

आयकर अपीलीय अधिकरण, 'ए', न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH : CHENNAI  
श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. 2223/CHNY/2019  
निर्धारण वर्ष /Assessment year :2016-2017.

Shri. D. Kumar,  
85, Balaji Nagar 3<sup>rd</sup> Street,  
Alwarthirunagar,  
Chennai 600 087.

**Vs.** The Income Tax Officer,  
Non Corporate Ward 8(3)  
Chennai 600 034.

[PAN AQFPK 0646R]  
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri. Bhagavath Krishnan, Adv  
प्रत्यर्थी की ओर से /Respondent by : Shri. ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 02.11.2023.  
घोषणा की तारीख /Date of Pronouncement : 08.11.2023.

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:-**

This appeal filed by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-9, Chennai in ITA No.46/CIT(A)-9/2018-19 dated 25.06.2019. The assessment was framed by the Income Tax Officer, Non Corporate Ward 8(3), Chennai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 22.12.2018.

2. The only issue in this appeal of the assessee is with regard to the order of the Id. CIT(A) confirming the action of the Id. Assessing Officer holding that the land in question is not agricultural land and hence liable to capital gain tax. For this, assessee has raised the following ground No.2.

*'2. The CIT(A) erred in confirming the order of the ITO and holding that the said land in question is not an agricultural land and the same is liable to Capital Gains Tax, since the land under consideration is a capital asset u/s.2(14) of the Income Tax Act, 1961''.*

3. The brief facts are that the assessee sold his land situated in Mylapore RF Village falling under the jurisdiction of Uthukottai Municipality for a consideration of ₹1,65,23,000/-. The assessee is an individual earning income from commission had filed his return of income for the relevant assessment year 2016-2017 on 15.02.2017 declaring an income of ₹2,80,360/-. The assessee's case was selected for complete scrutiny assessment. The Assessing Officer required the assessee to explain as to why the land sold by assessee and claimed the same as exempt being agricultural land be not liable to capital gains tax being capital asset u/s.2(14) of the Act. The assessee replied vide letter dated 12.11.2018 that the agricultural land is situated in the village of Mylapore RF which does not fall under the jurisdiction of any municipality or cantonment board. The Uthukottai Town Panchayat is the nearest Panchayat/

Municipality which has a population of 12740 as per 2011 census and the population of the area where land is situated is Nil. The distance between the limits of Uthukottai Town Panchayat and the limits of Mylapore RF measured aerially is 6.05kms. The Assessing Officer further required the assessee to file details of agricultural operations carried out by the assessee like crop cultivated and crop sold during the year under consideration. The Assessing Officer also noted that the Tahsildar vide his letter dated 05.12.2018 had stated that land sold is dry land and there was no cultivation done during the financial years 2013-14 to 2018-2019. The assessee replied at the first instance that agricultural operation was not carried out but produced payment of revenue tax and Xerox copy of the bill for hiring the tractor. The Id. Assessing Officer has not accepted the claim of the assessee that land sold was agricultural land and is exempt from capital gain tax and held that the same is capital asset u/s.2(14) of the Act liable to capital gain tax for the reason that no agricultural activities were carried out by the assessee from the financial years 2013-14 to 2018-2019. The Assessing Officer relied on the judgment of Hon'ble Jurisdictional High Court in the case of Sri. A. Lalichan in TCA No.504/2018, dated 11.10.2018. Finally the Assessing Officer added this sale consideration treating the same as capital asset and computed long term capital gains tax at ₹1,55,70,663/-. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. The Id. CIT(A) also uphold the action of the Id. Assessing Officer by holding that the assessee has not carried out any agricultural operations and also relying on the decision of Hon'ble Jurisdictional High Court in the case of *Sri. A. Lalichan (supra)* by observing as under:-

*"6. After considering the assessment order, ground of appeal and the facts of the case, the only ground of appeal is disposed off as under:*

*During the assessment proceedings, the AO examined the details of sale of property and the appellant contended that the property under consideration is an agricultural land but the AO has held that the land under consideration is not an agricultural land and is a capital asset within the meaning of Sec. 2 (14) of the Act. During the assessment proceedings, the AO repeatedly asked the appellant to establish as to whether the land is an agricultural land or not. In response, the appellant had stated that agricultural activity was carried out but agricultural income was not declared in the ITR. The AO also examined the revenue records and held that except the details like name of the person owning the land and extent, the details with regard to cultivation of crops are left blank. Moreover, the AO has also made necessary enquiry u/s. 133(6) of the Act with the concerned Tahsildar who has stated that the land is dry land and there was no cultivation done during the F. Ys. 2013-14 to 2018-19.*

*At the outset, the local authority has confirmed that no agricultural activity has been carried on in the land under consideration. However, had there been agricultural income, the appellant is required by law to declare the agricultural income in the ITR, which is not done. It is also pertinent to mention here that the agricultural income is to be taken into account for rate purposes for computing the tax liability of the appellant. All that the appellant has stated is that the agricultural activity was carried on but income was not offered and in support of his claim the appellant has produced the photocopy of tractor bill, Chitta and Adangal. The AO has also held that the appellant could-not produce the necessary proof for sale of produce etc. In this regard, reliance is also placed in the decision of the Hon'ble Supreme Court of India in the case of CIT Vs. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC) wherein the Hon'ble Supreme Court has held that in case of agricultural income, the appellant has to establish that primary, secondary and tertiary activities were carried on which is supported by necessary documentary evidence. However, in the case under consideration, the appellant has miserably failed to discharge the onus cast upon him to establish the same. Except furnishing the tractor bill and revenue records and even the revenue records furnished by the assessee would not be of any help to the appellant as the column for cultivation of crops has been left blank and moreover the Tahsildar has*

*categorically confirmed that no agricultural activity was carried on in the land under consideration for many years and also the land is a dry land. Therefore, the contention of the appellant that the land was used for agricultural purposes is not acceptable. Moreover, the AO has also established that the distance of the land situated and the population of the Municipality as required Section 2(14) of the Act is also not satisfied in the case of the appellant. Further, the AO has also brought on record that the property: under consideration has been sold at a hefty price to an educational Trust and moreover the AO has also relied upon the decision of the Hon'ble Jurisdictional High Court in the case of A. Lalichan in TCA No.504/2018 L dated 11.10.2018.*

*During the appellate proceedings, the A.R reiterated the submission of the appellant as made before the AO and further stated that the decision of the Hon'ble Jurisdictional High Court in the case of A. Lalichan is not applicable for the case under consideration and that the decision of the Hon'ble Gujarat High Court in the case of Siddharth J Desai is applicable to the case under consideration.*

*In view of the detailed facts and legal position stated above, the contention of the A.R is not acceptable as it has been established beyond doubt that the land under consideration have never ever been used for agricultural purposes and the AO has also established that the land 'under consideration is a capital asset within the meaning of Sec. 2(14) of the Act. In view of these facts, the AO has rightly computed the capital gains and therefore the AQ's action is upheld. Accordingly, this ground of appeal is dismissed.*

Aggrieved, now the assessee is in appeal before us.

5. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly, assessee sold agricultural land situated in Mylapore RF village falling under the jurisdiction of Uthukottai Municipality. It is also an admitted fact that Uthukottai Town Panchayat is the nearest Panchayat/ Municipality which is having an population of 12740 as per 2011 census and the population of the area where land is situated is Nil. Distance between the Uthukottai Town Panchayat and the

limits of Mylapore RF aerially is 6.05 kms. These facts are not disputed by the Revenue. Assessee before the Id. CIT(A) and the Id. Assessing Officer filed documentary evidences in the form of Chitta and Adangal clearly establishing that the land is in the nature of agricultural land being dry land. Even the Income Tax Inspector vide letter dated 16.01.2020 clearly stated that this land was dry land but no agricultural operation was carried out for a long period. The relevant report of the Income Tax Inspector reads as under:-

*"As directed by the Senior AR-1, Hon'ble ITAT, Chennai, in the case of Shri Kumar, No.85,37 St, Balaji Nagar, Alwarthirunagar, Chennai-87, I visited the lands in question viz., Sl.No.38,39,92/1A,92/1B,92/1C,92/2A,92/2B on 14.1.2020. Shri Kumar accompanied me and identified the lands. The lands are situated in Mylapore Reserve Forest area adjacent to the Poondi Canal. They are lands. As the lands were not used for agricultural activity for a long period, the area is covered completely with thick overgrowth of Karuvellam trees. There is a Company namely M/s.AKS Engg. Co. which lies adjacent to the lands. There is no village in the vicinity. Mylapore village is about 4 kms from the lands"*

We also note that the Tahsildar had written a letter clarifying the land as dry land is enough proof for the land being agricultural. Dry land is capable of cultivation and the statement of the Tahsildar leads to the emphasis of the land being agricultural although land may not have been used for cultivation. We also note that the Hon'ble Madras High Court in the case of *S. Sarangapani Iyengar vs. The Assistant Commissioner, Urban*

*Land Tax, Alandur and Saidapet in 171- A.I.R. 1974* has considered an identical issue and held as under:-

*"4. At the threshold, it is difficult to uphold the finding given by the Tribunal that the lands in question are not agricultural funds. The Tribunal seems to have taken a view that merely because the lands were kept vacant during the Fasli years 1381-85, they ceased to be agricultural lands. For such a proposition, there does not seem to be any support in any statutory provision. The lands are registered as agricultural lands in the revenue records. There are adangal records which undoubtedly show that they are dry lands. Whether its agricultural land especially when it is not put to any other use. It is difficult to appreciate the reasoning of the Tribunal that since the petitioner has merely stated that the lands in question are dry lands and that they have been reserved for formation of horticultural garden, the lands could be said to have ceased to be agricultural lands.*

*5. It is also difficult to sustain the finding of the Tribunal that these lands are capable of being used as house sites. This finding was obviously recorded by the Tribunal with a view to bring the land within the definition of 'urban land' under S.2 (13). Sec. 2 (13) of the Act which defines 'urban land' reads as follows :*

*“ ‘Urban land’ means any land which is used or is capable of being used as a building site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops.”*

*We are not concerned in this case with the question as to whether the land in question falls within the exception in the latter part of the definition. The Taxing Authority must satisfy itself that a dry land is an urban land, which means that it is either used as a building site or is capable of being used as a building site. There is of course the inclusive part which would become applicable only if the land is appurtenant to an existing building. In respect of vacant land, the only part of the definition which becomes material is that part which refers to the land which is capable of being used as a building site. Every land which is vacant may not necessarily be capable of being used as a building site much less agricultural land. When we deal with agricultural land, it must be taken into account that the presumption would be that it is going to be used for the purpose of agriculture. An agricultural land is normally used for a building site and in an case it is not capable of being used as a building site in the normal course unless of course the owner sets a part of it apart by way of lay out or intends to construct a building in some part of the property. Normally agricultural lands must be construed as agricultural lands and since agricultural lands are not normally used for building sites, it must be*

*assumed that they are not capable of being used as building sites unless steps have been taken to have it used as building site. Agricultural funds will, therefore, stand excluded from the definition of 'urban land' unless they are intended to be converted for building purposes or house sites. In this view of the matter, the orders of assessment in respect of the agricultural lands in question will have to be set aside".*

We also note that the decision of Hon'ble Madras High Court in the case of *Alagarsamy and Others vs. Revenue Divisional Officer in W.P. (MD) No.21234 of 2017, dated 22.11.2019* had held that dry land is nothing but agricultural land as per the judgment para 10.

*"10.It may not be necessary to dilate further on these aspects of the matter. As already alluded to supra, there is no disputation qua writ petitioners' assertion that lands acquired are agricultural lands. All that the counter-affidavit says is, it is dry land. Agricultural lands can either be dry or wet lands. As alluded to supra, there is no disputation that if it is agricultural land, question of deduction of tax at source will not arise in the light of view taken by a Hon'ble Division Bench of Andhra Pradesh High Court in C. Nanda Kumar v. Union of India [2017 SCC OnLine Hyd 55] and by a Hon'ble Single Judge of the Punjab and Haryana High Court in Jagmal Singh's case which in turn has been taken by drawing inspiration from order of Hon'ble Supreme Court in C.W.P. No. 4401 of 2009. To be noted, this C.W.P. has been referred as Civil Appeal No. 4401 of 2009 which has been extracted and reproduced supra, but it is Civil Writ Petition'.*

As regards to the charge of the Revenue that the land was sold at huge profits, that cannot be a deciding factor to determine whether the land is agricultural land or not. We have to see what was the intention of the seller and not the intention of the purchaser which cannot be a determinative factor to treat the profit earned by the assessee on sale of agricultural land is capital gains or business income. This view was

confirmed by the *Hon'ble Gujarat High Court in the case of PCIT vs. Heenaben Bhadrresh Mehta (2018) 409 ITR 0196*. In view of the above admitted facts that land sold by the assessee is agricultural land which is clearly proved by Chitta, Adangal and hence we are of the view that sale consideration arising out of sale of agricultural land cannot be assessed to long term capital gain tax being agricultural land not falling under the head capital asset u/s.2(14) of the Act. Hence, we allow the appeal of the assessee.

6. In the result, the appeal of the assessee in ITA No.2223/CHNY/2019 for the assessment year 2016-2017 stands allowed.

Order pronounced on 8th day of November, 2023, at Chennai.

Sd/-  
(मंजुनाथ. जी)  
**(MANJUNATHA.G)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-  
(महावीर सिंह )  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai  
दिनांक/Dated: 08.11.2023.  
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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