आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./**I.T.A. Nos.1623, 1624, 1625 & 1646/Chny/2018**
निर्धारण वर्ष/**Assessment Years: 2007-08, 2009-10, 2010-11 & 2008-09**
&
W.T.A. Nos. 43 & 44/Chny/2018
Assessment Years: 2007-08, 2008-09

Shri Samarijit Singh Chabra, No. K-10, Sangath Apartments, MGR Nagar, Velachery, Chennai 600 042.	Vs.	The Income Tax Officer/ Wealth Tax Officer, Non Corporate Ward – 14(1), Chennai.

[PAN: BFOPS1703Q]

(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing	:	08.05.2024
घोषणा की तारीख /Date of Pronouncement	:	31.07.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

These four income tax appeals filed by the assessee are directed against different orders all dated 26.02.2018 passed by the ld. Commissioner of Income Tax (Appeals) 14, Chennai for the assessment years 2007-08, 2009-10, 2010-11 and 2008-09.

2. Since, issues raised in all the appeals are similar based on the same identical facts, with the consent of the both the parties, we proceed

to hear all the appeals together and for convenience pass consolidated order.

3. The ld. AR Shri N. Arjun Raj, Advocate requested us to take up appeal for the assessment year 2009-10 in I.T.A. No. 1624/Chny/2018 for better understanding of the facts which are necessary for disposing of all the appeals mentioned hereinabove. The ld. DR Shri P. Sajit Kumar, JCIT consented for the same and accordingly, for the sake of convenience, we proceed to take up the appeal for the assessment year 2009-10 as a lead case.

4. Now, we shall take up appeal in ITA No. 1624/Chny/2018 for AY 2009-10.

5. Ground No.1 is general in nature and requires no adjudication.

6. Ground No. 2 & 3 [issue No. 2 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in partly sustaining the disallowance of administrative expenses to an extent of ₹.12,03,978/- made by the Assessing Officer.

7. We note that the assessee claimed expenditure to an extent of ₹.24,07,956/- on account of wages, salary, rent, printing and stationary, advertisement, car loan interest, and interest on land. The Assessing

Officer asked the assessee to produce ledger, bills and vouchers in support of the claim vide notice under section 142(1) of the Act. For not providing any evidences in support of the claim, the Assessing Officer disallowed 50% of claim of expenditure at ₹.12,03,978/-.

8. The assessee contended that the bills and vouchers have been destroyed in the unprecedented rain in November, 2008 before the ld. CIT(A) and requested to restrict the disallowance @ 20%. The ld. CIT(A) agreed in principle with the views of the Assessing Officer in disallowing 50% of claim of the expenses at ₹.12,03,978/- taking into consideration the disallowance in AY 2008-09, confirmed the AO's order.

9. Before us, the ld. AR submits that the ld. CIT(A), having considered the genuine inability on the part of the assessee to produce necessary proofs and having consider incurring of expenditure, erred in confirming 50% of the disallowance. The ld. AR prayed that this Tribunal may take a lenient view in further restricting the disallowance to the extent of 20%.

10. The ld. DR vehemently opposed the argument of the ld. AR in seeking to restrict the disallowance to 20% and supported the order of the Assessing Officer arguing that in the absence of any evidence, the Assessing Officer has rightly disallowed the entire expenditure.

11. Having heard the submissions of both the parties, considering the facts and circumstances of the case, we note that admittedly, there is no evidence before the Assessing Officer in support of the claims made through income and expenditure statement. The reason for non-submission of the evidence was contended before the ld. CIT(A) and this Tribunal that due to unprecedented rain the relevant documents were got destroyed. On perusal of para 3.3.1 of the impugned order, we note that the ld. CIT(A) found the order of the Assessing Officer is reasonable in restricting the disallowance to 50% in the absence of any evidence, further, no evidence whatsoever filed before us. Thus, we find no infirmity in the order of the ld. CIT(A) in confirming the addition to an extent of ₹.12,03,978/-. Thus, ground Nos. 2 & 3 raised by the assessee are dismissed.

12. Ground Nos. 4 to 10 [issue No. 1 as per assessee] raised by the assessee concerning issue in confirming the order of the Assessing Officer on account of long term capital gains ignoring the distinction between assessment of capital gains and assessment of agricultural income in the facts and circumstances of the case.

13. The Assessing Officer, on receipt of information from AIR, issued questionnaire to the assessee regarding details of sale of land at Vanasthalipuram in the then Andhra Pradesh. The assessee, vide his reply dated 19.07.2013 contended that it was not a sale of land, but, given as security for loan taken. Further, vide reply dated 11.11.2013, it was explained that the assessee has inherited the property to the tune of 18 acres from maternal side, out of 18 acres, sold 8 acres for a price of ₹.2.35 crores for developing business in Chennai and the balance 10 acres are still being maintained as agricultural land. Further, it was submitted that the profits arising out of sale of agricultural land will not be taxed as capital gain as the buyers of 8 acres are also engaged in carrying agricultural activities even today i.e., as on 11.11.2013, for the reasons stated, which are reproduced in para No. 3 of the assessment order. The Assessing Officer found the replies dated 19.07.2013 and 11.11.2013 are contrary to each other and to verify the same issued summons under section 131 of the Act to the buyers. According to the Assessing Officer, the said summons returned un-served and by considering the agreement of Sale cum General Power of Attorney dated 24.10.2008, he held that the sale is completed. Accordingly, by allowing indexed cost of acquisition, the Assessing Officer determined the capital gains at ₹.2,34,72,242/-.

14. Having aggrieved by the order of the Assessing Officer, it was contended before the ld. CIT(A) that the said agricultural lands were situated at Kammaguda H/O Turkayamjal Village, Hayathnagar Revenue Mandal, Ranga Reddy District (Kammaguda Grampanchayat) a rural place having a population of not more than 10000 in the state of Andhra Pradesh. The nearest Municipality to Kammaguda (Turkayamjal) is LB Nagar, which is at a distance of 10.8 Kms by one route and 10.4 Kms by another route by placing copy of Google map. The assessee placed reliance in the case of Sarifabibi Mohamed Ibrahim v. CIT reported in (1993) 204 ITR 631 (SC) for determining as to whether the land is agricultural land or non-agricultural land. The submissions of the assessee were reproduced by the ld. CIT(A) in para 4.2 from pages 5 to 7 of the impugned order. The ld. CIT(A) observed that the assessee has not discharged his primary onus by producing the proof for having carried out agricultural operation in the said land from cultivation to sale of agricultural produce and not treating the said land as agricultural land, confirmed the order of the Assessing Officer in determining the long term capital gain. The relevant finding at para 4.3.4 in page 10 of the impugned order is reproduced herein below for ready reference:

> *"4.3.4 in view of the above remarks and the decisions relied on, I am of the considered opinion that the appellant has not discharged his primary onus of proving that the land he sold was in fact an agricultural land. Therefore, I concur with the AO's addition by treating the same as a capital asset, and*

assessment of sale proceeds under the head of long term capital gain. In view of the above remarks the appellant's grounds are dismissed.

15. Having aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us by raising ground Nos. 4 to 10 mentioned hereinabove.

16. The ld. AR submits that the said lands are admittedly situated beyond 8 kms from the notified municipalities and would be outside the ambit of capital asset in terms of Section 2(14) of the Act. He drew our attention to the certificate issued by the Tahsildar and submits that the disputed lands are classified as agricultural lands in the Revenue Records. Further, he submits that the earning of agricultural income is not a statutorily prescribed condition to determine the character of the land. The ld. AR challenged that the lower authorities went wrong in imposing the artificial condition of earning of agricultural income for the purpose of treating the disputed lands as an exempted category of agricultural lands. He argued that the Assessing Officer had taken the distance from Hayathnagar to Turkayamjal for concluding that the lands are situated at 7Km. The Assessing Officer ought to have taken the distance from the actual location of the land situated at Kammaguda Village as against the Turkayamjal Mandal adopted for arriving at the distance. He vehemently submits that the distance taken from L.B. Nagar / Hayathnagar based on the expansion of Hyderabad Corporation is wholly unjustified especially in

view of the clause (2) to Explanation forming part of the Notification issued on 06.01.1994 and categorically stating that the limits should be applied only as it stood in 1994 for the purpose of determining the distance from the notified municipalities. He pleads for directing the Assessing officer to treat the sale proceeds as exempt income generated from sale of exempted category of land in the interest of justice.

17. Without prejudice to the above submissions, the ld. AR referred to Cancellation Deed dated 27.09.2014 wherein it is confirmed by the parties that the consideration as agreed upon at the time of execution of the registered agreement of sale cum power of attorney was not received by the assessee leading to its cancellation.

18. Further, the ld. AR submits that the assessee had executed the agreement of sale cum General Power of Attorney on the belief/ mutual understanding of receiving the consideration in the future and in the cancellation agreement, it was stated the considerations were never received which fact is also confirmed and signed by the other parties at the time of registration and drew our attention to the cancellation deed vide Doc No. 17548/2014 dated 14.12.2019 at Page No. 264 of the paper book. He argued that the transfer in terms of Section 2(47) of the Act is

not attracted to the facts of the present case and it is pleaded for directing the Assessing Officer to delete the addition made in this regard.

19. The ld. AR has, further, submitted that the re-computation of the long term capital gains adopted by the Assessing Officer is wholly unjustified and not sustainable in law, the Assessing Officer had adopted the cost of acquisition incurred by the previous owner as on 1974 and granted the benefit of indexation from the year 1999 to the assessee. He prayed for giving directions to the Assessing Officer to adopt the fair market value as on 01.04.1981 as the cost of acquisition and further pleaded for granting the benefit of indexation from the 01.04.1981 and drew our attention to the judgment of the Bombay High Court in the case reported in 355 ITR 474 wherein it was held that the indexation benefit shall be made available to the tax payer from the date of acquisition by the previous owner. He requested to remand the matter to the file of the Assessing Officer.

20. Further, without prejudice to the above submissions, in the event of assessing the disputed sum in the hands of the assessee for the assessment year under consideration, the ld. AR pleads for treating the same as source with respect to the other additions made during the assessment year under consideration and the subsequent assessment

year namely assessment year 2010-11 towards the cheque deposits being assessed to tax by giving appropriate directions to the Assessing Officer in the interest of justice.

21. The ld. DR submits that the assessee did not bring on record any evidence showing that the said land is an agricultural land and argued that the Assessing Officer rightly held that it is not an agricultural land in the absence of evidence and brought to tax as non-agricultural land. Further, the assessee has taken many submissions before the Assessing Officer and drew our attention to the replies given by the assessee, which are reproduced by the Assessing Officer in part in the assessment order. The ld. CIT(A) also clearly observed that no agricultural activities were performed by the assessee and rightly confirmed the addition made by the Assessing Officer. The ld. DR relied on the order of the ld. CIT(A) and requested to dismiss the grounds raised by the assessee.

22. Heard both the parties and perused the materials available on record. As discussed above, the Assessing Officer received information from AIR and accordingly, a questionnaire was issued to the assessee seeking details of sale of land, in response to which, the assessee given replies dated 19.07.2013 and also 11.11.2013. We find in the reply dated 19.07.2013, that the assessee has taken a stand that it was not a sale

but, was given as security for obtaining a loan. Vide reply dated 11.11.2013, it was explained that out of 18 acres, which were inherited, out of which 8 acres were sold for a price of Rs.2.35 crores for developing business in Chennai. Therefore, we find two submissions taken by the assessee in response to the questionnaire issued by the Assessing Officer. The said replies in part were reproduced by the Assessing Officer in his order. The Assessing Officer found the said replies were contrary to each other and determined capital gain in the hands of the assessee by giving indexed cost by holding that the lands were not an agricultural land. The ld. CIT(A) further gone to hold that there were no agricultural activities shown by the assessee and confirmed the order of the Assessing Officer.

23. Before us, the ld. AR placed on record agreement of sale cum general power of attorney dated 24.10.2008, which is at page No. 222 of paper book. On perusal of the same, we note that the assessee hearin, was shown as vendor to sell Schedule mentioned properties therein to G. Ravinder Reddy and four others, who were shown as vendees, for a consideration of Rs.2,35,27,000/-. Further, it is noted that the vendor, i.e., assessee claimed that he is the sole and absolute owner, pattedar and peaceful possessor of the agricultural dry land in survey No. 248

admeasuring AC. 7-39 guntas of 3.19 hectares in Kammaguda, H/o, Turkayamjal village, Hayathnagar Revenue Mandal, Ranga Reddy District under Kammaguda gram panchayat being pattedar vide pattedar pass book bearing No. 423331, title deed No. 427384 and patta No. 941 issued by the Mandal Revenue Officer, Hayathnagar, Ranga Reddy District, which clearly shows that the subjected land has been shown as agricultural land in the Revenue records vide pattedar pass book, title deed and patta. Further, the description of the property is given in Schedule of the property at page No. 7 of the said deed, wherein, it is described as a piece and parcel of agricultural dry land and further, all the boundaries mentioned therein are agricultural lands. Further, it is noted that plan showing, which is annexed to the said deed is also described as agricultural land. The copy of adangal/pahani dated 27.04.2016 in native language issued by the Revenue Department, Government of Telangana is at page No. 272 of the paper book, true translation of which at page No. 273 of the paper book, which clearly shows the nature of the subjected land as dry agricultural land, which supports the case of the assessee in contending that the subjected property is an agricultural land.

24. As the matter stood thus, we find the deed of cancellation of agreement of sale cum GPA is at page No. 256 of the paper book. On

perusal of the same, we note that the assessee executed the said deed of cancellation on 27.09.2014 cancelling the agreement of sale cum GPA dated 24.10.2008 against G. Ravinder Reddy and four others. The ld. AR argued that no transfer in terms of the section 2(47) of the Act is attracted and pleaded to delete the addition made by the Assessing Officer, which was confirmed by the ld. CIT(A). We note, that it was mentioned, the vendor i.e., assessee herein, cancelled the earlier agreement of sale cum GPA for non-receipt of sale consideration from G. Ravinder Reddy and four others. The ld. DR Shri Sajit Kumar, ACIT stressed on the fact that the original agreement cum GPA contains the recitals that the assessee had acknowledged the receipt of consideration while executing the same. As discussed above, on an examination of agreement of sale cum GPA vide document 4545/2008 at page No. 222 of the paper book clearly shows that G. Ravinder Reddy and four others paid an amount of Rs.2,35,00,000/- to the assessee which was admitted and acknowledged by the assessee. It was also agreed to pay the remaining sale consideration of Rs.27,000/- [2,35,27,000 – 2,35,00,000] at the time of registration of regular sale deed. Therefore, we find force in the arguments of the ld. DR that the assessee admitted and acknowledged the payment of Rs.2,35,00,000/- and no evidence was brought on record by the assessee that the sale consideration of Rs.2,35,00,000/- was

refunded to the G. Ravinder Reddy and four others. Thus, we hold that the assessee is in receipt of Rs.2,35,00,000/- and for having no proof of showing the refund to G. Ravinder Reddy and four others, is chargeable to tax in the hands of the assessee. Thus, ground Nos. 4 to 10 [issue No. 1 as per assessee] raised by the assessee are dismissed.

25. Ground Nos. 11 & 12 [issue No. 3] raised by the assessee in challenging the action of the ld. CIT(A) in sustaining the addition of ₹.1,04,02,074/- on the analysis of the bank accounts for arriving at peak credit.

26. The Assessing Officer, on receipt of information from AIR regarding cash deposits in the savings bank account of the assessee and credit card payments, asked the assessee for explanation. The assessee explained that the deposits with Standard Chartered Bank from withdrawal from ICICI Bank for loan transaction show rosy picture to obtain loan from Bank. Further, through its reply dated 11.11.2013, it was explained in respect of deposits of ₹.1,00,76,770/- in ICICI Bank on account of sale consideration of ₹.45,27,760/- on sale of Kancheepuram residential plots. Further, it was stated that the amount mentioned is aggregate amount deposited from frequent withdrawal in one particular account for deposit into another account to honour the cheques issued.

The Assessing Officer, on examination of bank statement, proceeded to work out peak credit, the details of which are reproduced in page Nos. 12 to 14 of the assessment order. The Assessing Officer accordingly determined peak credit of ₹.1,04,02,074/- by treating the same as unexplained cash and added to the total income of the assessee.

27. Before the ld. CIT(A), it was contended that the peak credit determined by the Assessing Officer should have been ₹.83,11,070/- taking into account the opening balance of ₹.20,91,004/-, which was reflected in earlier years' account. The ld. CIT(A), in principle confirmed the addition made by the Assessing Officer in the absence of furnishing of books of account or fund flow statement having the source of fund for making such cash deposits. Considering the submissions of the assessee to exclude opening balance while calculating the peak credit, the ld. CIT(A) directed the Assessing Officer to verify the claim and to re-compute the peak credit accordingly and partly allowed the ground raised by the assessee.

28. Before us, the ld. AR submits that quantification of the peak credit adopted by the Assessing Officer on various facets was wrong, invalid and incorrect and prayed for giving direction to the Assessing Officer for allowing the related ground of appeal in the interest of justice.

29. The ld. DR drew our attention to the assessment order and submits that the Assessing Officer rightly adopted the peak credit by considering the bank statement. The assessee failed to provide any corroborative evidence before the ld. CIT(A) in support of his claim. He vehemently argued that there was no evidence filed by the assessee even before the Tribunal in support of claiming to remand the matter back to the file of the Assessing Officer.

30. Heard both the parties, perused the material available on record. The Assessing Officer, in our opinion rightly considered the submissions of the assessee vide reply dated 05.08.2013 and 11.11.2013 in adopting the peak credit. We find that before the ld. CIT(A) the assessee raised new contention of opening balance for earlier years should not have been taken into account while determining the peak credit. Therefore, according to the assessee, the peak credit should have been ₹.83,11,070/-, i.e., ₹.1,04,02,074 (-) opening balance of ₹.20,91,004/- of earlier year accounts for FY 2007-08 (AY 2008-09). On perusal of the impugned order at para 5.3.1, we note that the ld. CIT(A) rightly directed the Assessing Officer to verify the contention of the assessee being opening balance of FY 2007-08 (AY 2008-09) and re-compute the peak credit. In our opinion, the ld. CIT(A) answered the ld. AR's submissions

before us in giving direction to the Assessing Officer for allowing related ground in the interest of justice. Therefore, we find no infirmity in the order of the ld. CIT(A) and it is justified, further, we direct the Assessing Officer to give telescoping effect regarding the cash availability in the hands of the assessee, in view of our decision in ground Nos. 4 to 10 hereinabove, where we held, a sum of Rs.2,35,00,000/- chargeable to tax to the extent of cash deposits in saving bank account and credit card payments is available with the assessee. Thus, the ground Nos. 11 & 12 raised by the assessee are allowed for statistical purposes.

31. Ground Nos. 13 & 14 [issue No. 4 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in sustaining the addition of ₹.1,72,77,982/- on account of cheque deposits in the facts and circumstances of the case.

32. On verification of the bank account of the assessee, the Assessing Officer found many credits and debits through cheques, the details of which were reproduced in page Nos. 15 & 16 of the assessment order. The Assessing Officer asked the assessee to explain all the transactions exceeding ₹.1 lakh. According to the Assessing Officer, no explanation was given by the assessee in respect of cheques received and issued. According to the Assessing Officer, the assessee has shown sale

realization of ₹.30,27760/- from sale of Kancheepuram plots and balance of ₹.1,72,77,982/- [₹.2,03,05,742 – ₹. 30,27,760] was added to the total income of the assessee.

33. It was contended before the ld. CIT(A) that there was no trading activity by way of sale and no books of accounts were maintained. The assessee has given analysis of cheque transaction before the ld. CIT(A) and to consider the sale proceeds of shares received from M/s. Anagram Securities Limited to an extent of ₹.20,24,117/- and 15 cheques issued by wife of the assessee to an extent of ₹.87,62,000/- sought to restrict analysis of cheque credit at ₹.1,18,32,462/- as against Rs.1,72,77,982/-. The ld. CIT(A) held that there was no answer to ledger account, confirmation letter from parties were furnished and disbelieved issuance of cheques by the wife of the assessee for having sufficient funds and confirmed the order of the Assessing Officer.

34. Before us, the ld. AR submits that the cheque deposits credited into bank account and the Assessing Officer erred in taxing the entire credit, which deifies the principles of fairness in taxation. Further, he vehemently argued that the Assessing Officer has not examined/considered the debit entries/utilization of such cheque deposits. The Assessing Officer as well as the ld. CIT(A) wrongly treated amounts circulated by the assessee

through the bank account of assessee's wife and assessed in the hands of the assessee. He elaborated that the amounts received from assessee's wife and breakup of the amounts received from her, cannot be taxed in the hands of the assessee and drew our attention to page Nos. 219, 220, 274, 275 & 276 of paper book.

35. The ld. DR relied on the order of the ld. CIT(A).

36. Heard both the parties perused the material available on record. We note that the Assessing Officer added the entire cheque deposits to the total income of the assessee by giving benefit to the sum realized on sale of Kancheepuram plots. Regarding other parties, i.e., Star Real Estate (sale of Kanchipuram Land), Sheetal Enterprises (own business entity), Srinivasa Rao (advance) and Durga Bhav (Advance), the assessee has not furnished ledger account copy, PAN and confirmation from such parties. Regarding cheque deposits of assessee's wife, the Assessing Officer held that she was not filing return of income as she has not sufficient source of income to issue cheque to the assessee, which was confirmed by the ld. CIT(A). The ld. CIT(A) also held that the genuineness of the transactions and capacity of the parties were not proved in respect of the parties from whom the assessee claimed to have received cheques.

37. Regarding the documents referred by the ld. AR at page Nos. 219, 220, 274, 275 & 276 of paper book shows only reiteration of the submissions made before the ld. CIT(A) in summarising analysis of credit at ₹.1,18,32,462/-. Further, at pages 274, 275 & 276 shows debit & credit details of the assessee, which supports the total value of the cheque deposit which is confirmed at page No. 219 of the paper book and also before the ld. CIT(A), the specific contention of the ld. AR is that the assessee had made deposits out of his cash flow from time to time into his wife's account and out of which, his wife issued 15 cheques on various dates totalling to ₹.87,62,000/-, but there was no details of deposits made in the bank account of assessee's wife and it is not traceable from page Nos. 219, 220, 274, 275 & 276 of paper book. We note that the assessee pleaded before the Assessing Officer that the assessee received cheque deposits from his wife to an extent of Rs.60,19,000/-. Before the ld. CIT(A), it was contended that his wife issued 15 cheques on various dates totalling into Rs.87,62,000/-. The ld. AR contended that in making addition taking into consideration the entire credit is not fair and taxing the cheque deposits made by assessee's wife is not justified. The assessee did not bring on record any evidence to show that there was no benefit given by the Assessing Officer regarding

the withdrawals. Therefore, we find no force in the arguments that the Assessing Officer added the entire credits. Regarding the other parties, i.e., Star Real Estates, Sheetal Enterprises, Srinivasa Rao and Durga Bav, we find no evidence brought on record by the assessee even before the ld. CIT(A) as well as before this Tribunal. We find the Assessing Officer given benefit of sale realization of Kancheepuram plots to an extent of Rs.30,27,760/-. Regarding assessee's wife cheque deposit and issuance of cheque in favour of the assessee again, required to be considered in favour of the assessee as the contention, the assessee had made deposits out of his cash flow from time to time into his wife's bank account and in turn, his wife issued cheques before the ld. CIT(A) to an extent of Rs.87,62,000/- is accepted and accordingly, the addition is deleted to that extent. The remaining addition of Rs.85,15,982/- [1,72,77,982-87,62,000] is sustained. Thus, ground Nos. 13 & 14 [issue No. 4 as per assessee] is partly allowed.

I.T.A. No. 1625/Chny/2018 – A.Y. 2010-11

38. Ground No. 1 is general in nature and requires no adjudication.

39. Ground Nos. 2 & 3 [issue No. 1 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in partly sustaining

the disallowance of other expenses at 50% of the total disallowance of ₹.16,18,213/- made by the Assessing Officer.

40. We note that the assessee claimed expenditure to an extent of ₹.16,18,213/- on account of wages, salary, rent, printing and stationary, advertisement, car loan interest, and interest on land. The Assessing Officer asked the assessee to produce ledger, bills and vouchers in support of the claim vide notice under section 142(1) of the Act. For not providing any evidences in support of the claim, the Assessing Officer disallowed entire claim of expenditure of ₹.16,18,213/-.

41. The assessee contended that the bills and vouchers have been destroyed in the unprecedented rain in November, 2008 before the ld. CIT(A) and requested to restrict the disallowance @ 20%. Considering the entire disallowance made by the Assessing Officer as excessive and unreasonable, the ld. CIT(A) restricted the disallowance of expenditure to 50% taking into consideration of his decision in assessee's case for the assessment year 2008-09. and allowed partly the ground raised by the assessee.

42. Before us, the ld. AR submits that the ld. CIT(A), having considered the genuine inability on the part of the assessee to produce necessary

proofs and having consider incurring of expenditure, erred in confirming 50% of the disallowance. The ld. AR prayed that this Tribunal may take a lenient view in further restricting the disallowance to the extent of 20%.

43. The ld. DR vehemently opposed the argument of the ld. AR in seeking to restrict the disallowance to 20% and supported the order of the Assessing Officer arguing that in the absence of any evidence, the Assessing Officer has rightly disallowed the entire expenditure.

44. Having heard the submissions of both the parties, considering the facts and circumstances of the case, we note that admittedly, there is no evidence before the Assessing Officer in support of the claims made through income and expenditure statement. The reason for non-submission of the evidence was contended before the ld. CIT(A) and this Tribunal, that due to unprecedented rain the relevant documents were got destroyed. On perusal of para 4.3.1 of the impugned order, we note that the ld. CIT(A) found the order of the Assessing Officer is excessive and unreasonable and thereby restricted the disallowance to 50%. Thus, we find no infirmity in the order of the ld. CIT(A) in restricting the disallowance to an extent of 50%. Thus, ground Nos. 2 & 3 [issue No. 1 as per assessee] raised by the assessee are dismissed.

45. Ground Nos. 4, 5 & 6 [issue No. 2 of the assessee] raised in the appeal of the assessee in challenging the action of the ld. CIT(A) in sustaining the short term capital gains relating to the sale of Devi Karumariamman Nagar flat amounting to ₹.18,02,830/-.

46. We note that the assessee sold UDS of 1066 sft. and built-up area of 1720 sft at Plot No. 43 & 44, Devi Karumariamman Nagar for a consideration of ₹.35,00,000/- and claimed short term capital loss at ₹.4,40,000/-. According to the Assessing Officer, though the claim of cost of acquisition at ₹.26,00,000/-, the assessee produced purchase deed showing purchase details of 1066 sft at ₹.6,97,170/-. For not furnishing construction agreement copy, the Assessing Officer estimated the cost of land for 1066 sft at ₹.6,97,170/- and construction cost of ₹.10,00,000/- and determined the cost of acquisition at ₹.16,97,170/-. The Assessing Officer, accordingly, by taking into sale consideration at ₹.35,00,000/- less cost of acquisition at ₹.16,97,170/-, determined the short term capital gains at ₹.18,02,830/- [₹.35,00,000 – ₹.16,97,170].

47. The ld. CIT(A) confirmed the views of the Assessing Officer for not bringing any new evidence supporting the claim of the assessee.

48. Before us, the ld. AR submits that the Assessing Officer denied the claim of cost of construction for want of evidence. The assessee placed on record the purchase deed and drew our attention to page No. 322 of the paper book. Further, he drew our attention to page 340 of paper book and submits that the assessee has availed housing loan sanctioned by ICICI Bank relating to purchase of said property. The assessee availed housing loan of ₹.25,71,500/- and paid interest thereon. He vehemently argued that the assessee is entitled for allowance of deduction towards cost of construction of asset while computing short term capital gains/loss.

49. The ld. DR relied on the order of the ld. CIT(A).

50. Heard both the parties and perused the material available on record. We note that sale deed dated 29.03.2006 executed by Rajathee Promoters in favour of the assessee regarding purchase of 1066 sft which is UDS share of land forming part of Schedule A. The market value, as declared in Schedule B, of 1066 sft is at ₹.6,39,600/-. The assessee claimed cost of property at ₹.29,24,000/- and supporting the same shown loan availed from ICICI Bank for ₹.25,71,500/-. The Assessing Officer asked the assessee to produce copy of construction agreement, but, however, no such agreement was brought on record showing the

assessee got the asset in support of claim of cost of property. On perusal of page 339 & 340 of the paper book, which clearly shows that ICICI Bank sanctioned provisional loan for purchase/construction of house property of ₹.25,71,500/- @ 10% interest p.a. The said statement was dated 29.01.2007. Further, on perusal of page 341, which clearly shows that it was certificate issued by ICICI Bank stating that the said house loan has been repaid in full and there are no further dues payable under the loan. On perusal of the paper book page 339 & 340 shows that the assessee availed loan from ICICI Bank for subjected property under consideration and repaid the same which supports the contention of the assessee that loan was availed for construction of asset in 1066 sft. Therefore, in our opinion, the Assessing Officer and the ld. CIT(A) did not look into the evidence of loan sanctioned by the ICICI Bank in proper prospective and the addition confirmed by the ld. CIT(A) is liable to be deleted. Accordingly, we hold that the order of the ld. CIT(A) in confirming the order of the Assessing Officer in making addition on account of short term capital gain as against claim of short term capital loss is set aside and delete the addition made by the Assessing Officer. Thus, ground Nos. 4, 5 & 6 [issue No. 2 of the assessee] raised by the assessee are allowed.

51. Ground Nos. 7 & 8 [issue No. 3 of the assessee] raised by the assessee in challenging the action of the ld. CIT(A) in sustaining the addition of ₹.1,03,82,074/- on analysis of bank account for adopting peak credit.

6.3 CIT(A)'s remarks and decision:

On the above mentioned issue, I have carefully considered the AO's observation and the appellant's contention as mentioned above under para 6.1 and 6.2 respectively.

6.3.1 In the absence of books of accounts and cash flow statements, the Assessing Officer has resorted to addition by treating the cash deposits as income from undisclosed sources. While doing so, the AO has applied the principle of peak credit for quantifying the addition. Even at the appeal stage before the CIT(A), the appellant could not explain the source by way of books of accounts or Fund Flow Statement. Therefore, the addition made by the Assessing Officer is in principle confirmed as the appellant has failed to satisfactorily account for the source of fund for making such cash deposits into the bank account. However, the appellant's contention that while computing the peak credit, the AO should have excluded the opening balance of the peak credit which was the subject matter of addition in the earlier Asst. Year 2009-10 deserves merit. Therefore, the AO is directed to verify this claim and to re-compute the peak credit accordingly.

6.3.2 In view of the above remarks, the appellant's ground is partly allowed.

52. On perusal of the impugned order above, we note that the ld. CIT(A) principally confirmed the peak credit as adopted by the Assessing Officer for failing to satisfactorily account for the source of fund for making such cash deposits into the bank account, but, however, taking into consideration the assessee's contention that the Assessing Officer should have excluded opening balance of peak credit, which was subject matter of addition in earlier year AY 2009-10, directed the Assessing Officer to

verify the said claim and to re-compute the peak credit accordingly. While dealing the AY 2009-10 by us in the aforementioned paragraph where we confirmed the order of the ld. CIT(A) in remanding the matter back to the file of the Assessing Officer to take into consideration the opening balance of peak credit for AY 2008-09 and finding is equally applicable in the year under consideration. We find no infirmity in the order of the ld. CIT(A) and it is justified. Further, while computing the income of the assessee, we direct the Assessing Officer to give telescoping effect regarding the cash availability in the hands of the assessee, in view of our decision in ground Nos. 4 to 10 of AY 2009-10 hereinabove, where we held, a sum of Rs.2,35,00,000/- chargeable to tax to the extent of cash deposits in saving bank account and credit card payments is available with the assessee. Thus, ground Nos. 7 & 8 [issue No. 3 of the assessee] raised by the assessee are allowed for statistical purposes.

53. Ground Nos. 9 & 10 [issue No. 4 of the assessee] raised by the assessee in challenging the action of the ld. CIT(A) in sustaining the addition of ₹.26,56,700/- representing cheque deposits.

54. On verification of the bank account of the assessee, the Assessing Officer found many credits and debits through cheques, the details of which were reproduced in page Nos. 3 & 4 of the assessment order. The

Assessing Officer asked the assessee to explain all the transactions exceeding ₹.1 lakh. According to the Assessing Officer, no explanation was given by the assessee in respect of cheques received and issued. According to the Assessing Officer, the assessee has shown sale realization of ₹.26,00,000/- from Udayalakshmi towards sale of Devi Karumariamman Nagar flat and balance of ₹.26,56,700/- [₹.52,56,700 – ₹. 26,00,000] was added to the total income of the assessee.

55. It was contended before the ld. CIT(A) that there was no trading activity by way of sale and no books of accounts were maintained. The assessee has given analysis of cheque transaction before the ld. CIT(A) and to consider credit in respect of DD's cancellation of ₹.11,00,000/-, refund of advance paid for purchase of lands at ₹.10,00,000/- and 4 cheques issued by wife of the assessee, to an extent of ₹.25,40,000/- sought to restrict analysis of cheque credit at ₹.25,40,000/-. The ld. CIT(A) held that there was no answer to ledger account, confirmation letter from parties were furnished and disbelieved issuance of cheques by the wife of the assessee for having sufficient funds and confirmed the order of the Assessing Officer.

56. Before us, the ld. AR submits that the cheque deposits credited into bank account and the Assessing Officer erred in taxing the entire credit,

which deifies the principles of fairness in taxation. Further, he vehemently argued that the Assessing Officer has not examined/considered the debit entries/utilization of such cheque deposits. The Assessing Officer as well as the ld. CIT(A) wrongly treated amounts circulated by the assessee through the bank account of assessee's wife and assessed in the hands of the assessee. He elaborated that the amounts received from assessee's wife and breakup of the amounts received from her and other credits, not assessable to tax including the cancellation of DD in the hands of the assessee and drew our attention to page Nos. 314, 315 & 342 of paper book.

57. The ld. DR relied on the order of the ld. CIT(A).

58. Heard both the parties perused the material available on record. We note that the Assessing Officer added the entire cheque deposits to the total income of the assessee by giving benefit to the sum realization of sale of Devi Karumariamman Nagar plots. Regarding cheque deposits of assessee's wife, the Assessing Officer held that she was not filing return of income as she has not sufficient source of income to issue cheque to the assessee, which was confirmed by the ld. CIT(A). Further, the assessee's explanation for source that he had received refund of advance made earlier is not supported by any confirmation letter or

documentary proof. Moreover, the DD purchased earlier and subsequently cancelled and cash realized there from were also not proved with supporting documents. Regarding the documents referred by the ld. AR at page Nos. 314, 315 & 342 of paper book shows only reiteration of the submissions made before the ld. CIT(A) in summarising analysis of credit at ₹.25,40,000/-. Further, at page No. 342 shows debit & credit details of the assessee, which supports the total value of the cheque deposit at ₹.4,40,000/- that the assessee had made deposits out of his cash flow from time to time into his wife's account and out of which, his wife issued 4 cheques on various dates totalling to ₹.4,40,000/-, but there was no details of deposits made in the bank account of assessee's wife and it is not traceable from above pages of paper book referred herein above. But, however, taking into account the very availability of cash in the hand of the assessee, the benefit of funds from his wife is to be given and accordingly, Rs.4,40,000/- is deleted and the balance addition of Rs.22,16,700/- [Rs.26,56,700-4,40,000] is sustained. Thus, ground Nos. 9 & 10 [issue No. 4 of the assessee] is partly allowed.

I.T.A. No. 1623/Chny/2018 - A.Y. 2007-08

59. Ground No. 1 is general in nature and requires no adjudication.

60. Ground Nos. 2, 3 & 4 are not pressed and accordingly dismissed as not pressed.

61. Ground Nos. 5 to 11 [issue No. 1 as per assessee] raised in the appeal of the assessee in challenging the action of the ld. CIT(A) in sustaining the addition made by the Assessing Officer on account of long term capital gains in respect of land claiming to be sale of agricultural land.

62. Based on the reopening of assessment proceedings in the case of the assessee for the assessment year 2009-10, the Assessing Officer found that the assessee sold 5 acres of land in the A.Y. 2007-08 itself vide sale deed Doc. 16092/2006 dated 21.09.2006. The said transaction came to light only after order under section 281B of the Act was issued to the assessee attaching this part of land. Thus, the Assessing Officer held that the assessee is liable for long term capital gains. Accordingly, the Assessing Officer determined long term capital gains at ₹.1,50,00,000/- and added to the income of the assessee.

63. Having aggrieved by the order of the Assessing Officer, it was contended before the ld. CIT(A) that the said agricultural lands were situated at Kammaguda H/O Turkayamjal Village, Hayathnagar Revenue

Mandal, Ranga Reddy District (Kammaguda Grampanchayat) a rural place having a population of not more than 10000 in the state of Andhra Pradesh. The nearest Municipality to Kammaguda (Turkayamjal) is LB Nagar, which is at a distance of 10.8 Kms by one route and 10.4 Kms by another route by placing copy of Google map. The assessee placed reliance in the case of Sarifabibi Mohamed Ibrahim v. CIT reported in (1993) 204 ITR 631 (SC) for determining as to whether the land is agricultural land or non-agricultural land. He also relied on the decision of the Jurisdictional High Court in the case of Sakunthala vedachalam v. ACIT. The submissions of the assessee were reproduced by the ld. CIT(A) in para 4.2 from pages 7 to 10 of the impugned order. The ld. CIT(A) observed that the assessee has not discharged his primary onus by producing the proof for having carried out agricultural operation in the said land from cultivation to sale of agricultural produce and not treating the said land as agricultural land, confirmed the order of the Assessing Officer in determining the long term capital gain. The relevant finding at para 4.3.5 in page 13 of the impugned order is reproduced herein below for ready reference:

> *"4.3.4 in view of the above remarks and the decisions relied on, I am of the considered opinion that the appellant has not discharged his primary onus of proving that the land he sold was in fact an agricultural land. Moreover, the Revenue authorities have certified that the land is located within 8 km of municipal limit. Therefore, I concur with the AO's addition by treating the same as a capital asset, and assessment of sale proceeds under the head of*

long term capital gain. In view of the above remarks the appellant's grounds are dismissed.

64. Having aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

65. The ld. AR submits that the issue on merits for the assessment year under consideration is on the correctness of the assessment of sale proceeds received from sale of agricultural lands situated at Kamaguda Village.

66. It was further submitted that the said lands are admittedly situated beyond 8 kms from the notified municipalities and would be outside the ambit of capital asset in terms of Section 2(14) of the Act. The Assessing officer had followed the decision taken for the Assessment Year 2009-10 based on the certificate obtained from the Tahsildar. The ld. AR submits that even from the plain reading of the certificate issued by the Tahsildar, the disputed lands are classified as agricultural lands in the Revenue Records. The appellant submits that the earning of agricultural income is not a statutorily prescribed condition to determine the character of the land.

67. Further, the lower authorities went wrong in imposing the artificial condition of earning of agricultural income for the purpose of treating the

disputed lands as an exempted category of agricultural lands. The appellant had placed on record the Judgements in support of his contention during the course of the hearing. The decision taken for the Assessment Year 2009-10, which decision was followed for the assessment year under consideration may not hold good further on the ground that Greater Hyderabad Corporation was notified only from 16.04.2007 (as extracted by AO in Page 11 of the Assessment order passed for the AY 2009-10) from which date the LB Nagar was clubbed with Hyderabad Municipal Corporation. He vehemently argued that the findings recorded for the Assessment Year 2009-10 that the disputed lands are within the prescribed limits from LB Nagar (Greater Hyderabad w.e.f 16.04.2007) may not hold good for the land sold during the Assessment Year under consideration in the month of September 2006 before such expansion. He pleads for directing the Assessing officer to treat the sale proceeds as exempt income generated from sale of exempted category of land in the interest of justice.

68. The ld. AR, alternatively, pleads for remanding the matter to the file of the Assessing officer to re examine the conditions stipulated in terms of Section 2(14) of the Act and this alternate plea is made especially in view of the non adjudication of the compliance of statutory conditions

prescribed u/s 2(14) of the Act by the First Appellate Authority in the impugned order.

69. The ld. DR Shri P. Sajit Kumar, JCIT, at the outset, submits the legal background of section 2(14) of the Income Tax Act,1961, which excludes "Agriculture land", from the definition of "Capital Asset", chargeable to capital gains on transfer of such asset. This exemption of agriculture land from taxation existed in income-tax legislation from the 1922 onwards till date, with slight modifications made to the provisions from time to time. He submits that from the year 1922 to 1961, the use of language under capital asset exclusion was "*any land which the income derived is agricultural income*" and from the year 1961 to 1969, the use of language under capital asset exclusion was modified to *"Agricultural land in India"*. Further, he submits that in the year 1970, the scope of exclusion of agriculture land from the definition of 'capital asset' was restricted by factoring provisions to exclude all agriculture land situated within the municipal limits or Boards having population of ten thousand or more and agriculture land within eight kilometres from some notified municipality limits. The measurement of distance from municipal limits got further modified from the year 2015 by factoring the distance based on the population of the municipalities. Thus, from the Assessment year 1970-

71, even agriculture land situated within the municipal limits or of a certain distance from municipal limits, have also been brought within the scope al asset' that would be chargeable to tax on its transfer. However, there is no definition of "Agriculture" or "Agriculture Land" to be found in the Act. Hence, for the meaning of 'Agriculture' and 'Agriculture Land', reliance will have to be drawn from the judicial interpretations and accordingly, the ld. DR relied on the decision of the Hon'ble Supreme Court in the case of CWT v. Officer-in-Charge (Court of Wards), as reported in [1976] 105 ITR 133 (SC), wherein, it was held as under:

- *One of the objects of the exemption seemed to be to encourage cultivation or actual utilisation of land for agricultural purposes;*
- *"Agricultural land" must be land which could be said to either actually used or ordinarily used or meant to be used for agricultural purposes;*
- *Mere fact that property was classified in revenue records as agricultural land was not conclusive and such entries could raise only rebuttable presumption:*
- *What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose;*
- *If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act.*

70. He submits that while deciding the above case, the Honourable Supreme Court heavily relied on its earlier judgement in the case of CIT v. Raja Benoy Kumar Saha reported in [1957] 32 ITR 466 (SC), wherein it was held that in the primary sense in which the term agriculture is

understood is agar-field and cultra-cultivation, i.e., the cultivation of the field. Subsequently, while upholding a decision of Hon'ble Gujarat High Court in the case of Smt. Sarifabibi Mohmed Ibrahim v. CIT as reported in (1993) 204 ITR 631 (SC), the Hon'ble Supreme Court reiterated that exemption of capital gain on transfer of agriculture land is available only, if such land is found used for cultivation at the time of transfer and after transfer by the purchaser and not just based on the classification of the land as per the land registers maintained by the State Government. Even to this date, the above judgement of the Hon'ble Supreme Court has not been altered or modified or over turned by its subsequent decision.

71. The ld. DR further submits that the only two concessions, the Income Tax law brought out was by way of introduction of section 54B w.e.f. AY-1970-71 and 10(37) from the AY-2005-06. These two concessions were brought in to protect the interest of genuine holders of agriculture land carrying on agriculture activity but such agriculture land falling within the meaning of Capital Asset under section 2(14) of the Act. Even these concessions are given, provided the agriculture land was demonstrated to have been used for agriculture purpose in the immediate two preceding years of such compulsory acquisition and moreover, the test laid out by the Honourable Supreme Court, to claim a land

transferred as an agriculture land, exempt from the definition of Capital asset within the meaning of section 2(14) of the Act, holds good even to this day.

72. Further, Shri P. Sajit Kumar, JCIT submits that any taxpayer, who claim their land transferred is not a capital asset, within the meaning of section 2(14), will necessarily have to demonstrate all the below mentioned aspects.

a. The land is classified as an agriculture land in the records of the state; and

b. The land is not situated within the area specified under item (b) of sub-clause (iii) section 2(14) of the Act;

c. The land was being continuously used by the seller for the purpose of agriculture till date and time of transfer; and

d. The land remained, being used for agriculture, even after the transfer, by the purchaser.

e. If, even one of the above four limbs is not satisfied or not substantiated, the claim of land being an agriculture land excluded within the meaning covered under section 2(14) of come Tax Act, is not admissible.

73. Heard both the parties and perused the material available on record. We note that the assessee placed on the record two sale deeds both dated 21.09.2006 which are at page 12 and 24 of the paper book,

wherein, the assessee sold two parcels of land each 5 acres for sale consideration of Rs.75,00,000/- each. The Assessing Officer, in the reopening proceedings, added Rs.1,50,00,000/- by giving index cost and determined capital gains stating that it is chargeable to tax being non-agricultural land.

74. We find the Assessing Officer had taken the distance from Hayathnagar to Turkayamjal village at 7 kms to conclude the said lands are non-agricultural land. The ld. AR contended that the distance taken from Hayathnagar is unjustified in view of the clause (2) to Explanation forming part of notification issued on 06.01.1994 stating that the limit should be applied only as it stood in 1994 for the purpose of determining the distance from the notified municipalities. The provision under section 2 of the Act is at page 1 of the paper book and on perusal of the section 2(14)(iii) (b) explains that *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*, meaning thereby, land situated beyond eight kilometres from the local limits of any municipality or cantonment, is

agricultural land. Further, we find Notification No. SO 10(E) [No. 9447 (F.No. 164/3/87-ITA-I)] at page 5 of the paper book issued by the Central Government having regard to the extent of, and scope for urbanization of the areas concerned and other relevant consideration, specifying the areas shown in (Col. 4) of the Schedule Annexed and falling outside the local municipality or cantonment board. This notification came into effect from 06.01.1994. On perusal of the Schedule annexed there, we find Hyderabad at S.No. 17 and the details of areas falling outside the local limits of municipality or cantonment board in (Col. 4), where it is clearly stated the scope for urbanisation areas upto a distance of 8 kms from the municipal limits in all directions.

75. In this regard, we find copy of certificate dated 09.11.2013 in native language issued by the Panchayat Secretary at page 39, true translation of which at page 40 of the paper book. On perusal of the same, we note that the Panchayat Secretary certified that the population of the Kammaguda village is 4445 as per 2011 census and the distance between LB Nagar Municipal Circle Office to Kammaguda village is approximately 14 kms. We note that the Greater Hyderabad Municipal Corporation was formed and came into effect from 01.09.2007 and on perusal of the circular, we find force in the arguments of the ld. AR that

the above circular issued on 06.01.1994 to determine the notified municipalities as it stood in 1994.

76. We find the decision of Hon'ble High Court of Madras in the case of P. Ashok Kumar in T.C.A. No. 268 of 2011 at page No. 12 of the paper book. The substantial question of law before the Hon'ble High Court was whether on the facts and circumstances of the case, the Tribunal was right in holding that non-cultivation of piece of land does not lose its character as an agricultural land unless the user had specifically got changed the nature of the land. The Hon'ble High Court was pleased to dismiss the said question of law by holding that entries made in the certificate issued by the Tashildar is important even there is no cultivation carried on the lands as per the land records. Another decision in the case of Sakunthala Vedachalam reported in (2015) 53 taxman.com 62 (Madras) at page No. 17 of the paper book, which held where lands were classified as agricultural land as per Revenue records and satisfied other conditions of section 2(14) of the Act, the fact that the assessee put the lands to commercial use was irrelevant. In the present case, as discussed above, the subjected lands are agricultural land in pursuance of section 2(14)(iii)(b) of the Act read with Notification issued by the Central

Government, fortified by the decisions of the Hon'ble High Court of Madras.

77. Therefore, in pursuance of the provisions under section 2 of the Act read with notification above, the subjected lands are situated beyond 8 kms and in our opinion, are agricultural lands. Further in support of the arguments, the ld. AR placed copy of Google Map showing the distance between LB Nagar as it stood in 1994 shows the distance between LB Nagar Municipality and Kammaguda at distance of 11.5 kms. Therefore, on an examination of copy of adangal/pahani at page 37, 38 and copy of certificate issued by the Panchayat Secretary at page No. 39, we hold that the subjected land is an agricultural land, exempt from taxation. Under the above facts and circumstances as well as Notification issued by the Central Government and in view of the decisions of Hon'ble High Court of Madras, we set aside the order of the ld. CIT(A) in confirming the addition made by the Assessing Officer on account of long term capital gains and accordingly, the ground Nos. 5 to 11 [issue No. 1 as per assessee] raised by the assessee are allowed.

I.T.A. No. 1646/Chny/2018 AY 2008-09

78. Ground No. 1 is general in nature and requires no adjudication.

79. The ld. AR drew our attention to ground No. 2 to 5 [issue No. 1 as per assessee] and submits that the said grounds can be heard together as those involves the issue regarding confirmation of the addition on account of purchase value of Kancheepuram land, levelling charges, fencing, brokerage and applicability of provisions under section 40A(3) of the Act for want of acceptable sources while rejecting the explanation offered by the assessee.

80. Brief facts, relating to the issue in hand as emanating from the assessment order, we note that the assessee is an individual engaged in real estate business. According to the Assessing Officer, no returns of income filed for the assessment years 2008-09, 2009-10 and 2010-11. An information received from AIR regarding cash deposits made by the assessee for the assessment year 2008-09 of ₹.48,14,900/-, for AY 2009-10 of ₹.1,00,76,770/- and AY 2010-11 of ₹.73,40,735/-. A letter dated 09.08.2012 was issued by the ld. CIT-VI, Chennai calling the assessee to furnish returns of income, which was unserved with postal comments "left". The Assessing Officer states that the assessee was misguiding the Income Tax Department and non-cooperation in giving whereabouts the assessee. The case of the assessee was reopened for the above assessment years 2008-09, 2009-10 and 2010-11 by issuing a notice

dated 03.12.2012, which was returned unserved with postal comments "door locked" and the said notice was affixed at the address in Plot No. 12, Door No. 19 of Brindavan Apartments, Lake View Road, Adambakkam, Chennai. In response to the above notice, the assessee was initially represented by the Authorized Representative and filed return of income admitting net loss of ₹.10,44,301/- basing on which, the Assessing Officer formulated main issue vide para 2 of the assessment order.

81. Regarding the issue in respect of purchase of land at Kancheepuram, taking into account of income and expenditure statement, the Assessing Officer did not accept the contention of the assessee of showing opening stock for AY 2008-09 as there was no closing stock shown in earlier year i.e., AY 2007-08. Accordingly, the Assessing Officer proceeded to add the amount of ₹.1,89,87,750/- on account of undisclosed source of income making applicable provisions under section 40A(3) of the Act. The assessee contended before the ld. CIT(A) that the said transaction does not represent opening stock but relate to purchase of 8 acres & 31 cents vacant land with independent source of funds at Kancheepuram costing Rs.1,16,34,000/- as the assessee is engaged into making investments, which is evident from para 3.2 of the impugned

order. The ld. CIT(A), considering the submissions of the assessee, held that no satisfactory explanation was offered by the assessee and by concurring with the views of the Assessing Officer, the addition was confirmed. For ready reference, the relevant portions from para 3.2 to 3.3.2 are reproduced herein below:

> *3.2 Appellant's submission before the CIT(A):*
>
> *The appellant's submission before the CIT(A) on the aforesaid issue is reproduced hereunder.*
>
> *"This transaction indeed does not represent the opening stock but relates to the purchase of 8 acres and 31 cents(3,57,300 sq.ft) of vacant land at Kanchipuram costing Rs. 1,16,34,000 and other expenses of the nature of leveling charges, fencing of land and brokerage, etc., altogether costing totally Rs.1,89,87,750/ during the Financial year 2007-08, relevant to the assessment year 2008-09.*
>
> *The Learned Assessing Officer did not accept the contention of the assessee that the purchase price was met out of sale proceeds of land at Kammaguda, Turkyamjal village, inherited by the assessee from his mother long back, during the Financial Year 2006-07. It is apt to mention that the Assessing Officer herself has by her order dated 03.03.2015 U/s144 r.w.s 147of the Income Tax Act, for the Ay 2007-08, has levied capital gains on the sale of the above referred land taking the consideration at Rs. 1,50,00,000/- (Copy of the referred assessment order attached herewith marked as Annex-1). As such the Assessing Officer has erred in coming to the conclusion that the assessee could not explain property the source for acquisition of the referred land. It is submitted that though it may not be possible to match one to one nexus with regard to the transactions undertaken by the assesses, it is nevertheless undeniable that the assessee infact had enough sources of funds for purchasing the referred land. It is also apt to mention that the Assessing Officer had made in the same assessment certain additions with regard to cash deposits and cheque deposits made into the bank account of the assessee as not explained properly and the AO should have appreciated that these amounts are also available to the assessee in making the investment in the referred property.*
>
> *It is also submitted that Section 40A(3) will not apply as the purchase of land has not been claimed as expenditure in computing the total income,*

since it was shown as closing stock also as there was no transaction of sale during the assessment year."

3.3 CIT(A)'s remarks and decision:

On the above-mentioned issue, I have carefully considered the AO's observation and the appellant's contention as mentioned above under para 3.1 and 3.2 respectively.

3.3.1 From the statement of facts, it is noticed that the assessee is doing real estate business. Vide letter dated 07.01.2017, the appellant admitted that even though he started the business, there was no sale and therefore he was not maintaining any books of accounts. The Assessing Officer while adding Rs.1,89,87,750 to the income returned found that the purchase of land at Kancheepuram shown as opening stock in the profit and loss account was not finding a place in the closing stock disclosed in the return for AY 2007-08. Besides, there are claims of expenditure like levelling charges, fencing of land and brokerage paid amounting to Rs.73,53,750. Since this is a transaction relevant for this Asst Year, it has to be held that the purchase of land along with the expenditure incurred have to be accounted for with reference to the source for such expenditure. Since books of accounts were not admittedly maintained and there is a claim of sale of another land at Kammaguda, Turkyamjal village and the consideration claimed to have been received both by way of advances and final consideration did not match on a one to one basis with reference to the purchase of the land at Kancheepuram and the claim of expenditure mentioned above, it has to be held that the closing stock which is a current asset appearing in the balance sheet which represents the investment of the appellant for which no satisfactory explanation was offered by the appellant. Even during the appeal stage, the appellant could not explain the opening stock with the help of Fund Flow statement. Therefore, I concur with the AO that it was out of undisclosed source of income.

3.3.2 In view of the above remarks, addition of opening stock as unexplained is confirmed and the appellant's ground is dismissed.

82. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before the Tribunal. The ld. AR submits that the ld. CIT(A) erred in confirming the assessment of ₹.1,89,87,750/-, which comprises of purchase value of Kancheepuram land and other expenses without assigning proper reasons and justification. Further, he has submitted that

the ld. CIT(A) failed to appreciate the said purchase for want of acceptable source without appreciating the sale of land sold as source of purchase of Kancheepuram land. The ld. AR vehemently argued that the ld. CIT(A) incorrectly confirmed the views of the Assessing Officer in making the addition under section 40A(3) of the Act. The ld. CIT(A) failed to appreciate that having looked into the irrelevant details/facts while not considering the relevant details/facts. The ld. AR drew our attention to page 42 of the paper book and argued that the assessee explained the source for said purchase of land before the ld. CIT(A) and the ld. CIT(A) failed to consider the sale proceeds received in the earlier year (2007-08) from the sale of agricultural land without giving any concrete findings. The ld. CIT(A) failed to give any finding on the disallowance made under section 40A(3) of the Act. The ld. AR prayed to delete the addition confirmed by the ld. CIT(A) and alternatively pleaded that the matter may be remanded to the file of the Assessing Officer/ld. CIT(A) for non-consideration of disallowance made under section 40A(3) of the Act.

83. The ld. DR submitted that the assessee has not engaged in real estate business. He has further submitted that the Assessing Officer has rightly not accepted the contention of the assessee having not showing the opening stock for the year under consideration being the value of

Kancheepuram land since no closing stock was shown for earlier year 2007-08. He submits that the assessee failed to show any evidence for purchasing the land at Kancheepuram and also claiming expenditure for fencing, levelling and brokerage. The assessee failed to prove the business expenditure.

84. Heard both the parties, perused the material available on record along with paper book filed by the assessee. The contention of the ld. AR is that the source of funds for purchasing the land at Kancheepuram and also claim of expenditure for fencing, levelling and brokerage was through sale proceeds of another land at Kammaguda, Turkayamjal village, Ranga Reddy District, State of Telangana. We find this line of argument was made before the ld. CIT(A) also, which is evident from para No. 3.2 of impugned order. The ld. CIT(A) did not accept the said contention only on the ground that there was no match on one to one basis with reference to the purchase of the land at Kancheepuram and claim of expenditure vide para No. 3.3.1 of the impugned order. In this regard, while dealing with ground Nos. 5 to 11 for AY 2007-08 [issue No. 1 as per assessee], held that no capital gain is chargeable in view of supporting documents showing the subjected lands are agricultural lands, whereby, we deleted the addition of Rs.1,50,00,000/- made by the Assessing Officer.

Therefore, we find force in the arguments of the ld. AR about the availability of funds in respect of sale of 2 parcels of land each 5 acres for a sale consideration of Rs. 75,00,000/- each vide two separate registered sale deeds both dated 21.09.2006, which are page Nos. 12 to 36 of the paper book. We note that the assessee claimed expenditure of Rs.1,89,87,750/-, which is inclusive of cost of land at Kancheepuram and expenditure for levelling charges, fencing of land and brokerage. On perusal of para 3.3.1 of the impugned order, we note that the ld. CIT(A) mentioned the claim of expenditure for levelling charges, fencing and brokerage for Rs.73,53,750/-. Since the assessee could able to show availability of funds to an extent of Rs.1,50,00,000/- arising out of sale of above said lands each 5 acres in AY 2007-08, in our opinion, the same funds are available in the hands of the assessee to that extent of Rs.1,50,00,000/-, which requires to be telescoped against the addition made in the year under consideration. Accordingly, the Assessing Officer is directed to verify and pass order as deemed fit. Thus ground Nos. 2 to 5 [issue No. 1 as per assessee] are allowed for statistical purposes.

85. Ground Nos. 6 & 7 [Issue No. 2 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in partly sustaining the disallowance of administrative expenses to an extent of ₹.5,22,150/-

as against the disallowance of ₹.10,44,301/- made by the Assessing Officer.

86. We note that the assessee claimed expenditure to an extent of ₹.10,44,301/- on account of wages, salary, rent, printing and stationary, advertisement, car loan interest, and interest on land. The Assessing Officer asked the assessee to produce ledger, bills and vouchers in support of the claim vide notice under section 142(1) of the Act. For not providing any evidences in support of the claim, the Assessing Officer disallowed the entire expenditure.

87. The assessee contended that the bills and vouchers have been destroyed in the unprecedented rain in November, 2008 before the ld. CIT(A). The ld. CIT(A) agreed in principle with the views of the Assessing Officer in disallowing the entire expenses, but, however, considering the submissions of the assessee, restricted the disallowance to ₹.5,22,150/- being 50% of total disallowance made by the Assessing Officer.

88. Before us, the ld. AR submits that the ld. CIT(A), having considered the genuine inability on the part of the assessee to produce necessary proofs and having considered incurring of expenditure, erred in confirming

50% of the disallowance. The ld. AR prayed that this Tribunal may take a lenient view in further restricting the disallowance to the extent of 20%.

89. The ld. DR vehemently opposed the argument of the ld. AR in seeking to restrict the disallowance to 20% and supported the order of the Assessing Officer arguing that in the absence of any evidence, the Assessing Officer has rightly disallowed the entire expenditure.

90. Having heard the submissions of both the parties, considering the facts and circumstances of the case, we note that admittedly, there is no evidence before the Assessing Officer in support of the claims made through income and expenditure statement. The reason for non-submission of the evidence were contended before the ld. CIT(A) and this Tribunal that due to unprecedented rain the relevant documents were got destroyed. On perusal of para 4.3.2 of the impugned order, we note that the ld. CIT(A), considering the said unprecedented event, held the disallowance made by the Assessing Officer is excessive and unreasonable, which in our opinion is reasonable in restricting the disallowance to 50%. Thus, we find no infirmity in the order of the ld. CIT(A) in restricting the addition to an extent of ₹.5,22,150/- as against ₹.10,44,301/-. Thus, ground Nos. 6 & 7 [issue No. 2 as per assessee] raised by the assessee are dismissed.

91. Ground Nos. 8 & 9 [issue No. 3 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in sustaining the addition of ₹.25,34,004/- on account of cash deposit in savings account on the basis of peak credit.

92. We note that the Assessing Officer found cash deposit in the savings bank accounts of Citi Bank to an extent of ₹.26,74,900/- and Kotak Mahindra Bank to the tune of ₹.21,40,000/- and credit card payments in different banks pertaining to the assessee. The assessee explained before the Assessing Officer that own funds were deposited in Kotak Mahindra Bank and the payments to credit card from the same SB account of Kotak Mahindra Bank. Further, it was explained through letter dated 05.08.2013 that cash deposit got from personal business and private finance. The said amounts were deposited in Standard Chartered Bank from withdrawals from ICICI Bank for transaction towards land purpose to show rosy picture to get bank loan. Further, it was also stated that the assessee has received advances from sale of agricultural land on various dates and deposited in the said SB account. The Assessing Officer, considering the submissions of the assessee, taking into account bank statement, which are reproduced in page 7 to 10 of the assessment

order, by adopting peak credit, made disallowance of ₹.25,34,004/- on account of unexplained cash.

93. Before the ld. CIT(A), it was submitted that being in the trade of real estate, cash transaction could not totally be avoided and in some cases the transactions had to take place in cash only. Further, the opening balance as on 01.04.2007 of ₹.3,75,514/- which is nothing but the closing balance of cash as on 31.03.2007 for the year under consideration and prayed not to reckon the said amount while computing peak level. The ld. CIT(A) found the submissions of the assessee are non-acceptable as there was no corroborative evidence in the form of books of account and cash flow statement and accordingly, confirmed the views of the Assessing Officer in adopting the peak credit.

94. Before us, the ld. AR submits that the quantification of the peak credit adopted by the Assessing Officer on various facts was wrong, invalid and prayed to give proper direction to the Assessing Officer by allowing the grounds of appeal in the interest of justice.

95. The ld. DR drew our attention to the assessment order and submits that the Assessing Officer rightly adopted the peak credit by considering the bank statement. The assessee failed to provide any corroborative

evidence before the ld. CIT(A) in support of his claim. He vehemently argued that there was no evidence filed by the assessee even before the Tribunal in support of claiming to remand the matter back to the file of the Assessing Officer.

96. Having heard both the parties, taking into account the entire facts and circumstances of the case, by considering the evidence of bank statement furnished by the assessee in support of his claim, we are of the opinion that the Assessing Officer has rightly considered the submissions made by the assessee vide his reply dated 19.07.2013, 05.08.2013 and 11.11.2013. Apart from the said submissions of the assessee, there was no new evidence filed before the ld. CIT(A) or even before the Tribunal. On perusal of the impugned order at para 5.3.1, we note that the ld. CIT(A) rightly confirmed view of the Assessing Officer in the absence of any evidence i.e., books of account and cash flow statement as contended by the Assessing Officer vide para 5.2 of the impugned order. Before us, as stated above, the assessee has not filed any evidence in support of claiming to remand the matter back to the file of the Assessing Officer. Therefore, we find no force in the arguments of the ld. AR. Thus, we find no infirmity in the order of the ld. CIT(A) and it is justified. Thus,

ground Nos. 8 & 9 [issue No. 3 as per assessee] raised by the assessee are dismissed.

97. Ground Nos. 10 & 11 [issue No. 4 as per assessee] raised by the assessee in challenging the action of the ld. CIT(A) in confirming the addition of ₹.54,71,694/- representing cheque deposit without assigning proper reason and justification.

98. We note that on verification of all the bank accounts of the assessee, the Assessing Officer found that there are many credits and debits through cheques, which are reproduced in para 5 of the assessment order. The Assessing Officer asked the assessee to explain all the transactions exceeding ₹.1 lakh in all his bank accounts. According to the Assessing Officer, no explanation was offered by the assessee. Further, it was observed by the Assessing Officer on analysis of income and expenditure statement, that the assessee has not admitted any sales in the year under consideration and it is the duty of the assessee to prove transaction of receipt of advance from buyers of Kancheepuram plot or Kammaguda land. In the absence of any evidence/ explanation, the Assessing Officer treated the cheque deposits of ₹.54,71,694/- as undisclosed source of income and added to the total income of the assessee.

99. Before the ld. CIT(A), it was contended that the Assessing Officer wrongly quoted an amount of ₹.1,75,000/- instead of ₹.25,000/-. The assessee requested the ld. CIT(A) to restrict the credit in respect of cheque deposit to ₹.51,47,294/-. Further, it was submitted by the assessee that he made deposits from his cash float from time to time into his wife's bank account Smt. Mahalakshmi and out of which, his wife issued him 19 cheques on various dates totalling to ₹. 42,70,235/-. The ld. CIT(A) found the submissions of the assessee as not acceptable. The ld. CIT(A) discussed the issue in para 6.3 of the impugned order. The ld. CIT(A) directed the Assessing Officer to verify assessee's claim in respect of cheques issued by the assessee for ₹.1,74,400/- and exclude the same from the addition, in case it is found, to be factually correct.

100. Before us, the ld. AR submits that the Assessing Officer fell in error in taxing the entire credits which defies fairness principles of taxation. He further submits that the Assessing Officer has not examined/considered the debit entries/utilization of such cheque deposits and vehemently argued that the Assessing Officer incorrectly treated the amounts in the bank account of wife of assessee as assessable income in the hands of the assessee. He referred to page 44, 47 & 48 of the paper book showing the break-up of amounts from the wife of the assessee and other credits.

He prayed to give a proper direction to the Assessing Officer to delete the addition made by allowing the related grounds of appeal for rendering justice.

101. The ld. DR strongly pleaded that the assessee has not filed any evidence before the Assessing Officer in explaining the transactions which are cited in para 5 of the assessment order. The ld. DR has submitted that there was no evidence filed by the assessee even before the Tribunal in support of claiming to remand the matter back to the file of the Assessing Officer.

102. Having heard both the parties and taking into account the facts and circumstances of the case, we note that admittedly there was no evidence before the Assessing Officer in explaining the transactions which reflected in para 5 of the assessment order. The assessee vide reply dated 24.02.2014 furnished source for cheque deposit from Smt. Mahalakshmi wife of the assessee, Sheetal Enterprises, Munirathnam Naidu and capital account. The Assessing Officer doubted the financial capacity of assessee's wife as she was not filing any return of income. Further, he observed that regarding Sheetal Enterprises, the assessee has not explained as to the party from whom received, their address, PAN and confirmation. For the receipt from Munirathnam Naidu, the assessee has

not furnished his address, PAN and confirmation during the course of assessment proceedings. Therefore, the Assessing Officer disallowed the above said cheque deposits for having no corroboratory evidences in support of the claim made by the assessee. The assessee could not bring any evidence before the ld. CIT(A) as well as before this Tribunal. But, however, taking into account the submissions regarding the assessee's deposit of his monies into his wife's account and again the same has been disbursed to the assessee by way of cheque is not acceptable since the assessee's wife has not filed any return of income. We find that the ld. CIT(A) directed the Assessing Officer for verification regarding incorrect mentioning of ₹.1,75,000/- instead of ₹.25,000/- as contended by the assessee, which clearly shows that the assessee has no evidence regarding other cheque deposits except the above said item. On perusal of page 86 of paper book, wherein, it is noted that the assessee received Rs.1,40,000/- and Rs.5,00,000/- on 02.11.2007 and 03.11.2007 respectively. Again, the assessee transferred to his wife's account on 12.11.2007 and 14.11.2007 to an extent of Rs.6,00,000/- and Rs.40,000/- respectively. Therefore, we find force in the arguments of the ld. AR that the amounts were deposited in assessee's wife's account and again she transferred the same to assessee's account. Therefore, the addition to an extent of Rs.6,40,000/- is deleted and remaining amount Rs.47,77,694/-

is sustained [54,17,694 – 6,40,000]. Thus, ground No. 10 & 11 [issue No. 4 as per assessee] are partly allowed.

103. Ground No. 12 & 13 [issue No. 5 as per assessee] raised by the assessee challenging the action of the ld. CIT(A) in sustaining the investment to an extent of ₹.17,45,000/- on account of unexplained investment at Madikapakkam flat.

104. We note that the assessee claimed purchase of flat at Ram Nagar, Madipakkam for a consideration of ₹.49,95,000/-. In response to the notice of the Assessing Officer, the assessee explained the source for purchase of the above flat as bank loan of ₹.32.5 lakhs from Reliance Capital and balance of ₹.17,45,000/- by cash out of his own savings and agricultural income realized from 18 acres of land and advance received towards sale of agricultural land in Andhra Pradesh. According to the Assessing Officer, the assessee produced only the loan document from Reliance Capital and no evidence furnished regarding cash payment. Accordingly, in the absence of any corroborative evidence towards cash payment of ₹.17,45,000/-, the Assessing Officer added the same to the total income of the assessee as unexplained investment under section 69 of the Act.

105. Before the ld. CIT(A), it was contended that when the Assessing Officer has chosen to tax the cheque deposits and peak level cash balance as taxable income, she should have appreciated that the assessee had enough cash flow to meet the payment of ₹.17,45,000/-. The ld. CIT(A) found the submissions of the assessee as not acceptable regarding availability of cash in respect of cheque deposits and peak level cash balance as taxable income by holding that in the absence of books of account and fund flow statement demonstrating the nexus between the source of funds and the date on which the payment in cash towards investment in flat was made. Accordingly, the ld. CIT(A) confirmed the views of the Assessing Officer.

106. Before us, the ld. AR submits that the impugned addition as confirmed by the ld. CIT(A) was only made on the presumption of deficit of source for purchase of flat at Madipakkam by completely overlooking and brushing aside the submissions of the assessee. Further he submits that the source for said purchase of flat was out of funds already available and hand loans taken by the assessee during the assessment year under consideration. The said stand of the assessee is fortified based on the copies of the loan sanctions/disbursements communications at pages 127 to 142 of the paper book. It was further submitted that the ld. CIT(A),

without considering the same, confirmed the order of the Assessing Officer without giving any concrete findings in the impugned order. The ld. AR prayed to delete the said addition considering the source available from the hand loans taken during the assessment year 2008-09 and the sources emanating from the standalone addition made by the Assessing Officer during the assessment year under consideration. Further, alternatively, he also prayed for remanding the matter back to the file of the Assessing Officer/ld. CIT(A) especially in view of the cryptic findings recorded in the impugned order for rendering justice. The ld. DR relied on the order of the ld. CIT(A).

107. Having heard both the parties, we note that the assessee has purchased a flat in Madipakkam for a consideration of ₹.49,95,000/-. It was stated that the assessee has availed loan of ₹.32.50 lakhs from Reliance Capital for which, the Assessing Officer has given benefit, but, however, no benefit was given to balance amount of ₹.17,45,000/-, which was claimed to have paid in cash. The assessee claimed that the said cash balance was available with him out of agricultural income derived from 18 acres of land and advance received towards sale of agricultural land in Andhra Pradesh and also out of his own savings. On perusal of para 8 of the assessment order, we note that no evidence was filed in

support of agricultural income as the assessee has not admitted any agricultural income in any of the returns filed, receipt of advance for sale of agricultural land in Andhra Pradesh and also his own savings. The Assessing Officer observed that since the source of cash payment was not proved, taking into account the issue of agricultural income and sale of agricultural land, which were discussed in the assessment year 2009-10, as discussed above, the Assessing Officer has given benefit of bank loan as availed from Reliance Capital and in the absence of any evidence, the payment of balance cash payment of ₹.17,45,000/- out of ₹.49,95,000/- was treated as unexplained investment under section 69 of the Act. On perusal of the ld. CIT(A)'s order at page 11 & 12 of the impugned order, we find that the ld. CIT(A) held that the assessee failed to prove the nexus between the source of fund and the date on which the payment in cash towards investment in flat was made vide para 7.3.1. of the impugned order. Before us, the ld. AR drew our attention to page 105 of the paper book, which is a sale deed executed by M/s. Rajathi Promoters in favour of the assessee subjecting sale of two properties in Schedule B and Schedule C, which is at page 126 of the paper book. On perusal of the said sale deed, in its entirety, we find no details of payment by the assessee and acknowledgement of the payment by the sellers. Therefore, it clearly shows that the ld. CIT(A) rightly confirmed the views

of the Assessing Officer in respect of source of cash payment in the absence of any evidence, having no evidence as such supporting the submissions of the ld. AR before us, we find no infirmity in the order of the ld. CIT(A) on this issue and it is justified. Thus, ground Nos. 12 & 13 [issue No. 5 as per assessee] raised by the assessee are dismissed.

108. Ground Nos. 14, 15 and 16 are general in nature and requires no adjudication.

109. The assessee also filed wealth tax appeals in WTA Nos. 43 & 44/Chny/2018 for the assessment years 2007-08 and 2008-09 respectively against the common orders dated 26.02.2018 passed by the ld. CIT(A) – 14, Chennai.

110. Now, we shall take wealth tax appeal in W.T.A. No. 43/Chny/2018 AY 2007-08.

111. The assessee raised ground Nos. 1 to 2.2 amongst which only issue emanates for our consideration is whether the ld. CIT(A) is justified in confirming the order of the Assessing Officer in treating the agricultural land as urban land for the purpose of levying wealth tax.

112. We note that the facts emanating from the assessment order are that the assessee sold 10 acres of land on 21.09.2006 vide two sale deeds No. 16092/2006 and 16093/2006. According to the Assessing Officer, the value of 7.39 acres of land as on the valuation date 31.03.2007 and 31.03.2008 is Rs.1,10,85,000/-, which is worked out at the rate of Rs.15,00,000/- per acre. Accordingly, the Assessing Officer levied wealth tax of Rs.1,79,115/- being 1% on the net value of wealth plus interest at 1% vide his order dated 03.03.2015. As aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the ld. CIT(A) submitting that the quantum appeals under Income Tax Act are pending before the ld. CIT(A) with a contention that no capital gain tax is chargeable on agricultural lands. The ld. CIT(A), however, confirmed the view of the Assessing Officer in levying wealth tax.

113. While dealing the quantum appeal under Income Tax Act for AY 2007-08 in ITA No. 1623/Chny/2018, we held that the lands sold by the assessee are agricultural lands and no long term capital gain is chargeable to tax basing on the detailed finding in AY 2009-10. The relevant held portion for the AY 2007-08 is reproduced below for ready reference:

> *77. Therefore, in pursuance of the provisions under section 2 of the Act read with notification above, the subjected lands are situated beyond 8 kms and in our opinion, are agricultural lands. Further in support of the*

arguments, the ld. AR placed copy of Google Map showing the distance between LB Nagar as it stood in 1994 shows the distance between LB Nagar Municipality and Kammaguda at distance of 11.5 kms. Therefore, on an examination of copy of adangal/pahani at page 37, 38 and copy of certificate issued by the Panchayat Secretary at page No. 39, we hold that the subjected land is an agricultural land, exempt from taxation. Under the above facts and circumstances as well as Notification issued by the Central Government and in view of the decisions of Hon'ble High Court of Madras, we set aside the order of the ld. CIT(A) in confirming the addition made by the Assessing Officer on account of long term capital gains and accordingly, the ground Nos. 5 to 11 [issue No. 1 as per assessee] raised by the assessee are allowed.

114. In view of the above, since we held that no capital gain is chargeable for the AY 2007-08, the wealth tax levied for the AY 2007-08 is not maintainable. Thus, grounds raised by the assessee are allowed.

W.T.A. 44/Chny/2018 AY 2008-09

115. In this appeal, the assessee challenged levy of wealth tax by treating the agricultural land as urban land by the Assessing Officer, which was confirmed by the ld. CIT(A) on further appeal.

116. Since we have taken a view in AY 2007-08 that no wealth tax is leviable basing on the finding in quantum appeal under Income Tax Act by holding that no capital gain is chargeable on agricultural land, the wealth tax levied for the AY 2008-09 is also not justified. Thus, the ground raised by the assessee are allowed.

117. Since we have adjudicated the wealth tax appeals, on merits, in favour of the assessee, the petition under Rule 29 of Income Tax

(Appellate Tribunal) Rules, 1963 for admission of additional evidence filed by the assessee stands closed.

118. In the result, all the appeals filed by the assessee in ITA No. 1623, 1624, 1625 & 1646/Chny/2018 are partly allowed for statistical purposes and the appeals filed in W.T.A. Nos. 43 & 44/Chny/2018 are allowed.

Order pronounced on 31st July, 2024 at Chennai.

Sd/-	Sd/-
(JAGADISH)	(S.S. VISWANETHRA RAVI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 31.07.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.