

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2753/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2013-14

The Income Tax Officer,
International Taxation Ward-1(1),
Chennai.

Shri Rajamanickam Gautam,
Vs. No.65, Old No.46,
Defence Colony,
Nandambakkam,
Chennai – 600 032.

(अपीलार्थी/Appellant)

PAN: APGPG 6055G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Anitha, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri N.V. Krishnan, Advocate

सुनवाई की तारीख/Date of Hearing : 07.05.2025

घोषणा की तारीख/Date of Pronouncement : 19.05.2025

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the Revenue is directed against the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi order dated 30.08.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2013-14.

2. Brief facts of the case are as follows: The assessee is an individual, who is a non-resident. The assessee along with his two brothers are partners in the firm named Fidelity Agro Farm. For the relevant assessment year, assessee along with his two brothers had introduced as their capital contribution to of the firm, 7.25 acres of agricultural land (each brother had introduced 7.25 acres of agricultural land). The AO issued notice u/s.148 of the Act to reopen the assessment for the assessment year 2013-14. The assessee requested for reasons for reopening the assessment and the same was provided to the assessee. The assessee was directed to explain during the course of reassessment proceedings, why capital asset of 7.25 acres of land introduced into the firm as capital contribution ought not to be taxed as capital gains u/s.45(3) of the Act. The AO in the show-cause notice had stated the concerned authority had given permission to convert the impugned land into house site in the year 2009 itself and therefore same is not agricultural land. The assessee filed objections to the proposal in the show-cause notice. However the objections of the assessee were rejected and the AO passed reassessment order u/s.147 r.w.s. 144C(3) of the Act vide order dated 03.03.2023 bring to tax as capital gains an amount of Rs.8,17,33,050/-.

3. Aggrieved by the assessment order, the assessee filed appeal before the First Appellate Authority. Before the First Appellate Authority, the assessee raised contentions with regard to the legal issue as well as on merits that lands transferred are agricultural land and the transfer does not attract long term capital gains. The CIT(A) allowed the appeal of the assessee on merits but did not adjudicate the legal contentions raised by the assessee. The CIT(A) took note of the Tribunal order in the case of assessee's brother namely Shri Rajamanickam Arulselvan in ITA No.479/CHNY/2023 (order dated 01.04.2024) and held that impugned land is agricultural land.

4. Aggrieved by the order of the CIT(A), the Department has filed the present appeal before the Tribunal raising the following grounds:-

- 1. That the Order of the Ld. CIT(A) is erroneous on the facts, the merits of the case and provisions of Law as well and hence unsustainable.*
- 2. That the Ld. CIT(A) erred in failing to appreciate that when the assessee had applied for conversion of the vacant land into a plotted residential layout and had also made an application to DTCP on 24.04.2009, the intention to stop cultivation and hold it as a trading asset is manifest and therefore, cannot be classified as an agricultural land at the time of capital contribution by the assessee as a partner to the firm, irrespective of its nature and characteristics at the time of such transfer.*
- 3. That the Ld. CIT(A) erred in failing to appreciate the decision of the Hon'ble Supreme Court in the case of Sarifabibi Mohammed Ibrahim & Ors. v. CIT (1993) 204 ITR 631 which is paramount on this intriguing subject, had rendered that when the intention to stop cultivation is profoundly explicit, income arising from sale of such land was chargeable to capital gains tax.*

4. That the Ld. CIT(A) erred in failing to appreciate that the asset had lost its character as agricultural land once the partners intended to contribute it to a firm engaged in real estate business activity.

5. That the Ld. CIT(A) erred in failing to appreciate that the vacant land is no longer agricultural in nature when the assessee had failed to substantiate that the land was under cultivation at the relevant point of time, more particularly when way back in 2009 itself, there was a clear determination to convert it for non-agricultural purposes and had also obtained the requisite permission from DTCP subsequently.

6. That the Ld. CIT(A) erred in failing to appreciate that by applying for conversion of agricultural land to non-agricultural use, the legislative intention to encourage cultivation gets defeated and accordingly the claim of exemption of LTCG u/s 2(14) is inappropriate.

7. For those and other reasons that may be adduced at the time of hearing, it is prayed that the Hon'ble ITAT may be pleased to set aside the order of the Ld.CIT(A), restore the order of the assessing officer and thus render justice

The Department has also raised additional ground, which reads as follows:-

“Whether on the facts and circumstances of the case, the Ld.CIT(A) was justified for having failed to appreciate that the land is not covered under the exemption provided in Section 2(14) of the Income Tax Act for the reason that, the Appur Village in which the land is located is within an aerial distance of 8 kms of the outer limits of nearest Maraimalai Nagar Municipality.

5. The Ld.DR strongly relied on the grounds and addition ground.

6. The Ld.AR submitted that the issue raised is covered by the order of the Tribunal in the case of assessee's brother (*supra*), which is identical on facts.

7. We have heard rival submissions and perused the material on record. The solitary issue raised is whether the transfer of impugned land, whether it is liable for capital gains when the assessee had introduced the same as his capital contribution in the firm namely Fidelity Agro Farm. On identical facts, the Chennai Bench of the Tribunal in the case of Shri Rajamanickam Arulselvan, *supra* (assessee's brother) had held that at the time of transfer, the impugned land remained to be an agricultural land and is not a capital asset within the meaning of section 2(14) of the Act. The relevant finding of the Tribunal in the case of assessee's brother reads as follows:-

“9. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee has transferred the vacant land admeasuring 6.07 acres located at Appur village as capital contribution in the firm M/s. Fidelity Agro Farm by way of reconstituted partnership deed dated 06.04.2012. It is also an undisputed fact that the impugned land has been classified as wet agricultural land as per Chitta, Adangal, etc. The assessee had also furnished various other evidences to prove that the said land has been used for carrying out agricultural operation before the land was transferred to the partnership firm. Further, there is no dispute with regard to the fact that the assessee has filed an application before the DTCP on 24.04.2009 for conversion of land and the said application has been finally approved by the authorities on 20.02.2013 only. Therefore, in the light of the above facts, it is necessary to decide whether the impugned land was an agricultural land or a capital asset when the said land was transferred to partnership firm on 06.04.2012 as capital contribution.

10. Admittedly, various Courts have categorically held that once the land has been classified as an agricultural land as per revenue records, which

are evident by Chitta, Adangal and letter of the Tehsildar, that land should be considered as an agricultural land and not capital asset as per section 2(14) of the Act and this principle is supported by Hon'ble Jurisdictional High Court in the case of Mrs. Sakunthala Vedachalam, Mrs. Vanitha Manickavasagam v. ACIT [2014] 369 ITR 558 (Mad). Further, the Hon'ble Madras High Court in the case of CIT v. P. Mahalakshmi 276 Taxman 224 (Madras) has also considered an identical issue and held that when the land was used for agricultural operation and the said land was also situated beyond the specified limit of the municipality, then the said land should be treated as an agricultural land as defined under section 2(14)(iii) of the Act. The Hon'ble Supreme Court in the case of Sarifabibi Mohammed Ibrahim & Ors v. CIT (1993) 204 ITR 631 (SC) has set out various parameters to ascertain the nature of particular land whether it is an agricultural land or capital asset. If we apply the parameters set out by the Hon'ble Supreme Court to the facts of the present case, there is no dispute with regard to the fact that the impugned land of the assessee transferred to the partnership firm is an agricultural land because as per the revenue records, the said land was classified as an agricultural land. The assessee and his family members used the impugned land for agricultural purposes. Although, the assessee had an intention to use the impugned land for non-agricultural purposes, but, based on the intention, a particular land cannot be treated as capital asset when other evidences pointing to the fact that the impugned land is an agricultural land. Therefore, in our considered view, the Assessing Officer has erred in considering the impugned land as capital asset based on the intention to convert the land into non-agricultural purposes by filing an application before the DTCP, even though the application of the assessee has been approved by the authorities on 20.02.2013. No doubt, the land may be a non-agricultural land when the authorities had given permission to go ahead for development of land, but, that instance was happened after transfer of land as per section 45(3) of the Act. When the land was transferred on 06.04.2012 by way of capital contribution to the partnership firm by the assessee, the said land was an agricultural land and further, the impugned land was used for agricultural purposes. The ld. CIT(A), after considering relevant facts, rightly deleted the addition made by the Assessing Officer towards computation of capital gain on transfer of land into partnership firm as capital contribution.

11. In so far as various case law relied on by the ld. DR including the decision of the ITAT in the case of ACIT v. G. Shanmuganathan in ITA No.

569/Mds/2016 dated 04.11.2016 and also the decision of the Hon'ble Madras High Court in the case of PCIT v. A. Lalichan [2019] 104 taxmann.com 30(Madras), we find that in order to ascertain a particular land is an agricultural land or capital asset, various parameters needs to be considered including the land revenue records, location of the land duration of holding the land, utilization by owner of the land, etc. Therefore, based on the findings of a particular case law or judgement, it cannot be ascertained that a particular land is an agricultural land or capital asset. Going by the facts of the present case it is undisputedly proved that the impugned land is an agricultural land when it was transferred into partnership firm. In our considered view, the case law relied on by the ld. DR has no application to the facts of the present case.

12. In view of the matter and considering the facts and circumstances of this case, we are of the considered view that there is no error in the reasons given by the ld. CIT(A) to delete the addition made by the Assessing Officer towards computation of capital gain on transfer of land into partnership firm as capital contribution. Thus, we are inclined to agree with the findings of the ld. CIT(A) and dismiss the appeal filed by the Revenue."

8. The above order of the Tribunal was taken in appeal before the Hon'ble High court of Chennai. However, the same was dismissed in view of low tax effect. Since the facts are identical, we hold the impugned land is not a capital asset and continues to remain as agricultural land when assessee had transferred the same to the firm as his capital contribution.

9. As regards the additional ground raised by the Revenue, we find that it is not even the case of the AO that the impugned land was within 8 kms. from Maraimalai Nagar municipality. The sole reason

for treating it as capital asset u/s.2(14) of the Act by the AO was that the impugned land got converted from agricultural land by the concerned authorities for house sites. Moreover, the additional ground that is raised before the Tribunal for the first time is not a legal ground. Since the AO nor Revenue had case before the First Appellate Authority proceedings, that impugned land is capital asset u/s.2(14) of Act, on account of land being situated within 8 kms from a Municipality, we deem it appropriate not to entertain the additional ground raised by the Revenue. Moreover, as mentioned earlier, on identical facts in the case of assessee's brother, the Tribunal had decided the issue in favour of assessee, which has attained finality. For the aforesaid reasoning, we confirm the order of the CIT(A) as correct and in accordance with law.

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

Order pronounced in the open court on 19th May, 2025 at Chennai.

Sd/-
(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 9th May, 2025

Sd/-
(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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