आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' 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.1380/Mds/2016**

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mr.N.Venkataraman, No.7/3, Old No.4/3, Skandalaya, Justice Sundaram Road, Mylapore, Chennai-600004.	Vs	The Deputy Commissioner of Income Tax, (Business Cir.II) / Non-Corporate Circle-2, Chennai.
PAN: AACPV4475G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. N.Devanathan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of hearing	:	27th October,2016
घोषणाकीतारीख /Date of Pronouncement	:	4th January, 2017

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

This appeal is filed by the assessee aggrieved by the order of the learned Commissioner of Income Tax (Appeals)-2, Chennai dated 04.03.2016 in ITA No.142/CIT(A)-2/2013-14 passed under section 143(3) r.w.s. 250(6) of the Act.

2. The assessee has raised several elaborate grounds in his appeal, however, the crux of the issue is as follows:-

> "*The learned Commissioner of Income Tax (Appeals) has erred in sustaining the order of the learned Assessing Officer who had computed the long term capital gain of the assessee at ₹1,28,38,808/- 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. Brief facts of the case are that the assessee is an individual filed his return of income for the assessment year 2011-12 on 27.09.2011 declaring his total income as ₹2,61,45,844/-, which was subsequently revised by him on 03.10.2012 disclosing the income at ₹2,85,45,840/-. Thereafter the case was selected for scrutiny and notice under section 143(2) was issued to the assessee on 27.09.2012. Subsequently, the learned Assessing Officer completed the assessment under section 143(3) of the Act on 05.02.2014 wherein he computed long term capital gain at Rs.1,28,38,804/- towards sale of his agricultural land treating the same as non-agriculture land. During the course of assessment proceedings, it was noticed by the learned Assessing Officer that the assessee had sold his immovable property being agricultural dry land situated at No.90, Kattavakkam village, Walajabad Taluk for sale consideration of ₹1,33,72,024/-. The assessee had purchased the aforesaid agricultural land in the year 2005. With respect to the sale of

the land during the relevant assessment year, the assessee had claimed it as exempt from long term capital gains tax since the land sold was agricultural land. However, the learned Assessing Officer opined that the land sold by the assessee cannot be treated as agricultural land and exempt from long term capital gain tax because of the following reasons:-

i) The assessee had not disclosed agricultural income accrued from the land for the assessment year 2006-07 to 2011-12. Therefore, it can be presumed that the assessee had not carried out any agricultural activities in his agricultural land.

ii) Though there can be a presumption that the land sold by the assessee is agricultural land if it is recorded in the Revenue records as agricultural land and assessed as such under the Land Revenue Code, such presumption can be rebutted if the land is surrounded in potential commercial area. Reliance was placed in the decision of the Hon'ble Gujarat High Court in the case CIT Vs. Sarifabibi Mohammed Ibrahim reported in 136 ITR 621. In the present case the land was situated in the close proximity of industrial area of

Oragadam which is a fast growing automobile hub in South Asia.

iii) The land was sold to a real estate company M/s. Inno Real Pvt.Ltd. and M/s. Inno Estate Pvt.Ltd., who had put to use for non-agricultural purposes.

iv) The sale consideration for three acres of land sold by the assessee is Rs.1.3 crores which is normally the price realizable towards building sites. In fact the assessee had purchased the land only for a meager value of Rs.6.2 lakhs during the period March,2005 which is only five years prior to the date of sale .Thus, there was appreciation of more than 30 times.

v) The value of the land sold was phenomenal and therefore, not viable for agricultural purposes.

4. Thereafter relying on various decisions, the learned Assessing Officer concluded that the land sold by the assessee cannot be treated as agricultural land and therefore brought the capital gain arising out of the sale of land to the ambit of long term capital gain tax.

5. On appeal, the learned Commissioner of Income Tax (Appeals) also confirmed the order of the learned Assessing Officer by observing as under:-

> *"**6. <u>CONCLUSION:</u>** From the analysis of the facts of the appellant's case, vis- vis the judgements of various courts, it is seen that the lands in question are not agricultural in nature, since,*
>
> *a), The appellant has not produced any evidence whatsoever, in support of his contention that he has cultivated rice and sugarcane in the lands at Nathanallur and Kattawakkam village. As rightly observed by the Assessing Officer, while passing the Assessment Order and also in his Remand Report dt.l0.1.2016, that not only has the appellant not returned any (net) income from agricultural activities, but also, he **has not reflected any income or expenditure relating to carrying on of agricultural activities, in his Return of Income.***
>
> *b) The Village Agricultural Officers of Nathanallur as well as Kaltawakkam villages have not confirmed about the actual carrying on of agricultural activities by the appellant, in the lands in question, and have routinely forwarded the copies of Adangal extracts pertaining to the land in question. As mentioned earlier, the appellant's name does not find a mention in the Adangal extract pertaining to the land at Nathanallur and only the name of one Shri Pandurangan finds a place therein.*
>
> *c) As highlighted vide para 5.8.(supra), not only are the lands located in close proximity of the fast growing industrial area of Oragadam, but also, the purchase of -the land, at a time which strikingly coincides with the Notification of Oragadam .area itself, as a Special Economic Zone, for development by SIPCOT, lends strong credence to the view of the*

Assessing Officer, that the appellant had not purchased the lands in question with the idea of carrying of agricultural activities, but rather, with the idea of capitalizing on the fast appreciating Real Estate value in Oragadam Industrial Area.

d) In fact, it is interesting to note that the appellant has made rather elaborate written submissions, discussing various case-laws at length, but no submission whatsoever have' been made evidencing the carrying on of agricultural activity by him, during the period for which he held the lands.

Hence, taking into account, all the aforementioned facts, it is seen that the ao is fully justified in rejecting the assessee's claim that the lands in question are agricultural in nature and bringing to tax the capital gains arising from the sale thereof."

6. Before us, the learned Authorized Representative submitted that the land purchased and sold by the assessee is agricultural land. It was further argued that the assessee had not changed the characteristic of land and held the same as agricultural land all through his period of holding. Agricultural operations were also carried out in the land though not commercially. The land was situated outside 8 kms of the municipal limit. It was further submitted that, as per section 2 (14)(iii) of the Act, the land does not fall within the meaning of

"capital asset" as it is agricultural land situating in India complying with the provisions of section 2(14)(iii)(a & b) of the Act. He further relied on various case laws to support his claim and pleaded that the exemption denied by the Revenue may be granted.

7. The learned Departmental Representative on the other hand, vehemently argued in support of the orders of the Revenue Authorities.

8. We have heard the rival submissions and carefully perused the materials on record. The learned Authorized Representative produced the following documents before us which could not be confronted by the Revenue:-

S.No.	Description	Page No. in the paper book
1.	Patta No.1071 in the name of the assessee Mr.N.Venkatraman S/o, S.Nagarajan to the extent of 1 Hectare 12.50 are in Kattavakkam village issued by the Tahsildar, Kanchipuram Taluk.	151
2.	Patta No.1061 in the name of the assessee Mr.N.Venkatraman S/o. S.Nagarajan to the extent of 0.81.50 are in Kattavakkam village issued by the Tahsildar, Kanchipuram Taluk	153
3	**Certificate issued by Tahsildar, Kanchipuram Taluk office dated 31.05.2011 to the effect that Nathanallur & Kattavakkam**	155

	villages are situated beyond 8 kms (approximately 20 kms away) from Kanchipuram municipality and in the above mentioned villages population is less than 20,000	
4	**In response to the Summon issued u/s.131 the VAO, Kattavakkam vide his letter dated 7.1.2016 had enclosed the copy of relevant adangal register with respect to the cultivation performed in the land owned by Shri N.Venkatraman (the assessee) and others of the neighborhood :-** **1. Groundnut** **2. Coconut plantation** **3. Turmeric** **4. Sugarcane**	157, 159, 161
5.	Land tax receipt in the name of Mr. N.Venkatraman (the assessee) dated 24.04.2008 for Patta No.1071 for Rs.500/- and for Patta No.1061 for Rs.400/-	163

9. From the above, it is evident that the land owned by the assessee which was subsequently sold is agricultural land and certain agricultural activities were performed on it. The “Adangal” certificate issued by the State Government Revenue officials also states that the neighborhood lands are also agricultural land and agricultural activities were performed on the same (P.B. Page No. 159 & 161). Further, these lands were located beyond the municipal limit of eight kilometers say approximately twenty kilometers from the municipal limit as per the certificate issued by the revenue authorities. These facts could not be successfully

disproved or confronted by the learned Departmental Representative. The blunt reason stated by the learned Assessing Officer in his order for denying to treat the land sold by the assessee as agricultural land are that:-

i) The land in question was dry land.

ii) No agricultural operation was carried out in the land.

iii) The land is situated in the close proximity to the industrial area of Oragadam.

iv) The land was sold to Real Estate Company for non-agricultural purposes.

v) The land was sold at exorbitant price.

vi) Only in the remote past the land was used for agricultural purposes.

vii) The assessee had not declared agricultural income in his return.

10. At this juncture, the case laws cited by the learned Authorized Representative are very relevant.

i) In the case CWT Vs Officer in-charge(Court of Wards), Paigah reported in 105 ITR 133. The Hon'ble Apex

Court has explained the meaning of the agricultural land in respect to wealth tax matter **even when the location of the land was within the Municipal Limits** as follows:-

"AGRICULTURAL LAND" — MEANING OF.

The question was whether the property called "Begumpet Palace" **within the municipal limits of Hyderabad** *consisting of vacant lands of about 108 acres and also buildings enclosed in compound walls constituted "agricultural land" within the meaning of clause (i) of section 2(e) of the Wealth-tax Act, 1957. Because the land was never intended to be used for agriculture and was not ploughed or tilled, the income-tax authorities and the Appellate Tribunal held that the property could not be treated as "agricultural land" within the meaning of section 2(e). On a reference, the High Court held the land to be agricultural land because: (i) the area was 108 acres abutting the Hussain Sagar tank; (ii) the land had two wells in it; (iii) it was capable of being used for agricultural purposes, (iv) it had not been put to any use which could change the character of the land by making it unfit for immediate cultivation; and (v) it was classified and assessed to land revenue as "agricultural land" under the A.P. Land Revenue Act. On appeal to the Supreme Court:*

Held, that the first four features considered by the High Court and based upon absence of any user for non-agricultural purposes were inconclusive, and the fifth feature alone provided some evidence of the character of the land from the point of view of its purpose. That the property was classified in the revenue records as agricultural land was not conclusive and such entries could raise only a rebuttable presumption. Therefore, the Appellate Tribunal should determine afresh whether the lands were agricultural after giving opportunity to both sides to lead further evidence.

Simply because "agricultural land" has not been defined in the Wealth tax Act, 1957, it is not correct to give the expression as wide a meaning as possible. The correct rule is to find out the exact sense in which the words have been used in the particular context and give an interpretation in consonance with the purpose of the statute. The object of the Act is to tax surplus wealth and it is clear that all land was not excluded from the definition of "assets". Therefore, it is imperative to give reasonable limits to the scope of the expression "agricultural land" and give it a restricted meaning;.

The determination of the character of the land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural purpose and user and not the mere

possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. One of the objects of the exemption is to encourage cultivation or actual utilisation of land for agricultural purposes. If there is neither anything in its condition, nor anything in the evidence to indicate the intention of its owners or possessors so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence.

ii) In the case CWT Vs. E.Udayakumar, reported in 284 ITR 511 ,the Hon'ble Madras High Court has held as follows:-

> *"The fact that there was a hospital in the adjacent land was totally irrelevant. Since the assessee had not put up any construction thereon, the assessee was entitled to claim exemption from the wealth-tax."*

iii) In the case N.S.Srinivasa Naicker & Sons Vs. ITO reported in 292 ITR 481(Mad) the Hon'ble Madras High Court has held as follows:-

"Held that it was an admitted case that till the date of sale, agricultural operations were carried on by the assessee. The land was put to use only for agricultural purposes and not for anything else. The lands in question were also registered as agricultural lands and assessed to land revenue. The fact that the purchaser had put it to use for a totally different purpose from that of the assessee ought not to have weighed with the tax authority. Capital gains tax could not be levied."

iv) In the case CIT Vs. Manilal Somnath reported in 106 ITR 917 (Guj), the Hon'ble Gujarat High Court has held as follows:-

> *"Held that what had to be considered is not what the purchaser did with the land or the purchaser was supposed to do with the land but what was the character of the land at the time when the sale took place. The fact that the land was within municipal limits or that it was included within a proposed town planning scheme was not by itself sufficient to rebut the presumption arising from actual use of the land. The land had been used for agricultural purposes for a long time and nothing had happened till the date of the sale to change that character of the land. The potential non-agricultural value of the land for which a purchaser may be prepared to pay a large price would not detract from its character as agricultural land at the date of the sale. The land in question was therefore, agricultural land."*

v) In the case CIT Vs. Smt. Lilavati Thakorelal Patel reported in 152 ITR 565 (Guj), the Hon'ble Gujarat High Court has held as follows:-

> " *Held that* in *determining whether land is agricultural or not, the important factors which should be taken into consideration are: (i) classification of the land in the revenue records as agricultural land; (ii) actual or ordinary use of the land for agricultural purposes at or about the relevant time; (iii) whether such user was for a substantial period or it was for a temporary duration only by way of a stop-gap arrangement; (iv) rational proportion of income from the land to investment made therein; (v) permission under s. 65 of the Bombay Land Revenue Code for change of user, and when and by whom it has been obtained; (vi) cessation of the agricultural use and converting the land to non-agricultural purpose; (vii) non-use for agricultural purpose of the land though listed in revenue records as agricultural land; (viii) its situation, physical characteristics and development in the vicinity; (ix) permission under s. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, and when and by whom; (x) price of the land on sale, and whether the value was determined as a unit of the land or on yardage or on acreage basis? "*

vi) In the case Mrs. Sakunthala Vedachalam & Another Vs. ACIT reported in 369 ITR 558 (Mad), the Hon'ble Madras High Court has held as follows:-

> *"Held, allowing the appeals, that the assessees had also produced a copy of the adangal and the letter from the tahsildar, which showed that the lands were agricultural in nature and the Revenue had also accepted that the lands were falling within the restricted zone in terms of section 2(14) . The assessees have qualified under clause 11(1) since as per the adangal records, these lands were classified as agricultural lands and the assessees have also paid revenue kist, namely, revenue payment. The tests laid down by the Gujarat High Court relied on by the Tribunal clearly stated that any one of the factors can be present in a case to qualify for the benefit of classification as agricultural lands. The reason given by the Tribunal was that the adjacent lands were put to commercial use by way of plots and, therefore, the very character of the lands of the assessees was doubted as agricultural in nature. The manner in which the adjacent lands were used by the owner therein was not a ground for the Tribunal to come to a conclusion that the assessees' lands were not agricultural in nature. The reason given by the Tribunal that the adjacent lands have been divided into plots for sale would not mean that the lands sold by the assessees were for the purpose of development of plots. Also the reasoning given by the Tribunal "No agriculturists would have purchased the land sold by the assessee for pursuing any agricultural activity" was based on mere conjectures and surmises. Therefore, the assessees were entitled to exemption.*

vii) In the case CIT Vs. Borhat Tea Co.Ltd. reported in 138 ITR 783 (Cal), the Hon'ble Calcutta High Court has held as follows:-

> *"For the purpose of land being agricultural land, actual agricultural operations or cultivation or tilling of the land is not necessary. What is to be seen is whether such land is capable of agricultural operations being carried on thereon."*

11. Further, provisions of section 2(14) (iii) is extracted herein below for reference.

"*2(14) Capital asset means-*

(a) …….

(b) …….

(i)……..

(ii)…….

(*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 aerially,—

(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.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;"

12. From the above, it is crystal clear that the land sold by the assessee cannot be brought under the ambit of capital gains tax because it is an agricultural land and does not fall within the definition of capital asset under section 2(14) of the Act because of the following reasons:-

i) The land is classified as agricultural land in the revenue records.

ii) It is situated outside the limit of eight kilometers from the municipal limits.

iii) As per the revenue records, agricultural activities were being carried out in the land.

iv) Though the Revenue has made allegation that the land is surrounded by industrial area, however no evidence is brought before us to justify their claim.

v) The land was purchased and subsequently sold by the assessee was classified as agricultural land in the revenue records.

vi) The intention of the purchaser of the land is immaterial.

vii) Just because the price of the land is exorbitant, it cannot be treated that the land is non-agricultural, when the revenue record states otherwise.

viii) The large extent of land would also point out to the fact that it is agricultural land.

ix) Even if some commercial establishments have sprung up in the close vicinity of the land, it cannot mean that the primary characteristic of the agricultural land is lost.

13. It is further pertinent to mention that the case laws cited by the Revenue do not apply to the facts of the case of the assessee simply because, the land in question falls outside the municipal limit of 8 kilometers rather 20 kms., away approximately and the entire locality as evident from the "adangal" is classified as agricultural land. Further in the present scenario where the roads have developed and modern vehicles are in plenty, transportation facilities have drastically improved due to which price of distant neighborhood lands also shoots up because of easy accessibility, but that cannot mean that all those lands loose

the characteristics of agricultural land and if held so the purpose of the Act will be defeated. In the present case it is not in dispute that the land in question is more than 19 Km., from the nearest Municipal Limit. Moreover the decision relied by the Revenue in the case CIT V/s. Sarifabibi Mohmed Ibrahim (Supra) the facts are not identical because in that case the land was situated within the Municipal limits and within a town planning scheme while as in the case of the assessee the land is situated beyond 19 K.m., from the Municipal limits. Further it is not necessary for the assessee to exploit the agricultural land by commercial production of agricultural produce but it would suffice even if agricultural activities are carried out for self consumption. For the aforesaid reasons, we hereby hold that the land sold by the assessee is agricultural land and cannot be termed as "capital asset" by virtue of section 2(14) of the Act and hence, capital gain arising out of the sale of the land sold by the assessee will not attract capital gain tax. Therefore, we hereby direct the learned Assessing Officer to delete the addition made for Rs. 1,28,38,808/- under the head long term capital gains.

14. In the result, the appeal of the assessee is allowed.

*O*rder pronounced in the open court on the 4th January, 2017

Sd/-	Sd/-
(**धुव्वुरु आर.एल रेड्डी**)	(**ए. मोहन अलंकामणी)**
(Duvvuru RL Reddy)	(A. Mohan Alankamony)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 04.01.2017
somu

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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