunal.

4. The Id. Counsel for the assessee has submitted that as per the Revenue records, the land is an agricultural land. Referring to paper book page 31, a photograph, which according to the Id. Counsel for the assessee, the assessee was carrying on agricultural activities. He also referred paper book page 10 and submitted the details of the land and according to him, it is a wet land as per Revenue records. He also

submitted that the land the land was given to the caretaker to carry out agricultural operation.

5. On the other hand, the Id. DR has submitted that according to the revenue records, it is "Banjar" land and the assessee has not carried out any agricultural operation. Therefore, the land cannot be construed as agricultural land. So far as land given to the caretaker to carry out agricultural activities, the assessee has not given any details and submitted that the land sold by the assessee to a company, which cannot be considered as an agricultural land.

6. We have heard both the sides, perused the materials available on record and gone through the assessment order and directions of the Id. DRP including paper book filed by the assessee. The assessee is a Non-Resident Indian and there is no possibility of assessee herself carrying agricultural operations. So far as revenue records are concerned, it only shows that it is "Banjar" land. No evidence was furnished as to whether the assessee was having water facility to that land or not. The only case of the assessee is that she has given the land to a caretaker and the caretaker has been carrying on the agricultural operation. However, the assessee has not given details of caretaker, such as, name of the caretaker, agricultural crop grown neither before the Assessing Officer

nor before the Id. DRP or even before the ITAT. When the assessee is relying on crucial evidence, he has to give all the details and discharge the burden. In the present case, the assessee failed to discharge the burden casted on the assessee that the caretaker was carrying on agricultural operation. Therefore, the explanation of the assessee cannot be accepted. That apart, the photograph shown by the assessee cannot be evidence as there is nothing visible from the photograph that the assessee was carried agricultural operation. Thus, we are of the opinion that the land sold by the assessee is not an agricultural land and confirm the orders passed by the Id. DRP and the final assessment order passed by the Assessing Officer.

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

Order pronounced on 27th September, 2023 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 27.09.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.