

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI V. DURGA RAO, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.636/Mds/2013**
(निर्धारण वर्ष / Assessment Year : 2009-2010)

Income Tax Officer,
Ward I(1),
Tambaram,
Chennai -45

Smt. Geetha Venugopal,
Vs 105, Old Trunk Road,
Pallavaram,
Chennai 600 043

(अपीलार्थी/Appellant)

[PAN:AQEPG 6451H]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. S. Dasgupta, IRS, JCIT.

प्रत्यर्थी की ओर से / Respondent by : Shri. J. Radhakrishnan, Advocate

सुनवाई की तारीख/Date of hearing : 28.04.2015

घोषणा की तारीख /Date of Pronouncement : 19.06.2015

आदेश / ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by Revenue is directed against the order of the
Commissioner of Income Tax (Appeals)-IX, Chennai, dated 28.12.2012
for the assessment year 2009-10.

2. The sole issue raised by the Revenue in this appeal is with regard to treating the land acquired by the Government owned by the assessee is agricultural land and therefore is not a capital asset for the purpose of charging capital gains tax.

2.1 The brief facts of the case are that the assessee is an individual filed a return of income on 19.01.2010 admitting a total income of ₹2,09,960/- and the case was selected for scrutiny. The assessee had owned some agricultural lands at Kolappakkam Village Block No.1, Sriperumbudur Taluk. The said lands were acquired by the Government for the purpose of airport extension. The total compensation paid by the Government was ₹53,00,890/- and ₹1,36,97,192 to the assessee with a total TDS deducted of ₹24,27,521/-. The assessee claimed exemption from Capital Gains u/s.10(37) of the Income Tax Act as the asset transferred was agricultural land and agricultural land is not a capital asset within the definition contained in section 2(14) of the Act.

2.2 The Assessing Officer observed that the lands belonging to the assessee were acquired by the Government of Tamilnadu for the extension of second runway of Chennai Airport. The lands with Survey Nos.272, 271/1 are situated at No.75, Kolapakkam Village, Block No.1,

Sriperumbudur taluk. The nearest municipality is Pallavaram and the Kolapakkam is 14.4 kms and from Meenambakkam it is 14.6 kms. The Government had paid a consideration of ₹2,14,25,603/-. The assessee filed the return of income admitting a taxable income of ₹2,09,960/- for the assessment year 2009-10 after claiming the amount of ₹2,14,25,603/- as exempted income u/s.10(37) of the Act. According to the assessee, the above lands acquired by the Government of Tamilnadu will not be falling in the definition of sec. 2(14) of the Act. During the scrutiny, the Assessing Officer denied the claim made by the assessee and treated the profits from the sale (the compensation received) of the lands, i.e ₹2,12,41,412/- as capital gains and brought to tax. While doing so, the Assessing Officer has relied on the decision rendered by the Hon'ble Apex Court in the case of *Smt. Sarifabibi Mohd. Ibrahim vs. CIT 204 ITR 631 (SC)*. The Assessing Officer has applied the test and laid down by the Hon'ble Apex Court and concluded the assessment by treating the lands acquired by the Govt of Tamilnadu as capital assets u/s.2(14) of the Act. Against this, the assessee went in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) observed that the said land is situated beyond 10kms from nearest Municipality limits i.e. Pallavaram Municipality, Kanchipuram Dist, and the population of

the Kolapakkam is 2594. It is clearly seen that the said lands neither form part of Chennai Metro Development Authority (CMDA) nor situated in any area with a population of 10,000. Further the said lands are located away from the limits notified by the Central Government for the purpose of Section 2(14) of Income Tax Act, 1961, and the fact was not disputed by the Assessing Officer. The lands as seen from Revenue records suggest that said lands at survey No.272, 271/1 are situated at No.75, Kolapakkam village, Block No.1, Sriperumbudur taluk is classified as agricultural land. The Assessing Officer has not brought anything on record that the said lands are not agricultural lands. The assessee has submitted basic evidences that the land is agricultural land by furnishing copies of adangal. When the assessee submitted overwhelming evidences suggesting that the land is agricultural, the burden is on the Assessing Officer to prove that the land is non-agricultural one. In the absence of any finding contrary to the evidences submitted by the assessee, the Assessing Officer is not justified in treating the said lands as non-agricultural lands and the Commissioner of Income Tax (Appeals) deleted the addition made by the Assessing Officer. Against this, the Revenue is in appeal before us.

3. We have heard both the parties and perused the material on record. In this case, the land with survey Nos.272, 271/1 are situated at No.75, Kolapakkam village, Block No.1,Sriperumbudur Taluk. The nearest municipality is Pallavaram and the Kolapakam is 14.4 kms and from Mennambakkam/Chennai it is 14.6 kms. The assessee received a consideration of ₹2,14,25,603/- on acquisition by Government of Tamil Nadu. According to the assessee, it is non capital asset so as to bring it to Capital Gain Tax as the property falls beyond an area which is comprised within the jurisdiction of a municipality or a cantonment board 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 previous year. In other words, land does not fall under such-clause (a) to sec 2(14) (iii) of the Act as land is outside the notified municipality. Now, we have to see whether the land fall in clause (b) to sec 2(14)(iii) of the Act, as Central Government may, having regard to the extend to the scope of urbanization that area and other relevant consideration specified in this behalf by notification in the official gazette. The notification issued by the Central Government u/s.2(1A) (c) proviso (ii)(B) and 2(14) (3b) vide No.9447, (F.No.164/(3)/87/ITA-I, dated 06.01.1994, as amended by notification No.11186 dated 28th

December, 1999 provided that agricultural land situated in area lying within the distance not exceeding 8 km from the local limits of municipality, it covered by amended definition "Capital Assets". The Central Government in exercise of such powers as issued before notification as amended by notification 11186, dated 28.12.1999, clearly clarifying that agriculture land situated in local area, outside municipality or contentment board etc. having population of less than ten thousand and also beyond distance notified by Central Government from local limits i.e. outside limits of other such municipality or contentment board etc. still continues to be excluded from the definition "Capital Asset". Accordingly, land situated in local areas continues to be excluded from the definition. In the present case, admittedly the impugned land is outside municipal limit of Chennai and also 8kms away from outer limit of this municipality and also any other municipality. The assessee land does not come within the preview of section 2(14)(iii) of the Act either under sub-clause u/s.(a) or (b) of the Act. Hence, it cannot be considered as Capital Asset within the meaning of the section and no capital gain can be charged on the transfer of this land by the assessee. Mere inclusion of land within jurisdiction of Airport Development Authority by State government notification does not change the character of land if the land still

continues to be agricultural land at the point of acquisition of land by Government. Accordingly, we inclined to confirm the order of the Commissioner of Income Tax (Appeals) in this issue.

4. In result, the appeal of the Revenue in ITA No.636/Mds/2013 is dismissed.

Order pronounced on Friday, the 19th day of June, 2015, at Chennai.

Sd/-

(वी. दुर्गा राव)
V. DURGA RAO

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)
(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated:19.06.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.