

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.843/Hyd/2017
(Assessment Year: 2005-06)

Shri Kallepu Sharath Vs Asstt. Commissioner of
Chander Income Tax, Circle 6(1)
Hyderabad Hyderabad
PAN: AERPC4342Q
(Appellant) (Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Shri M. Naveen, DR

Date of Hearing: 18.04.2018
Date of Pronouncement: .05.2018

ORDER

This is assessee's appeal for the A.Y 2005-06 against the order of the CIT (A)-12,Hyderabad, dated 2.3.2017. The assessee has raised the following grounds of appeal:

"1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) erred in upholding the conclusion of the assessing officer that the land sold was not an agriculture land inspite of documentary evidence available on record.

3. The Hon'ble CIT(A) ought to have observed that the assessing officer did not take the fact into consideration that the land was situated beyond 8 kms from urban municipality and considering the nature of the land it cannot be treated as business asset and cannot be treated as business profit.

4. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in appreciation of relevant facts in the process of arriving at a conclusion that the sale of land by the assessee was a trading activity.

5. The Hon'ble CIT(A) ought to have taken facts and circumstances of the relevant transaction and ought to have held that the profit earned by the assessee does not constitute income from business

6. Without prejudice to the above grounds, the Hon'ble CIT(A) ought to have directed the assessing officer to allow entire expenditure incurred in the process of sale of land for arriving at the profit liable for tax”.

2. Brief facts of the case are that the assessee, an individual, filed his original return of income on 11.10.2005 declaring taxable income at Rs.30,32,380 which included the Capital Gain of Rs.29,88,162. The AO had received the information that the assessee had sold properties and received the sale consideration of Rs.44,12,500 and this information was compared with the information in the returned income filed by the assessee and it was noticed that the assessee has declared the sale consideration at Rs.39,72,887 as against the actual sale consideration of Rs.44,12,500. Therefore, the AO was of the opinion that there was escapement of income to the tune of Rs.4,39,613 and accordingly the assessment was reopened by issuance of notice u/s 148 which was served on the assessee on 31.03.2010. In response to the notice u/s 148 of the Act, the assessee filed a return on 16.07.2010 declaring the taxable income at Rs.57,823 as against the income admitted in the original return at Rs.29,88,162. The AO required the assessee to furnish information relating to the purchase and sale of the properties by the assessee during the course of re-assessment proceedings. The assessee submitted that the land sold by the assessee was agricultural land and that it was situated beyond 8 kms from the Municipal limits and therefore, the profit on sale of land is not taxable, though the same was initially offered to tax in

the original returns filed. The AO therefore, asked the assessee to produce necessary proof in support of his claim that the land sold is agricultural land and was used for agricultural activities till the date of sale. The assessee was also asked to produce the Pattadar Pass Book for the year 2003-04 and details relating to the agricultural income earned during the A.Ys 2003-04 and 2004-05. In response to the same, the assessee submitted the copy of the pahanis as well as the pattedar pass book but did not furnish the details relating to the agricultural operations carried out by the assessee and the agricultural income earned therefrom. The AO also verified the returns of income filed by the assessee for the earlier years and observed that the assessee did not disclose any agricultural income from the land in those years. Therefore, the AO was not convinced with the assessee's contention that the land sold is agricultural land. Further, he has also observed that the assessee has purchased and sold several properties and had admitted the said activities as trading activity and has offered the profit as income from the business after claiming certain expenditure. Observing that the assessee has purchased land in Gundlapochampally Village in the year 2002 and sold in 2004 and has held the same for a period of just two years, and in the original return of income the assessee had admitted Short Term Capital Gains on sale of the said land, and only in the return filed in response to the notice u/s 148, the assessee has claimed the profit as exempt since the lands were agricultural in nature, the AO held that the assessee has failed to prove that he had carried on agricultural operations in the lands at Gundlapochampally Village and has not offered any income from agricultural operations in from the earlier A.Ys, the AO did not accept the land

to be agricultural land and the profit therefrom was treated as income from business and brought to tax. Further, in the P&L A/c, the assessee had claimed an amount of Rs.1,38,321 as expenditure under various heads but since the assessee did not produce any evidence in support of such expenditure, the AO disallowed 50% of the same and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before this Tribunal.

3. The learned Counsel for the assessee, reiterated the submissions made by the assessee, before the authorities below and submitted that the land, being agricultural land, is evident from both the pattedar pass books as well as the pahanis and hence the assessee's claim should have been allowed. He placed reliance upon the following two decisions in support of his contentions:

- i) *Hon'ble High Court of Andhra Pradesh in the case of Rastriya Ispat Nigam Ltd vs. ACIT reported in 377 ITR 420 (A.P)*
- ii) *Hon'ble Bombay High Court in the case of CIT vs. Smt. Debbie Alemao and 2.Joaquim Alemao reported in (2011) 331 ITR 59 (Bom.)*

4. Further, he also submitted that the reopening of the assessment is itself bad in law because the assessee had declared the sale consideration at Rs.44,12,500 and after reducing the interest on loans of Rs.72,228 and the development charges of Rs.3,67,385, the net amount only has been mentioned as sale consideration in the computation of income. He has drawn my

attention to page 186 of paper book, which is a computation of income and page 190 of the paper book, which is the computation of short term capital gain on sale of land, to drive his point. Thus, according to him, the AO has formed an opinion without properly verifying the facts that there was an escapement of income when there was none. Further, he has also drawn our attention to the fact that the AO has not issued any notice to the assessee before changing the head of income from the agricultural income claimed by the assessee to the “income from business”. He also drew our attention to para 3.4 of the assessment order, wherein the AO has recorded that the lands are considered as agricultural land as per the revenue records, but that, he has not considered the same as agricultural land only because there was no proof that the assessee has done agricultural operations. He submitted that the AO cannot *suo moto* change the head of income without issuing a notice to the assessee. Without prejudice to this argument, he submitted that the AO ought to have allowed the entire expenditure incurred in the process for agricultural operations for arriving at the profit liable for tax.

5. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee, by himself had offered the Short Term Capital Gain on sale of land in his original return of income and therefore, he cannot change his stand in the re-assessment proceedings in response to the notice u/s 148 of the Act. He submitted that it is not the assessee who has filed the revised returns of income voluntarily, but the return is filed in response to the notice u/s 148 of the Act which proceedings are for the benefit of the Revenue and not for the

benefit of the assessee. Further, he also submitted that the assessee has not furnished any proof of carrying on of agricultural operations during the relevant A.Ys to hold it to be agricultural land. Therefore, he prayed that the assessment order be confirmed.

6. Having regard to the rival contentions and the material on record, I find that the first question that arises before me is whether there was any escapement of income requiring reopening of the assessment u/s 148 of the Act. I find that in the computation of income, the assessee has taken the net figure after reducing the interest on loans and development charges and therefore, the assessee has actually taken the sale consideration at Rs.44,12,500 only and there was no escapement of income in computation of the STCG. Therefore, in my opinion, there is no escapement of income requiring re-assessment u/s 147 of the Act.

7. Be that as it may, the assessee, in the revised return filed in response to section 148 of the Act, has claimed the land as agricultural land. The AO has also accepted that as per the revenue records, these lands are agricultural lands but the only reason for not accepting the said contention is that the assessee has not carried on any agricultural operations. The Hon'ble Bombay High Court in the case of CIT vs. Smt. Debbie Alemao and 2.Joaquim Alemao, reported in (2011) 331 ITR 59 (Bom.) has held that where the land is shown in revenue record as agricultural land and no permission was taken for conversion of

land, it is immaterial whether any agricultural income is shown in the return or not, the gains from sale are exempt from taxation. Therefore, the reason given by the AO for not accepting the assessee's contention is not sustainable. In view of the same, I am inclined to accept the contention of the assessee and hold that the land sold by the assessee being agricultural land, no capital gain is taxable on the profit from sale of such land.

8. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 30th May, 2018.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 30th May 2018.

Vinodan/sps

Copy to:

- 1 Shri B. Narsingh Rao & Co. CAs, Plot No.554, Road No.92, Jubilee Hills, Hyderabad 500096
- 2 ACIT, Circle 6(1) Hyderabad
- 3 CIT (A)-12, Hyderabad
- 4 Pr. CIT – 6, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order