

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.132/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Precot Limited SF No.559/4, D Block, 4 th floor, Hanudev Info Park, Nava India Road Udaiyampalayam, Coimbatore-641 028.	Vs	The Assistant Commissioner of Income Tax, Corporate Circle-2, Coimbatore.
PAN : AABCP 3038K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Mr. D.Hema Bhupal, JCIT

सुनवाई की तारीख/Date of hearing	:	15.03.2023
घोषणा की तारीख /Date of Pronouncement	:	19.04.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of order passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2021-22 / 1034346559(1) dated 20.07.2021. The assessment was completed by the Assistant Commissioner of Income Tax, Corporate Circle-2, Coimbatore for the relevant assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 27.12.2016.

2. At the outset, it is noticed that appeal filed by the assessee is barred by limitation of 161 days. The facts are

that the order of the CIT(A) dated 20.07.2021 was received by the assessee on 13.12.2021 as per Form No.36, which is not disputed by the Revenue and appeal filed before the Tribunal on 25.02.2022. The learned counsel for the assessee now before us stated that the above delay comes within the ambit of exclusion provided by the Hon'ble Supreme Court in view of Covid Pandemic-19 and the Hon'ble Supreme Court in Misc. Application No.665 of 2021 vide order dated 23.03.2020 had given directions that delay is to be condoned during the period from 15.03.2020 to 14.03.2021 and finally condoned delay upto 28.02.2022 in Misc. Application No.21 of 2022 vide order dated 10.01.2022. Since, the Hon'ble Supreme Court has condoned delay during the said period, respectfully following the same, we condone the delay and admit the appeal.

3. The first issue in this appeal of the assessee is as regards to order of the CIT(A) confirming disallowance of payments made belatedly on account of employees contribution of ESI & PF under respective statutes.

4. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the Assessing Officer noted that the assessee has made delayed payment being payments on account of PF & ESI of employees contribution i.e., ESI amounting to Rs.1,17,707/- and PF contribution of Rs.8,79,124/-. Therefore, the Assessing Officer relying on the provisions of section 2(24)(x) and Explanation to Section 36(1)(va) of the Act disallowed above payments. Aggrieved, the assessee preferred an appeal before the CIT(A) and the CIT(A) confirmed action of the Assessing Officer.

5. We noted that this issue is now settled by the decision of Hon'ble Supreme Court in the case of M/s. Checkmate Services P.Ltd Vs. CIT in Civil Appellate jurisdiction Civil Appeal No. 2833 of 2016 dated 13.10.2022. Admittedly, these payments are made beyond due dates as prescribed under respective statutes, which is not disputed by the assessee's counsel. Hence, we dismiss this issue of assessee's appeal.

6. The next issue raised in the appeal of the assessee is as regards to order of the CIT(A) confirming action of the

Assessing Officer in making assessment of capital gains on sale of agricultural land or landed property at Bindunagar, Hindupur, Parigi, Anantapur District, Andhra Pradesh.

7. Brief facts are that the assessee sold landed property at Bindunagar, Hindupur, Parigi, Anantapur District, Andhra Pradesh for a total consideration of Rs.1.20 crores and claimed capital gain as exempt u/s.10(14) of the Act, as according to the assessee, the above stated land is agricultural land. The Assessing Officer called for details from the assessee to prove that property is agricultural land. The assessee submitted working and copies of sale deed and other supporting documents in its favour. The Assessing Officer noted that nature of the property is mentioned as dry land and further as per certificate dated 03.03.2014 issued by Tahsildar, Parigi, Anantapur District, Andhra Pradesh present land is waste land due to heavy drought in the area and there is no standing crop in the land. The Assessing Officer noted that the 'Patta Adangal' submitted by the assessee also classifies the land as 'Metta' land (upper lying area). The Assessing Officer issued show-cause notice dated 22.12.2016 and noted that in

the show-cause notice that sale deed of the above said property mentions nature of the property as dry land and as per certificate dated 03.03.2014 issued by Tahsildar, Parigi, Anantapur District, Andhra Pradesh, the land is waste land due to heavy drought in the area and there is no standing crop in the land. The assessee replied vide letter dated 26.12.2012 and stated that land admeasuring 12.02 acres sold during the year is situated in Kodigenahalli Village in Hindupur Municipality. The assessee stated that this land is 4 kms. away from local limits of Hindupur Municipality when measured aerially and population of this village as per 2011 census is 3560 which satisfy conditions mentioned in section 2(14)(iii) of the Act and hence, it is an agricultural land. Apart from this, the assessee submitted a certificate dated 07.03.2014 issued by Panchayat Secretary, Grama Panchayath, Kodigenahalli. The assessee also stated that in earlier years crops like maize, pomegranate, orange, and lime were cultivated in this land. It was contended by the assessee that water from bore well was used for watering these plants due to non-availability of general water supply in this area. According to the assessee, above said land satisfies the condition as agricultural land, in view of

the provisions of section 2(14)(iii) of the Act and hence, not a capital asset. The Assessing Officer noted provision for section 2(14)(iii) of the Act and stated that as per certificate of Panchayat Secretary, Grama Panchayath, Kodigenahalli village dated 07.03.2014, the land is situated at a distance of 4 kms from Hindupur Municipal limits measured aerially and as per report of census of India, population of Hindupur Municipality in the year 2011 is 1,51,677/-. According to the Assessing Officer, the assessee's land falls within the definition of section 2(14)(iii)(b)(ii) of the Act, which states that agricultural land will not include those lands which is situated within municipal limits of not more than six kms. and population of municipality of more than one lakh, but not exceeding ten lakhs. According to the Assessing Officer, the land is clearly out of the ambit of agricultural land in view of the provisions of section 2(14)(iii) of the Act and hence, liable for capital gain tax. The Assessing Officer charged capital gain tax on the above land amounting to Rs.1,14,65,578/-. Aggrieved, the assessee preferred an appeal before the CIT(A).

8. The CIT(A) also confirmed action of the Assessing Officer by observing as under:-

“During the course of appellate proceedings the appellant has again reiterated the same contention which was raised before the A.O. during the course of assessment proceedings i.e. land became dry due to lack of water and the land became unfit for cultivation, land had to be kept idle without cultivation due to heavy drought and many crops were cultivated in the past etc. However, the A.O. has correctly held that the appellant's land could not be held as "Agricultural Land" as per the definition of Section 2(14)(iii)(b)(II) since it fell within 6 Kms of the municipality limits of municipality having population more than 1 lakh but less than 10 lakhs. The appellant has agreed that his land was at distance of 4 kms from the Hindupur Municipality whose population as per 2011 census was 1,51,677. The A.O. has also relied on the facts that the Tahasildar had certified that the appellant's land was dry land with no standing crops and that it was kept waste. In view of these facts, the appellant's contention cannot be accepted and the addition made by the A.O. of Rs. 1,14,65,578/- is upheld. Accordingly, appellant's appeal is dismissed.”

Aggrieved, now the assessee is in appeal before the Tribunal.

9. The learned counsel for the assessee, first of all, drew our attention to the relevant provision to section 2(14)(iii) of the Act and stated that the capital asset means, for the purpose of charging of capital gains only agricultural land in India not

being land situated as prescribed in provisions of section 2(14)(iii) of the Act. The learned counsel referred to relevant provisions and stated that provisions of section 2(14)(iii) (a) applies to the assessee for the reason that interpretation of sub-clause (a) to section 2(14)(iii) categorically states that population of not less than ten thousand is to be considered of that village and in the present case the village falls under Panchayath, Kodigenahalli. According to the counsel, in the present case, admitted fact is that Panchayat Secretary, Grama Panchayath, Kodigenahalli has issued a certificate that population of this village i.e Kodigenahalli in Hindupur Municipality as per 2011 census is 3560, which is much below ten thousand. Ld Counsel for the assessee accordingly stated that as per section 2(14)(iii)(a) of the Act the village population is to be considered for ascertaining whether the land is capital asset or not. In support of this, learned counsel for the assessee relied on the following case laws:-

- i) PCIT Vs Anthony John Pereira reported in (2020) 425 ITR 134(Bom) vide order dated 04.02.2020
- ii) CIT Vs P.J.Thomas (1995) 211 ITR 897 in Tax Case Appeal No.553 of 1992 vide order dated 18.08.1992.

iii) CIT Vs. Ashok Kumar Rathi (2018) 404 ITR 173
(Mad) vide order dated 07.12.2017.

10. On the other hand, the learned Sr.DR Mr.Hema Bhupal, JCIT argued that facts are admitted and there is no dispute, but interpretation of the provisions of clause(a) to section 2(14)(iii) of the Act is not what the learned counsel is interpreting. He argued that provision has to be read as complete and that means that population of not less than ten thousand is to be considered of municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name that land falls within the jurisdiction of municipality and it is in any area which is comprised within jurisdiction of municipality. According to the learned Sr.DR, clause (a) clearly spells out about land falls within jurisdiction of municipality or above noted bodies, but, not for village panchayat, which is outside municipality. According to the Sr.DR, the assessee's case falls under clause (b) (ii) to section 2(14)(iii) of the Act, because the land is located at the distance of 4 kms. from Hindupur Municipal limits measured aerially and as per provisional report of census of India published

population of Hindupur Municipality as per 2011 is 151677. Hence, he urged the Bench to decide this issue in term of clause (b) (ii) to section 2(14)(iii) of the Act.

11. We have heard rival contentions and gone through facts and circumstances of the case. We noted that facts are admitted and the assessee sold lands admeasuring 12.02 acres during this year situated in Kodigenahalli Village, which is falling in Hindupur Municipality, and which is 4 kms away from local limits of Hindupur Municipality when measured aerially. Admittedly, population of this village as per 2011 census is 3560. The land is situated at distance of 4 kms from Hindupur Municipal limits measured aerially and as per provisional report of Census of India, population of municipality as of 2011 is 1,51,677/-. There is no dispute about these facts. The only disputed point before us is whether clause (a) or clause (b) to section 2(14)(iii) will apply to the present dispute. First of all, we have gone through the relevant provision and for the sake of clarity, the same is being reproduced as under:-

“(14) "capital asset" means—

(a)

(b)

(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. The learned counsel for the assessee also relied on the judgement of Hon'ble Bombay High Court in the case of PCIT Vs Anthony John Pereira reported in (2020) 425 ITR

134(Bom) vide order dated 04.02.2020, wherein the Hon'ble Bombay High Court has considered assessment year 2011-12 and amended provision will apply to the present case of the assessee, because assessment year involved in the present appeal is 2014-15 and amendment in the definition of capital asset of section 2(14)(iii) is brought in by the Finance Act, 2013 w.e.f. 01.04.2014 and is applicable for and from the assessment year 2014-15. Further, the Hon'ble Madras High Court in the case of CIT Vs. Ashok Kumar Rathi (2018) 404 ITR 173 (Mad), wherein appeal pertains to assessment year 2010-11 and another decision of the Hon'ble Madras High Court in the case of CIT Vs P.J.Thomas (1995) 211 ITR 897 pertains to assessment year prior to amended period, because judgement of the Hon'ble High Court is dated 18.08.1992 in tax case petition No.553 of 1991.

13. We have gone through all these three decisions and none of the decisions also on facts does not reveal that we have to take population of village panchayat while computing aerial distance for the purposes of computation of long term capital gains on the surplus arising out of sale proceeds of agriculture

land. Hence, all these three case laws relied on by the learned counsel for the assessee are factually different and prior to amendment brought in by the legislature under the provisions of section 2(14)(iii) of the Act. According to us, interpretation of provisions of section 2(14)(iii) sub-clause (a) clearly applies, in case where land falls in any area which comprised within the jurisdiction of municipality and which has population of not less than ten thousand. Hence, in the present case meaning of clause (a) to section 2(14)(iii), agricultural land in India, not being land situated within jurisdiction of municipality and which municipality has population of not less than ten thousand is to be read together. In the present case, as argued by the learned Sr.DR, the assessee's case clearly falls under clause (b)(ii) to provisions of section 2(14)(iii) of the Act, reason being assessee's land is outside Hindupur Municipal limits at a distance of 4 kms measured aerially and as per provisional report of Census of India, population of Hindupur Municipality in 2011 is 151677. Hence, the Assessing Officer has rightly charged assessee's land to capital gain tax and the CIT(A) has rightly affirmed the same. Therefore, we confirm orders of the lower authorities and this issue of assessee is dismissed.

14. As regards charging of interest u/s. 234B and 234C challenged by the assessee, according to us, this charging of interest is consequential in nature.

15. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 19th April, 2023

Sd/-
(अरुण खोडपिया)
(Arun Khodpia)
लेखा सदस्य / Accountant Member

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice-President

चेन्नई/Chennai,
दिनांक/Date: 19.04.2023
DS

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.