

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 849/Chny/2024

निर्धारण वर्ष / Assessment Year: 2015-16

Nataraj Ramaiah,
No. 25, Kothari Road,
Nungambakkam – 600 034.
[PAN: AAAPR-5280-R]

Income Tax Officer,
v. International Taxation
Ward -2(1),
Chennai – 600 034.

(अपीलार्थी/Assessee)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Assessee by : None

प्रत्यर्थी की ओर से/Respondent by : Shri. G. Suresh, JCIT

सुनवाई की तारीख/Date of Hearing : 09.07.2024

घोषणा की तारीख/Date of Pronouncement : 18.09.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), Chennai-16, for the assessment year 2015-16, vide order dated 31.01.2024.

2. The assessee has raised the following grounds of appeal:

"1. Taxing the gains arising out of sale of agricultural land' not falling within the definition of Capital Asset in terms of Section 2(14) of the Income Tax Act. The learned Income Tax Officer erred in treating the gains of Rs.29,83,722/- on sale of agricultural land not falling within the definition of Capital Asset to Capital Gains Tax without accepting the explanations/ supporting

documents furnished by the assessee in terms of the Order of the Dispute Resolution Panel dtd.16/11/2022, which:

(i) Directed the assessee to obtain a certificate from the VAO, Aryaperumbakkam to verify the location / distance of land from the nearest Municipality obviously to ascertain if the agricultural land falls within the definition of Capital Asset' in terms of Section 2(14); and

(ii) Having been provided a certificate from the VAO to establish that the agricultural land is 10 Kms. away from the nearest Municipality viz. Kanchipuram, treating it wrongly as 'Capital Asset' (as per Section 2 (14)), without recording the reasons/basis therefor and merely because it is not Currently under cultivation is not relevant.

2. To determine the carry forward loss of Rs.19.78 lakhs from the AY 2013-14 available for set off against capital gains, if any, during the AY 2015-16 u/s. 74 of the Act.

To allow credit for carry forward loss of Rs.19.78 lakhs from the AY 2013-14 which was concluded u/s.147 on 29.09.21 being available for set off against capital gains, if any, during AY 2015-16."

3. The assessee is non-resident individual, filed his Return of Income for the AY 2015-16 on 20/01/2016 declaring a total income of Rs.99,27,500/- and claimed a refund of Rs.1,56,310/-. During the previous year relevant to the AY 2015-16 the assessee sold 77 cents of agricultural land in S.No.252/3 at No.18, Aryaperumbakkam Village, for a sale consideration of Rs.30,80,000/-. The above sale by the assessee was

not offered to tax as the land sold is an "agricultural land" not falling within the definition of Capital Asset' in terms of section 2(14) of the Income Tax Act. The assessee's Return was processed u/s.143(1) on 18.02.2016 determining a refund of Rs.1,56,310/- as claimed by the assessee. The Notice u/s 148 dtd.09.03.2021 was served on the assessee for the following reason:

"Sale of agricultural land (not being a capital asset) by the assessee on 25.02.2015 measuring 77 cents comprised in S.No.252/3 of Aryaperumbakkam Village being treated as 'Capital Asset' and charging the capital gains arising there from to tax by invoking provisions of Section 50C."

4. The facts as submitted to the Assessing Officer u/s.147 proceedings are as under:

(i) During the financial year 2014-15, relevant to the AY 2015-16 i.e. on 25.02.15 the assessee sold 0.77 acres of agricultural land comprised in S.No.252/3 of Aryaperumbakkam Village to M/s. Indo Bukit Holdings (P) Ltd. for R.s.30,80,000/- i.e. @ Rs.40 lakhs per acre.

(ii) The Government guideline value then prevailing was @ Rs.45 lakhs per acre which was not in line with the market value prevailing at that time.

(iii) These facts had been duly communicated to the AO on 25.03.2015.

(iv) This sale was not offered to tax on account of the fact that the asset transferred is "Agricultural land" as duly classified in revenue record - which falls outside

the purview of the definition of "Capital Asset" and hence not considered as a transfer.

(v) Some agricultural / garden produce / yield was there from the lands owned by the assessee / supervised at Aryaperumbakkam including the land sold without any organized agricultural activity on the said lands during the financial year 2014-15.

(vi) Pattas issued to Mr.Nataraj Ramaiah - the assessee/ Indo Bukit Holdings (P) Ltd. - buyer, covering S.No.252/3, Aryaperumbakkam Village clearly record/certify that they are WET LANDS (Agricultural).

(vii) These lands are by no stretch of imagination housing sites. The learned Officer may kindly appreciate that data found on TN Reginet Encumbrance Certificate is part of registration (not revenue/land) records and are not relevant for land classification and that the Patta and Land classification records are."

5. The Assessing Officer did not accept the assessee's explanation that the land sold is "agricultural" and hence not falling within the definition of 'Capital Asset' in terms of Section 2(14) of the Income Tax Act for the following reasons and referred the matter to the Dispute Resolution Panel by passing a Draft Order u/s.144C dt. 30/03/2022:

(i) Land sold by the assessee is not an agricultural land 'but a housing site'- as per the Encumbrance Certificate.

(ii) Chitta and Adangal provided by the Deputy Tahsildar do not record details of crop grown/harvest made and those specific columns have been left blank.

(iii) No evidence to show /prove that the land was used for agricultural purposes or to show that any

agricultural operations were carried out in the land. An entry in the revenue record as agriculture will not be sufficient evidence to hold that the land was agricultural innature.

(iv) The Adangal Register of Aryaperumbakkam Village maintained by the Tahsildar, Kanchipuram Taluk, certifies the subject land as "Banjar land" (which means that it was not under active cultivation).

(v) Sale of property is to a non-agriculturist."

6. Proceedings before the DRP:

(i) The assessee again re-iterated the above facts before the DRP, Bengaluru in Form 35A.

(ii) After perusing the assessee's objections and the relevant documents, the Hon'ble Members of the DRP during the hearing on 15.09.2022 directed the assessee to furnish a certificate with regard to the distance between the land sold and the Kanchipuram Municipality.

(iii) The said certificate called for was obtained from the VAO, Aryaperumbakkarm Village and furnished to them along with its free English Translation on 26.09.2022. This clearly confirms that it was 10 Kms. away from Kanchipuram Municipality - which excluded it from the definition of Capital Asset u/s.2(14) of the Income Tax Act, 1961.

On receiving the DRP's mail dtd. 10/11/2022 regarding the non furnishing of the certificate called for, the assessee sent the same again on 10/11/2022.

(iv) On 16/11/2022 the Hon'ble Members of the DRP-2, Bengaluru, issued directions confirming the additions viz. Rs.29,83,722/- (Long Term Capital Gains) made by the AO by observing:

"Having considered the submission of the assessee, we are of the opinion that the land sold under contention

(a) is not an agricultural land as no agricultural operations have been carried out for the year under consideration.

(b) Mere classification of the land as agricultural land in the revenue records is not sufficient to prove that the land is an agricultural land. The assessee should have carried out agricultural operations and the revenue records should consists of details of the crops grown, yield and the sale of such crop.

(c) In the absence of such details, we are constrained to confirm the additions made by the AO."

Subsequently, the AO confirms the addition as directed in the order by the Hon'ble DRP by passing an order U/s.147 r.w.s. 144C(13) of the Act on 16/12/2022.

7. Aggrieved by the action of the AO the assessee preferred an appeal before the Ld.CIT(A), Chennai-16 and the Ld.CIT(A) was pleased to confirm the same in his order dated 31/01/2024 by holding as under:

"4. After perusal of the order by Hon'ble DRP consequent to which the Assessing Officer passed order u/s. 147 r.w.s. 144C(3) dated 16.12.2022 for AY 2015-16, the appellant is advised to approach the Hon'ble ITAT on the above matter, as I neither have power nor jurisdiction to decide on a final assessment order passed by the Assessing Officer consequent to Hon'ble DRP directions."

Aggrieved by the order of the Ld.CIT(A), the assessee is before us.

8. As per the grounds and written submissions of the assessee, the DRP has erred in not appreciating the fact that land is situated beyond 10 Kms from the Kanchipuram Municipality, which has been certified by the VAO, Aryaperumbakkam Village on 26/09/2022 and thereby the land sold does not form part of the Capital asset as defined in Section 2(14) of the Act. The DRP while rejecting the claim of the assessee has stated that there was an absence of agricultural activities and confirmed that the assessee's land was classified as agricultural land in the land records of state and that was not sufficient to consider the same as agricultural land. Apart from that, the assessee has been paying the land tax (kisti) on the subjected land and the Patta is showing the same as agricultural land. The decision of the AO / DRP in considering the sale of agricultural land by the assessee as sale of Capital asset as per Section 2(14) of the Act, liable to tax under the head capital gain is against the law and has

prayed for setting aside the same by allowing the appeal of the assessee.

9. Per contra the Ld.DR asserted the action of the AO / DRP and relied on the orders of the AO / DRP.

10. We have gone through the records and perused the orders of the lower authorities. The assessee is a non- resident individual has filed his return of income for the A.Y.2016-17. However, the case was re-opened by the AO for the reason that the sale of immovable property during the relevant A.Y. had not been disclosed in the return of income under the head capital gain and brought to tax by rejecting the claim of the assessee for considering the sale of immovable property as agricultural land. The sale deed was registered at SRO, Joint 2, Kanchipuram for sale of immovable property of 0.77 Acres of land on 25/02/2015 for a sale consideration of Rs.30,80,000/-. The assessee has claimed that, he has sold an agricultural land during the A.Y.2016-17, which was situated beyond 10 Kms. from the Municipality of

Kanchipuram and hence the same had not been shown in the return of income, as it was exempt from Income Tax.

11. We note that the assessee has been paying the tax to the local revenue office as agricultural land and also furnished the certificate issued by the VAO, Aryaperumbakkam Village on 26/09/2022 to prove that the land is situated beyond 10 Kms. from the Municipality of Kanchipuram to exclude from the definition of Capital asset as per Section 2(14) of the Act, which was submitted before the DRP. Further, the assessee had furnished the land details available as per the records of the Revenue authorities has been shown as wet land for the purpose of valuation for registration of immovable property by the Land Registrars. We also note that, merely the Tahasildar has left blank the columns of crops grown / cultivated, cannot derive the conclusion by assuming that the immovable property is a capital asset. Therefore, considering the facts and circumstances of the case, we are of considered view that the AO / DRP has erred

in concluding the sale of immovable property as capital asset and thus we set aside the orders of the lower authorities and direct the AO to recompute the income of the assessee by deleting the additions made under the head capital gain to the tune of Rs.29,83,722/-.

12. In the result the appeal of the assessee is allowed.

Order pronounced on 18th September, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/**Vice President**

Sd/-
(एस.आर.रघुनाथा)
(S.R.RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 18th September, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT- Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF