

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री वी. दुर्गा राव, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER AND  
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1271/Mds/2013

निर्धारण वर्ष /Assessment Year : 2008-09

The Deputy Commissioner of  
Income Tax,  
Business Circle VII,  
Chennai - 600 034.

Shri P.R. Ramasamy,  
v. No.18, L.G.N. Street,  
Mount Road, Chennai - 600 002.

(अपीलार्थी/Appellant)

PAN : AABPR 3090 C

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Shri A.V. Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by :

Shri Philip George. Advocate

सुनवाई की तारीख/Date of Hearing

: 12.01.2015

घोषणा की तारीख/Date of Pronouncement:

25.02.2015

### **आदेश /ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-IX, Chennai, dated 19.02.2013 relevant to the assessment year 2008-09.

2. Facts in brief are that the assessee is an individual involved in the business of manufacture of fasteners. The assessee has filed a return of income by admitting a total income of ₹ 5,37,30,760/-. During the course of assessment proceedings, the A.O. has observed that the assessee has sold a land (long term capital asset) for a consideration of ₹ 1,08,00,000/- and claimed the above as agricultural land which is situated at No.50, Kanathoor Reddykuppam Village, Kancheepuram District. The A.O. has sought explanation from the assessee by issuing show cause notice on 27.12.2010. In reply, the assessee has submitted that he had purchased the agricultural land vide sale deed dated 18.01.1990 measuring 1.015 acres comprised in Survey No.6/1 (Part) at No.35, Kanathoor Reddikuppam Village, Chengalpattu Taluk, Kancheepuram District. The said land is situated adjacent to Buckingham Canal. In the said land, the assessee had cultivated cucumber, watermelon and casuarina besides greens and vegetables. Some of them were locally sold and some of them were consumed by the assessee's family. He submitted that he did not make any gain from the agricultural operations. The said land was sold on 12.04.2007, which was relevant to assessment year 2008-09 for a total consideration of ₹ 1,08,00,000/- in acreage as agricultural land, which is apparent from the sale deed. The land is

situated beyond 8 Kilometers from local Municipal limits. He further submitted that any gain arising out of sale of the agricultural land, which will not fall within the meaning of capital asset under Section 2(14)(iii) of the Income-tax Act, 1961, was not liable to capital gains tax. The A.O., after considering the explanation of the assessee, came to a conclusion as under:-

*“3. The assessee has purchased the land during the financial year 1999-2000. From the date of purchase the assessee has not carried out any agricultural activities. I have visited the land at Kanathoor reddykuppam village, Kancheepuram district with the help of village administrative officer Shri Mahendra Babu, I have not find out any traces of agricultural activities carried out in kanathoor reddykuppam village land. I have found out bushes in the kanathoor reddykuppam village land. There is massive construction activities is going on in and around the above said land. Two multistoried apartments has been constructed near to kanathoor reddykuppam village land. The calling for information u/s 133(6) has been sent to the Tashildar, Chingalpet taluk . The Tashildar has certified that there was no agricultural activities has not been carried out before and after the silling of land. The assessee also asked furnished the return of income filed for the assessment years 2004-05, 05-06, 06-07 and 2007-08 in which the assessee has not offered any agricultural income. If the assessee has carried out any agricultural activities, the agricultural income should be offered in the return of income filed. In the revenue land records also there is no evidence for the agricultural activities carried out. If the assessee has carried out any agricultural activities, the usage of land should be entered in the revenue land records. As per the revenue land records, the land has not been used for the agricultural activities from the date of purchase to till date. The assessee has divided the land into three plots and sold to the three parties. The three persons who are buying the land is going to construct the farm house. Therefore the kanathoor reddykuppam village land has not be used for the purpose of agriculture before and after the selling of the land. The assessee could not produce even single evidence that the kanathoor reddykuppam village land has been used for the purpose of agricultural land. The kanathoor reddykuppam village land is not used for the agricultural purpose in the past and present time also. The assessee's claim of agricultural land is not correct for the following reasons.*

- i. *The land is not used for the purpose of agricultural activities.*
- ii. *In the revenue land records the certificate received from the Tashildar office chengalpet stated that as per the revenue land records the above said land never has been used for the agricultural activities.*
- iii. *The assessee has not offered any agricultural income in the return of income filed.*
- iv. *The assessee does not have any borewell. Since the irrigation facilities are not available, there is no chance to agricultural activities has been carried out.*
- v. *The people who are residing near to the land said that the land is never used for the purpose of agricultural activities.*
- vi. *Massive construction activities is going on near to the kannathur reddykuppam village land. Therefore the above said land is located in the residential area.*
- vii. *The assessee has divided land into three plots and sold to three parties (real estate).*
- viii. *It is very near to maayajal multiplex theatre (commercial area).*
- ix. *The assessee has submitted that he had cultivated cucumber, watermelon and casurina. At the same time the revenue land records shows that there was no agricultural activities has been carried out.*

*Therefore the kanathoor reddykuppam village land is considered as capital asset and capital gains calculated on sale proceeds of the kanathoor reddykuppam village land.”*

3. On being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(Appeals). The Ld. CIT(Appeals) has given a finding that as per the sale deed, the land is classified as agricultural land. The assessee has produced basic evidences that the land is agricultural land by furnishing copies of adangal. When there is an evidence produced by the assessee that the land is an agricultural one, the burden is on the A.O. to prove that the land is a non-agricultural one. In the absence of any finding contrary to the evidence submitted by the assessee, the A.O. is not justified in

treating the land as non-agricultural land. The Ld. CIT(Appeals) has further given a finding that as per the adangal, the assessee has made casuarina cultivation. Accordingly, he held that the land is an agricultural land and hence not to be considered as capital asset under Section 2(14) of the Act. He thus allowed the assessee's appeal.

4. On being aggrieved, Revenue carried the matter in appeal before the Tribunal. The Ld. D.R. has submitted that the assessee has not carried any agricultural operations. Therefore the gain arising out of the sale of capital asset is taxable as capital gains. He further submitted that the assessee has not produced any revenue records before the A.O. Therefore, according to the Ld. D.R., the finding given by the Ld. CIT(Appeals) based on adangal has to be verified.

5. On the other hand, the Ld.counsel for the assessee submitted that the assessee had purchased the land as agricultural land and sold the same without converting as non-agricultural in nature. Therefore the land is to be treated as agricultural land and it is exempt from the capital gains tax. He relied on the decision of the Hon'ble jurisdictional High Court in the case of Mrs. Sakunthala Vedachalam v. ACIT in TC(A) No.566/2013 dated 06.08.2014.

6. We have heard both sides and perused the records and gone through the orders of the authorities below. The Assessing Officer, after considering the submissions of the assessee, has come to a conclusion that the land which is in dispute not at all used for agricultural activities. The A.O. gave a specific finding that the certificate issued by Tehsildar, Chingalpet Taluk, stated that as per the revenue land records, the above said land never was used for agricultural activities. However, the Ld. CIT(Appeals) has given a finding that as per the adangal issued by the Tehsildra, the assessee carried the casuarina cultivation. The findings of the A.O. and Ld. CIT(Appeals) contradict each other. Under these facts and circumstances of the case, we are of the opinion that to decide the issue whether it is agricultural land or capital asset, it is necessary to examine all the details. Therefore we set aside the order passed by the Ld. CIT(Appeals) and remit the matter back to A.O. to decide the issue afresh keeping in view the judgment of the Hon'ble jurisdictional High Court in the case of Mrs. Sakunthala Vedachalam v. ACIT (supra) and also the judgment of Hon'ble Supreme Court in the case of CWT v. Office-In-Charge (Court of Wards), Paigah (105 ITR 133) (SC) after giving reasonable opportunity of being heard to the assessee.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on Wednesday, the 25<sup>th</sup> of February, 2015 at Chennai.

Sd/-	sd/-
(ए. मोहन अलंकामणी)	(वी. दुर्गा राव)
(A. Mohan Alankamony)	(V. Durga Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 25<sup>th</sup> February, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-IX, Chennai-34
4. आयकर आयुक्त/CIT-VII, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.