

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI SANDEEP SINGH KARHAIL, JM**

**ITA No. 310/Coch/2024  
Assessment Year: 2020-21**

Elavanchalil Abdul Basheer ..... Appellant  
Oittannmakm, Koduvally, Kozhikode 673572  
[PAN: BBWPB4939D]

Vs.

The Income Tax Officer, Ward-2(2), Kozhikode ..... Respondent

Appellant by: Shri C.B.M. Warriar, CA  
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 27.03.2024  
Date of Pronouncement: 14.05.2024

**ORDER**

**Per: Inturi Rama Rao, AM**

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 23.02.2024 for Assessment Year (AY) 2020-21.

2. Brief facts of the case are that the appellant is an individual deriving income under the head 'agriculture'. The return of income for AY 2020-21 was filed on 21.12.2020 declaring income of Rs. 4,60,00,000/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2(2), Kozhokode

(hereinafter called "the AO") vide order dated 23,09.2022 passed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961 (the Act) at a total income of Rs. 4,55,83,080/-. While doing so, the AO made addition of Rs. 4,55,83,080/- by disallowing the claim for exemption of capital gains on sale of agricultural land in survey No. 143/34, Kattippara Village, Thamarassery, Kozhikode.

3. The factual background leading to the above addition is that during the previous year relevant to the assessment year under consideration the appellant received a total consideration of Rs. 5,09,24,950/- on sale of following agricultural land: -

Sl. No.	Agricultural Income	Date of sale	Amount
1	Property: 1 Re Survey Number 159/4 Thrikkaipetta village, Meppadi, Wayanad	04.12.2019	28,11,250
2	Property: 2 Survey Number 143/34 Kattippara Village, Thamarassery, Kozhikode	10.02.2020	3,93,700
3	Property: 3 Re Survey Number 90/3 Thrikaipetta Village, Meppadi, Wayanad	02.04.2019	4,64,10,000
4	Property: 4 Survey Number 140/1 Kattippara Village, Thamarassery, Kozhikode	03.02.2020	13.190,000

After claiming expenditure of Rs. 49,24,950/- the balance amount of Rs.4,60,00,000/- was claimed to be exempt from tax in respect of the property situated at Survey No. 90/03, Thrikaipetta Village, Meppadi, Wayanad. The AO noted that the said property was sold to

Vincentian Society for a consideration of Rs. 4,64,10,000/- on which TDS of Rs. 4,64,100/- was paid by the buyer of the property. Based on this information the appellant was called upon to show cause as to why the above property cannot be considered as non-agricultural land and also submitted the evidence in support of the agricultural expenditure incurred. It was stated that for failure of the assessee to produce the evidence in support of the claim that the land sold was agricultural land, the AO has treated the land as non-agricultural land and accordingly the income was brought to tax after deducting the indexed cost of acquisition of Rs. 8,26,920/-. The balance amount of Rs. 4,55,83,080/- was brought to tax as short term capital gains.

4. Being aggrieved, an appeal was filed before the CIT(A), contending that the subject lands were agricultural lands and not capital asset within the ambit of section 2(14)(iii) of the Act and the appellant also produced the evidence in the form of certificate issued by the Executive Engineer, PWD Roads Division, Wayanad certifying the distance between the location of the lands and the municipal border. However, the CIT(A) had proceeded by holding that in the absence of evidence in the form of 7/12 extract from the Revenue authorities the character of the land cannot be determined, especially in the absence of evidence of agricultural activity, and placing reliance on the judgement of the Hon'ble Kerala High Court in the case of Sreedhar Asok Kumar v. CIT [2018] 89 taxmann.com 145 (Ker) confirmed the addition.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. The learned counsel for the assessee submitted that during the course of proceedings before the CIT(A) the appellant filed certificate from the Village Officer certifying the distance as well as 7/12 extract, etc. However, the CIT(A), without taking into consideration the same, merely confirmed the addition. It is further submitted that the lower authorities merely swayed away by the fact that the land was sold to a trust for commercial purpose and huge consideration was received. He further submitted that there is no evidence to show that the said land is not agricultural land.

7. On the other hand, the ld. CIT-DR, relying on the orders of the lower authorities, submitted that no interference is called for.

8. We have heard the rival contentions and perused the material available on record. The issue that arises for our determination is whether the subject lands can be considered as agricultural land for the purpose of exemption from tax of the gains arising on sale of the said lands. On a mere reading of the provisions of sub-section (iii) of section 2(14) of the Act, it would be clear that only those lands, which come under clauses (a) & (b) of sub-clause (iii) can be considered as capital asset and the profits and gains arising from sale of such lands alone are taxable for income tax purposes. For better

appreciation the relevant provisions of section 2(14) of the Act are extracted below: -

***“Definitions.***

*2. In this Act, unless the context otherwise requires,—*

.....

*(iii) agricultural land in India, not being land situate—*

*(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or*

*(b) in any area within the distance, measured aially,—*

*(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or*

*(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.”*

9. We notice that the term “agricultural land” was not defined under the provisions of the Income Tax Act, 1961. The term has to be understood as in a common parlance for which the assessee claiming that the lands are agricultural should adduce necessary evidence. Whether a particular land is agricultural or not is essentially a question of fact. On the facts and circumstances of the case, it is found that a particular land is agricultural land, then it

cannot be included in the definition of capital asset as defined under section 2(14)(iii) of the Act. Even then, if such lands are found to be situated within the distance specified in items (a) &(b) of section 2(14)(iii), then the gains arising on sale of such lands does not qualify for exemption from tax.

10. In the facts of the present case, we proceed to ascertain whether the subject lands were agricultural lands or not. Undisputedly, the subject lands were not situated within the prescribed distance of any municipality or municipal corporation, notified area committee or town area committee, whatsoever it is, nor was it the case of the AO. Therefore, provisions of clause (1) & (b) and sub-cause (iii) of section 2(14) have no application to the facts of present case.

11. Next we proceed to examine the nature of the land based on the material on record. On a mere perusal of the assessment order, it would show that the AO reached the conclusion that the subject lands were not agricultural lands for the alleged failure of the appellant to discharge the onus of proving that the subject lands were agricultural lands. It is contention of the appellant that since the assessment proceedings were taken up in the Faceless Assessment regime, the appellant could not upload all the documents in view of the voluminous of the documents. However, before the CIT(A), the appellant had filed the evidence in the form of 7/12 extract and certificate from the Taluk Office certifying the

distance from the municipal limits. The CIT(A) ignoring the evidence adduced had merely jumped into the conclusion that the lands were agricultural lands. As regards the evidence of agricultural activities, the fact that the appellant had shown agricultural income itself will demonstrate that the appellant had carried on agricultural activities.

12. The reasoning of the AO that the lands were sold for higher consideration for commercial purposes, therefore the character of lands would change cannot be accepted as it would not change the character of the land as held by the Hon'ble Jurisdictional High Court in the case of PCIT v. Kalathingal Faisal Rahman [2019] 416 ITR 311, wherein the Hon'ble High Court quoted the decisions of the Hon'ble Gujarat High Court in the case of CIT v. Manila Somnath [1977] 106 ITR 917 and Hon'ble Bombay High Court in the case of Gopal C. Sharma v. CIT [1994] 209 ITR 946 wherein it is observed that the potential value of the property of nonagricultural consideration and large price, obtained by reason of the market conditions would not detract from the essential nature of the land at the time of the sale and the use to which it was put, prior to sale.

13. The Hon'ble Madras High Court in the case of M.S. Sreenivas Naicker v. ITO 292 ITR 481 also held to the same effect that is also undisputed fact that the lands were not converted to non agricultural use as per the law prevailing in the state. In the absence of conversion of land into non agricultural, the character of land

continues to be agricultural as held by the Hon'ble Bombay High Court in the case of CIT v. Debbie Alimao 331 ITR 59.

14. The Hon'ble Karnataka High Court in the case of CIT v. M.R. Anandaram (HUF) [2023] 450 ITR 94 stretched further by holding that even if conversion of lands into nonagricultural purpose had taken place, if the assessee continues to be carry on agricultural operations, still the land is considered to be agricultural land. This decision was affirmed by the Hon'ble Supreme Court in 453 ITR 457.

15. We also noted that the ratio of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT v. Kalathingal Faisal Rahman [2019] 416 ITR 311 is clearly applicable to the facts of the assessee as the Hon'ble High Court had reiterated the ratio of the decision of the Hon'ble Madras High Court in the case of M.S. Sreenivas Naicker v. ITO 292 ITR 481 and PCIT v. Mansi Finance Chennai Ltd. [2016] 388 ITR 514. However, in that case relief was not granted to the assessee for failure of the assessee to discharge the burden of proving that the lands were agricultural lands.

16. In the light of the above discussion, we are of the considered opinion that the lower authorities had clearly fell in error in holding that subject lands are agricultural lands. Therefore, we direct the AO to delete the addition on agricultural income and also allow the agricultural expenditure as the agricultural income was brought to tax.

17. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 14<sup>th</sup> May, 2024

Sd/-  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 14<sup>th</sup> May, 2024

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Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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Assistant Registrar  
ITAT, Cochin