

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

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1159/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s. R.K. Investments Ground Floor, Block-IV, No.184-187, Temple Steps, Anna Salai Little mount, Chennai-600 015.	बनाम/ Vs.	DCIT Non-Corporate Circle-3(1) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAAFR-3413-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri R. Vijayaraghavan (Advocate)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	31-07-2024
घोषणाकी तारीख / Date of Pronouncement	:	12-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax Chennai-4 (Pr.CIT) vide impugned order dated 08-03-2024 in the matter of an assessment framed by Ld. AO u/s.147 r.w.s 144B of the Act on 28-03-2022. The grounds taken by the assessee are as under: -

1. The Order of Principal Commissioner of Income tax is contrary to law facts and circumstances of the case.

2. The PCIT erred in assuming jurisdiction in as much as the very issue whether the land transferred was agricultural land subject matter of examination and investigation at the time of regular assessment under section 143(3) as well as the reopened assessment under section 147.

3. The PCIT ought to have appreciated that even at the time of regular assessment dated 28 December 2016, the Appellant had filed complete details of the land including its aerial distance from the nearest municipality, chitta and adangal to show that it was agriculture land and was beyond the limits prescribed under Section 2(14) in support of his claim that the impugned land did not constitute a capital asset u/s 2(14)(lii) and profit on sale of the land is not subject to Capital gains u/s45.

4. PCIT ought to have appreciated that the Assessing Officer after examining all the details filed by the appellant was satisfied that the impugned land was agricultural in nature and was not a capital asset as per Section 2(14)(iii). Consequently, the assessing officer after due examination accepted that profit on sale of the agriculture land was not subject to capital gains under sec 45.

5. PCIT ought to have appreciated that subsequently the assessment was reopened, and a notice was issued under section 148 dated 31st March 2021 specifically for verifying the exemption from capital gains claimed by the Appellant that the land transferred was agricultural land and hence profit on sale of land is not assessable to capital gains.

6. PCIT ought to have appreciated that Assessing Officer who had reopened the assessment specifically to verify the nature of the land transferred, after a detailed examination was satisfied with the submissions and documents furnished by the appellant, came to the conclusion that the land transferred was agricultural in nature and hence profit on sale of that land is not subject to tax. In the order made u/s. 143(3) r.w.s 147 dated 28.3.2022 after a detailed examination of facts and law, he has not made any addition on account of transfer of impugned land specifically mentioning the same on body of the order.

7. PCIT ought to have appreciated that the issue whether the impugned land was agricultural land or not, was considered in detail on the basis of submissions by the appellant of relevant documents at the time of original assessment as well as in the course of reassessment proceedings, particularly when the assessment was reopened only to see whether the impugned land would constitute a capital asset and on both occasions, the concerned assessing officers were satisfied that the impugned land was agricultural in nature and did not constitute a capital asset and therefore profit on sale of impugned land he is not accessible to Tax Act capital gains.

8. The PCIT ought to have appreciated that the Appellant entered into only an agreement for sale and a token amount was paid and the possession was not given to the Agreement holder.

9. The PCIT ought to have appreciated that this agreement was cancelled abinitio Subsequently cancellation agreement was entered with each of the agreement holders in 2015 and 2017.

10. The PCIT ought to have appreciated that in view of the fact that the possession was not handed over to agreement holders and subsequently the agreement was cancelled and the firm continues to be the owner of the property right from the beginning to till date.

11. In the agreement for sale, in February, 2014 there was no transfer of ownership and in the Encumbrance Certificate it was only mentioned as an agreement. Subsequently, in the EC for the scheduled land in 2015/2017 cancellation of the agreement was also incorporated.

12. The PCIT ought to have appreciated that there was no sale but only an agreement to sell which was subsequently cancelled and hence there was no income on sale of land for the year under appeal.

13. Without prejudice, even if it is assumed as a sale, as the land was agricultural land, any deemed profit arising from the transaction is exempt from tax.

14. PCIT ought to have appreciated that when the issue regarding the nature of the impugned land after the facts were thoroughly examined by the assessing officer at the time of reassessment as explained in the order under section 147, the proceedings under section 263 is without jurisdiction and would constitute super imposition of the conclusions of the PCIT on the assessing officer's view.

15. PCIT ought to have appreciated that the view of the assessing officers at the time of making regular assessment under section 143(3) as well as reassessment under section 147 on the basis of submissions and evidence holding that the land to be an agricultural land, constitute an acceptable view based on records and hence the orders of regular assessment as well as reassessment does not suffer from any error and PCIT erred in assuming jurisdiction under section 263 to super impose his views on the views of the assessing officers and which are not unsustainable in law.

16. PCIT ought to have appreciated that the jurisdictional High Court in the case of Sakunthala Vedachalam (Mrs.) v. ACIT (2014) 369 ITR 558 Mad HC and CIT vs P Ashok Kumar TCA 268/2011 on 2 Jan 2019 Mad have held that once the lands are classified as Agricultural lands in the land records, profit on sale of such land is not subject to capital gains.

17. PCIT also ought to have appreciated the jurisdictional courts verdict through The High Court of Madras in the case of Principal Commissioner of Income Tax-I, Coimbatore v. K.P.R. Developers Ltd. Where assessee sold agricultural land and claimed capital gain from sale as exempt, since Tahsildar while submitting report to Assessing Officer had enclosed copies of computerized patta, which showed that land was wet land and deemed to be agricultural land, merely because an agriculture activity could not be done on said land for various reasons including natural causes, it did not cease to be an agricultural land, thus, same could not be considered as capital asset as per section 2(14) and capital gain arising from same was exempt from tax. The High Court of Madras in the case of Mr P 5 Raghupathy [2018] 96 taxmann.com 200. The High Court of Madras in the case of Mr. N Rangabhasyam - [2017] 84 Taxmann.com 303

SUPREME COURT OF INDIA - SLP Dismissed - *Commissioner of Income-tax* v. Venkateswara Hospital [2019] 106 taxmann.com 283 (SC) - Where High Court upheld Tribunal's order that land sold by assessee did not fall within meaning of capital asset under section 2(14) as it was classified as dry land for which Kishtu had been paid and, moreover, mere fact that adjacent land was divided into plots for sale could not a ground to conclude that land sold by assessee was for purpose of development, SLP filed against order of High Court was to be dismissed. The Apex Court has emphasized the classification in revenue records, which squarely applies in assessee's case, therefore, it is once again reiterated that lands were agricultural in nature.

18. PCIT has not brought on record any new fact or finding to dislodge the conclusions arrived at by the two assessing officers in the course of making assessment as well as reassessment to enable him to assume jurisdiction under sec 263.

19. The PCIT ought to have appreciated that for claiming exemption under Section 2(14)(iii), provisions are clear and once they are satisfied, the relief under section 45 read with section 2(14)(iii) would have to be granted and there is no ambiguity in the claim of the appellants in view of the supporting documents filed and accepted by two assessing officers

independently. Hence the decisions relied on by PCIT are not relevant to the issue on hand.

20. The PCIT having not found any fault with any of the claims or submissions made by the appellant and had not pointed out any error in the orders of the AO accepting the claim of the Appellant that what was sold was agricultural land, erred in setting aside the assessment, particularly when the AO had examined the issue and had accepted the submissions and claim of the Appellant.

21. The PCIT on the basis of the document filed ought to have accepted that the land sold was Agricultural land.

22. When two views possible and the AO has taken one possible view, order not erroneous. Appellant relies on the following decisions: **Malabar Industrial Co Ltd v CIT 243 ITR 83 SC. CIT v Max Inda Ltd 295 ITR 282 SC. CIT Vs Mepco Industries Ltd 294 ITR 121 (Mad).**

23. **[2023] 147 taxmann.com 469(Orissa) HIGH COURT OF ORISSA** Commissioner of Income-tax v . Dhaneswar Rath Institute of Engineering & Medical Sciences • Where Assessing Officer during scrutiny proceeding had allowed assessee's claim of exemption under section 11 in regard to depreciation as application of income after conducting adequate enquiry and considering all documentary evidence furnished by assessee, impugned revisionary proceedings initiated by Commissioner (Exemptions) under section 263 on mere statement that no documentary evidence was submitted by assessee in support of its claim was liable to be quashed.

24. [2019] 110 taxmann.com 109 (Madras) HIGH COURT OF MADRAS, Kumar Rajaram v. Income-tax Officer (International Taxation 2(1)), Chennai, Where a property belonging to assessee's father was sold as per his father's Will and assessee computed capital gain after reducing payments made to charitable institutions and certain expenditure incurred towards execution of sale of property, since said payments were made as per Will, same were correctly excluded while computing capital gain on sale of property by assessee. Whether, on facts, Assessing Officer was justified in accepting sale consideration declared by assessee and, thus, impugned revisional order was to be set aside - Held, yes [Paras 5,8,10 and 12] [In favour of assessee.

2. The Ld. AR advanced arguments by submitting that the assessee's case was specifically reopened to examine the impugned issue and it was duly considered by Ld. AO and therefore, revision was bad-in-law. Reliance has been placed on various judicial decisions as narrated in the grounds of appeal. The Ld. CIT-DR supported the directions given by Ld. Pr. CIT in the revisionary order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident firm was assessed u/s 143(3) on 28-12-2016. Subsequently, the case was reopened and notice u/s 148 was

issued on 31-03-2021 for the reason (Page 19 of the paper-book) that the assessee sold certain land and claimed exemption from capital gain stating that the lands sold was used for agricultural activities. However, the said land was not under cultivation up-to 31-03-2012. If the land was put into agricultural activities, the assessee must have incurred expenditure and claimed the deduction of the same from the agricultural income. No such claim was made by the assessee. It was evident that the land was not used for agricultural activities for the last two years prior to the date of transfer of land. The exemption was allowed to the extent of Rs.815.73 Lac without any supportive documents. Therefore, the exemption was to be disallowed and the income was to be brought to tax as Long-Term Capital Gains. Accordingly, the reasons were recorded and the case was reopened wherein various details were called from the assessee in this regard during the course of re-assessment proceedings.

3.2 The assessee, vide its reply dated 10-03-2022, inter-alia, submitted that the land remained agricultural land throughout the period of holding which was evident from revenue records and other documents. The assessee consistently reflected agricultural income in the earlier years for which necessary amendment was made in the partnership deed. The allegation that no expenditure was claimed was factually incorrect since the assessee duly mentioned the agricultural income as well as expenses. The assessee also enclosed revenue records like Patta and evidence that the land was classified as Dry Maanavari Type wet lake single crop type etc. The assessee also referred to various judicial decisions to support its claim.

3.3 Considering assessee's submissions and documentary evidences, Ld. AO framed an assessment u/s 147 r.w.s.144B on 28-03-2022

wherein Ld. AO rejected assessee's objections to reopen the assessment proceedings. In para-9 of the order, Ld. AO took cognizance of assessee's reply dated 10-03-2022 and held that assessee's claim of LTCG was correct. The Ld. AO also examined the issue whether the land was held as stock-in-trade or not. In para-13, Ld. AO concurred that the subject land was sold as an agricultural land only. Accordingly, no addition was made and income assessed u/s 143(3) at Rs.71.96 Lacs was accepted. The assessment was accordingly finalized vide order dated 28-03-2022.

Revisionary Proceedings

4.1 This order was subjected to revision u/s 263 by Ld. Pr. CIT vide impugned order dated 08-03-2024. In this order, it has been alleged that the issue whether the land sold was agricultural land or not was not at all examined by AO nor was any evidence submitted by the assessee to that effect. Moreover, whether the land satisfies the provisions of Sec. 2(14)(iii) was not examined by Ld. AO. It was noted by Ld. Pr.CIT that two basic issues were there for consideration of Ld. AO i.e., whether the land in question could be held to be an agricultural land and secondly, if the said land was agricultural in nature, then as to whether it satisfied the provisions of Sec. 2(14)(iii) or not? However, this issue was not at all examined by Ld. AO.

4.2 Considering the same, the assessee was show-caused. The assessee assailed the revision of the order and submitted that the case was reopened specifically on the ground that the assessee claimed exemption u/s. 2(14)(iii) on sale of agricultural land. During the course of reassessment proceedings, various replies were furnished on the basis of which Ld.AO concluded that land sold was an agricultural land.

Therefore, the issues were duly examined and therefore, the order could not be revised in terms of various judicial decisions. It was also submitted that in this year only agreement of sale was entered and final conveyance deed for transferring the title was not executed. Accordingly, the assessee contended that as such there was no transfer as the land continued to be held in the name of the assessee firm.

4.3 However, Ld. Pr. CIT observed that for the land to be treated as an agricultural land, actual activities were required to be carried out on the said land. The Ld. AO did not consider this issue. The assessee also did not furnish any evidence to demonstrate sale and purchase related to agricultural activities and also failed to explain that the land was not capital asset as per sec.2(14)(iii). The Ld. AO also did not examine whether the land was located beyond the stipulated distances from Municipality or Cantonment Board depending on the population as per the last preceding census. Finally, considering Explanation-2 to Sec. 263, the assessment order dated 28-03-2022 was held to be erroneous and prejudicial to the interests of revenue. Accordingly, the order was set aside with a direction to Ld. AO to make necessary enquiries on the aforesaid lines and pass a fresh order after providing due opportunity of hearing to the assessee. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the discussion in preceding paragraphs, it could be seen that though regular assessment was framed u/s 143(3), the case of the assessee was reopened and notice u/s 148 was issued on 31-03-2021. A copy of the same has been placed on record. Upon perusal of the same, it could be seen that Ld. AO formed reason of escapement of

income by observing that the assessee sold certain land which was claimed to be an agricultural land and accordingly, claimed exempt from tax. However, it was the observation that the said land was not under cultivation up-to 31-03-2012. No agricultural expenses were shown to have been incurred by the assessee on account of agricultural activities which would vitiate the claim of the assessee. It was also observed that the land was not used for agricultural activities for the last two years prior to the date of transfer of land and the exemption was allowed without any supportive documents. Therefore, the deduction as claimed by the assessee was to be disallowed and the income was to be brought to tax as Long-Term Capital Gains. During the course of reassessment proceedings, various details were called from the assessee in this regard which were duly furnished. Thus, the case was reopened specifically to verify the claim of the assessee regarding exemption of capital gain on sale of certain land which was claimed by the assessee to be an agricultural land.

6. The assessee furnished documents evidencing the fact that the land remained agricultural land throughout the period of holding which was evident from revenue records and other documents. It was also stated that the assessee consistently reflected agricultural income in the earlier years. The allegation that no expenditure was claimed was also refuted. The assessee also enclosed revenue records like Patta and various evidences that the land was classified as Dry Maanavari Type wet lake single crop type etc. The assessee also referred to various judicial decisions to support its claim. All these details were furnished vide reply dated 10-03-2022, a copy of which has been placed in the paper book. In this reply, the assessee relied on various decisions of

Hon'ble High Court of Madras which include the decision in **K.P.R.Developers Ltd. (117 Taxamnn.com 822); Sakunthala Vedahalam (53 Taxmann.com 62); P.S.Raghupathy (96 Taxmann.com 200); Dr. N.Rangabhasyam (84 Taxmann.com 303).**

7. Considering assessee's submissions and documentary evidences, Ld. AO framed an assessment u/s 147 r.w.s.144B on 28-03-2022 accepting the claim of the assessee. In para-9 of the order, Ld. AO took cognizance of assessee's reply dated 10-03-2022 and held that assessee's claim of LTCG was correct. The Ld. AO also examined the issue whether the land was held as stock-in-trade or not and relied on a decision of Hyderabad Tribunal in this regard. In para-13, Ld. AO concurred that the subject land was sold as an agricultural land only. Accordingly, no addition was made and income assessed u/s 143(3) at Rs.71.96 Lacs was accepted.

8. In the light of above stated factual matrix, the inevitable conclusion would be that the assessee's case was specifically reopened to examine the claim of deduction with respect to agricultural land and the assessee furnished sufficient documentary evidences in support of the same. After due consideration, Ld. AO accepted the claim of the assessee which was in line with settled judicial precedents as cited by the assessee which clearly supported the case of the assessee. Therefore, it could not be said that the impugned issue was not examined by Ld. AO and necessary enquiries were not made by Ld. AO while framing the assessment. The Ld. AO, in our considered opinion, duly considered the submissions of the assessee, perused various case laws and finally accepted the claim of the assessee with due application of mind. The Ld. AO, having satisfied with assessee's claim, thought it fit not to make any

further enquiries in this regard. The same was one of the possible views which is not shown to be contrary to any law. We do not find any lack of enquiry as alleged in the impugned order. Therefore, Explanation-2 to Sec.263 would not apply in the present case. Another factor to be noted is that the assessee has offered agricultural income of Rs.3.50 Lacs in the return of income which has duly been accepted by Ld. AO and no disturbance thereof has been made by Ld. Pr. CIT to that effect in the impugned order. Therefore, considering the facts and circumstances of the case, the revision of the order could not be held to be justified. Therefore, we quash the impugned order and allow the appeal of the assessee.

9. The appeal stand allowed in terms of our above order.

Order pronounced on 12th August, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :12-08-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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