

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.No.1406/Mds/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shri M.R. Diwakar, 53/26, Bhimasena Garden Street, Mylapore, Chennai – 600 004.	Vs	The Asst. Commissioner of Income Tax, Non Corporate Circle 1, Chennai
PAN: AACPD1276F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri N. Devanathan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri A.V. Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	06.04.2017
घोषणाकीतारीख /Date of Pronouncement	:	27.04.2017

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-2, Chennai dated 04.03.2016 in ITA No.10/CIT(A)-2/2014-15 for the assessment year 2011-12 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several grounds in his appeal, however the crux of the issue is that the Ld.CIT(A) has erred in sustaining the order of the Ld.AO who had computed long term capital gain in the hands of the assessee at Rs.39,99,940/- by treating the land sold by the assessee as non-agricultural land and brought the same under the ambit of long term capital gain tax.

3. The brief facts of the case are that the assessee is an individual earning income under the head salary, house property, business and other sources, filed his return of income for the assessment year 2011-12 on 29.09.2013 admitting his income as Rs.45,30,724/-. The case was taken up for scrutiny under CASS and finally orders U/s. 143(3) was passed on 24.03.2014, wherein the Ld.AO treated the agricultural land measuring 0.94 cent sold by the assessee at Kattavakkam Village, Kancheepuram District as non-agricultural and brought the same under the ambit of capital gain tax.

4. During the course of assessment proceedings, the assessee made the following submissions before the Ld.AO:-

"The assessee purchased Agricultural land in the following Survey Number.

<i>Survey No.</i>		<i>Acre Cent</i>
<i>56/1B2</i>	<i>1.71</i>	<i>0.12</i>
<i>55/1D</i>	<i>0.87</i>	<i>0.69</i>
<i>55/2D1A</i>		<i>0.13</i>
	<i>Total</i>	<i>0.94</i>

Totally 0.94 Cent along with bore well, 5 HP motor pump and electricity connection with deposit was purchased on October 14th,2005 for Rs. 1,41,000/- and the same was sold on September 15 , 2010 for Rs. 42,43,816/-

1. As per section 2(14) of the Income Tax Act, 1961 Capital Asset property of any kind held by an assessee, whether or not, connected with his business or profession, but does not include -

Agricultural land in India, not being land situated-

(a) In any area which is comprised within the jurisdiction of a municipality (whether known as municipality, municipal corporation or notified area or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) 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 consideration, specify in this behalf by notification in the official gazette.

This agricultural land is situated more than 20 kilometers from the city /Municipal limits of Chennai and this village is not a notified area.

2. *As per Revenue records classification the land is an agricultural land - Letter dated 27/12/2007 from village administrative officer, Kanathur Reddiduppam Vii/age. Moreover the assessee has not applied for conversion of this Agricultural land into any category of land. Since the head of the village has issued the above certificate no other evidence shall refute these facts ..*

3. *Inflation or escalation in price of agricultural land would not change the basic character of land, if the land is recorded as agricultural, it would continue to be agricultural land. If the land is recorded and has not been put to any other use by the owner of the land and even if it remains barren or uncultivated for some time and even the grass alone are raised on the land, it would continue to be agricultural land. In this connection please refer to the verdict rendered in Commissioner of wealth tax v. Garg R.S. and Shah M.R. JJ. (2007) 288ITR 0319 (Gujarat High Court)*

4. *The assessee has cultivated paddy the same were used his household consumption. Some portion of the same was sold and the sale has not yielded any surplus. In this connection please refer to the verdict entered in CIT vs. Smt. Debbie Alemao (2011) 38 (I) ITCL*

5. *Whether a piece of land is agricultural land or not is essentially a question of fact. The fact that the land is lying fallow and the fact that the land is located in a locality where development had taken place are not sufficient to render the land non-agricultural. Commissioner of income tax, V. O.RM.SP.SV.A. Annamalai Chettiar (2005) 273 ITR 0404 {Madras High Court}*

6. *Agricultural land at the time of sale and transfer: the asset was classified as agricultural land at the time of sale and such it has not been considered as capital asset end as such, no capital*

gains would arise from the sale of agricultural land. The agricultural in question is not at all considered as capital asset u/s 2(47) of the Act.

7. Possession & Enjoyment: The Land was in effective possession and enjoyment of the property by the assessee till the date of sale as agricultural land and further that there was no scope business activity by the assessee till the sale date.

8. As the facts are very clear that land does-not fall in the specified urban areas we are of the considered view and pray that the sale of agricultural land does not attract any capital gains tax.

Thereafter the assessee placed reliance on various decisions of the higher judiciary. The assessee further submitted as under before the Ld.A.O.:-

- 1. Further the assessee has purchased his share of agricultural land in 56/1B2, 55/1D and 55/2D1A on October 14th 2005 for Rs.1,41,000/- and the same was sold on September 15th 2010 for Rs.42,43,816/-.*
- 2. As per section 2(14) of the Income Tax Act, 1961 Capital asset means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include- Agricultural Land in India, not being land situated-*
 - a. In any area which is comprised within the jurisdiction of a municipality (whether known as municipality , municipal corporation, notified area or a cantonment board and which has a population of not less than ten thousands according to the last preceding census of which the*

relevant figures have been published before the first day of the previous year; or

- b. *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 consideration, specify in this behalf by notification in the official gazette.*

This Agricultural land is situated more than 20 kilometres from the /Municipal limits of Chennai and this village is not a notified area.

"For the purposes of land being agricultural land, actual agricultural operation or cultivation or tilting of land is always not necessary. What is to be seen is whether such land is capable of agricultural operation being carried on. The correct test that has to be applied is whether on the date of sale, the land was agricultural land or not, whether land use was changed or not.

If in the revenue record the particular land is recorded as agricultural land and till the date of sale it is exploited as agricultural land and the owner of the land has not taken any step to indicate his intention to exploit the land for non-agricultural purposes then such land is to be regarded as agricultural land. The purpose for which such land is sold is not of much importance and weight.

Section 548 of the IT Act speaks about non-charging of gains of the cases where there is a transfer of land used for agricultural purposes. An amendment was effected with effect from 01/04/1970 so as to include lands situated in certain specified areas within the ambit of non-agricultural land. However, burden is on the assessee to prove that the land is non-

agricultural or it forms part of business asset. For the purposes of land being agricultural land, actual agricultural operation or cultivation or tiling of land is always not necessary. What is to be seen is whether such land is capable of agricultural operation being carried on. Our view is fortified by Hon'ble Calcutta High Court CIT Vs. Borhat Tea Co.Ltd. [1982) 1381TR 783/ [1981] 7 Taxman 388. The correct test that has to be applied is whether on the date of sale, the land was agricultural land or not, whether land use was changed or not. Just because after the sale, the purchaser was going to put the land to non-agricultural use, it does not mean that on the date of sale the land has ceased to be agricultural land. If in the revenue record, the particular land is recorded as agricultural/and and till the date of sale, it is exploited as agricultural land and the owner of the land has not taken any step to indicate his intention to exploit the land for non-agricultural purposes then such land to be regarded as agricultural land. The purpose for which such land is sold is not of much importance and weight. If the department is in a position to prove that it was used as agricultural land as a stop gap arrangement and its land use was changed before the sale then the situation may be different.

In your letter, you have mentioned that no agricultural operations had been carried on by the assessee for the past two years 31.03.2009 arid 31.03.2010. I hereby bring to your kind attention that the cultivation on land was not possible due to vagaries of nature and non availability of resources and no fault on me if lands are not put to use during the drought. "

4.1 However, the Ld.AO rejected the arguments advanced by the Ld.AR and made the following findings:

- 1) From the chita adangal it was revealed that the assessee had not carried out any agricultural activity and the land was kept as vacant.
- 2) Though the assessee had submitted receipts for sale of paddy and sugarcane, however it was not ascertainable whether the agricultural produce was derived from the agricultural land owned by the assessee.
- 3) There was no bar on the assessee to convert his agricultural land for any other purposes like construction of building, etc.,
- 4) Though the land was classified as agricultural land in the Revenue records, is not a conclusive factor to hold the land to be agricultural land.
- 5) The sale value of the land sold by the assessee shows that there was a considerable increase in the price of the land which establishes the fact that the land was commercial in nature.
- 6) There was considerable development in the near vicinity of the land.

- 7) The land was kept fallow continuously for more than 3 years in order to change the classification of the land from agricultural to commercial.
- 8) The land was sold to a reality company M/s. Inno Estates Private Limited for commercial use.

4.2 Thereafter the Ld.AO held the land sold by the assessee as non-agricultural land and also disallowed the claim U/s.54F of the Act, for having invested the sale proceeds in residential flat for Rs.45 lakhs since the same was not claimed in the return of income and computed the long term capital gain of the assessee as Rs.39,99,940/-.

4.3 At the outset the Ld.AR submitted that in the case of Shri N. Venkatraman ITA No.1380/Mds/2016 and Shri A. Vijayaraghavan ITA No.1379/Mds/2016 who owned adjacent land it was held by the Chennai Bench of the Tribunal that the land is agricultural in nature and accordingly the sale of such land would not attract capital gain tax. Hence it was pleaded that in the case of the assessee also the same decision would apply

because the facts are identical. The Ld. DR could not controvert to the submission of the Ld.AR.

5. We have heard the rival submissions and carefully perused the materials available on record. The assessee has submitted before us the following documents in support of his claim that the land sold by him is agricultural land:-

- i. Patta No.1110 in the name of Shri M.R. Diwakar and others evidencing the ownership of land in survey No.56-1B2B which is classified as wet land. (Paper Book page 41)
- ii. Patta No.1112 in the name of Diwakar and others evidencing the ownership of land in survey No.55D which is classified as wet land. (PB 43)
- iii. Certificate from the Revenue Officer, Theni, Kancheepuram District which states that the land owned by Shri M.R. Diwakar in Survey No. 56/1B2, 55/1D, 55/2D1A is Paddy field wherein paddy cultivation was carried out during the year 2006 to 2010.
- iv. The chitta adangal of Survey No.55/1D and 56 1B/2B which states that the land is in possession of

Shri M.R.Diwakar and paddy cultivation is carried out. (PB 59 & 61)

Further the assessee has submitted before us that the land sold by him is adjacent to the land sold by Shri A.Vijaraghavan and Shri N. Venkataraman *supra*, and it was held in their case by the Chennai Bench of the Tribunal that those land are agricultural land and accordingly the land falls outside the scope of “capital asset” by virtue of Section 2(14) of the Act and therefore capital gain tax will not be attracted. The Ld. DR could not successfully controvert to the submission made by the Ld.AR. Therefore it is apparent that the facts stated by the Ld.AR to be genuine. However, in the interest of justice, we hereby remit back the matter to the file of Ld.AO only for the limited purpose to verifying the genuineness of the aforesaid documents presented before us and to verify the claim of the assessee that the land sold by him is adjacent to the land sold by Shri A. Vijayaraghavan and Shri N. Venkataraman *supra* and if it is found to be so, treat the land sold by the assessee as agricultural land falling outside the scope of “capital asset” as per Section 2(14) of the Act and accordingly delete the capital gain

tax levied on him. However, if found otherwise pass appropriate speaking order in accordance with law and merit after affording sufficient opportunity to the assessee of being heard.

6. In the result the appeal of the assessee is allowed for statistical purpose as indicated herein above.

Order pronounced in the court on the 27th April, 2017.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th April, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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