

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2685/Chny/2018
निर्धारण वर्ष /Assessment Year: 2008-09

M/s.GRK Reddy & Sons (HUF),
No.38, Casa Challa, No.16,
South Mada Street, Saidapet,
Chennai-600 015.

Vs. The Income Tax Officer,
Business Ward-III(4),
Chennai-600 034.

[PAN: AAEHG 3164 P]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.D.Anand, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.Sridhar Dora, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.02.2019

घोषणा की तारीख /Date of Pronouncement

: 19.02.2019

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.2685/Chny/2018 is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals)-14, Chennai, in ITA No.118/CIT(A)-14/2014-15 dated 26.04.2018 for the AY 2008-09.

2. Mr.Sridhar Dora, JCIT represented on behalf of the Revenue and Mr.D.Anand, Advocate, represented on behalf of the assessee.

3. In the assessee's appeal, the assessee raised the following grounds:

1. The order of the learned Commissioner Of Income (Appeals)-14, is wrong, illegal and opposed to facts of the instant case.

2. The learned CIT(A)- 14 erred in law in confirming the levy of capital gains tax on sale of land which is classified as agricultural land by the revenue department and as per the deed of purchase and sale made by the appellant.

3. The learned CIT(A)-14 ought to have seen that the impugned land is classified as agricultural lands as per revenue records and is located 8 kms away from the nearest municipal limits or corporation and that the appellant has also carried on agricultural activity. The learned CIT(A) failed to see that the appellant had claimed the income from the sale of said land as exempt since the same is not a capital asset as per the provisions of section 2(14)(iii) of the Income tax Act.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants claim and thus render justice.

4. It was submitted by the Ld.AR that the assessee is a HUF which is having agricultural income and shares. The assessee, HUF had purchased 41.76 acres of agricultural land during the FY 2006-07 under the name and style of Jai Farms. The assessee had done agricultural operations on the said lands for the relevant year and had shown agricultural income of Rs.1,80,000/-. Subsequently, as the assessee found that the said lands were not suitable for large scale agricultural operations on account of certain defects in the lands, the assessee sold the same during the relevant AY. It was a submission that the assessee had purchased the said lands for a consideration of Rs.1,71,98,876/- during the FY 2006-07 and the same lands were sold during the FY 2007-08 for a consideration of Rs.4,38,48,000/- to a property developer, a group concern, namely M/s.New Chennai Township (P) Ltd. It was a submission that when the

land was purchased, it was agricultural land and in the Revenue records, the same was shown as agricultural land. It is also an accepted fact that the agricultural operations were carried out on the said lands as has been recorded by the AO in Para No.12 of his order that certain dry crops such as Manila/Gingily, etc., had been grown prior to the acquisition by the assessee. It was a submission that the AO states that no agricultural operations had been done by the assessee. It was a submission that this is not true. The assessee had attempted various agricultural operations and when it was found that the said land could not be used for large scale agricultural operations. 31.14 acres dry and barren land had been sold by the assessee. It was a submission that even at the time of sale, the Revenue records clearly showed that the land was agricultural land. It was a submission that the assessee claim of agricultural income of Rs.1,80,000/- has also not been rejected. Though, the evidence had been produced with regard to the details of the agricultural activities carried on by the assessee, the same was doubted. It was a further submission that in the course of the assessment, the Village Administrative Officers (in short "VAOs") had been called by the AO for examination and as per the examination, it was clear that the assessee had sold 12.50 acres of dry land at Achivilagam village and 29.26 acres of land at Vellur village. The assessee held more than 90 acres of land. The examination also clearly showed that the said lands were agricultural lands in the Revenue records, major portion of the lands were dry lands and dry crops had also been grown prior to the acquisition by the assessee. It was also noticed that

the said lands were beyond the prescribed 8 kms limit from the nearest Municipality. It was a submission that consequently, as the assessee had sold the agricultural land, the assessee had claimed exemption u/s.10(1) of the Act and the AO had denied the said claim of exemption u/s.10(1) on the ground that there was no evidence to show that the agricultural activities had been done on the said lands and on the ground that what had been transferred were land on which no agricultural operations had been done by the assessee and thirdly that the land was sold to Real Estate Developer for setting up a SEZ. Consequently, the AO had brought the gains from the sale of the said lands as liable for short term capital gains tax. It was a submission that the Ld.CIT(A) had confirmed the order of the AO. It was a submission that the Hon'ble jurisdictional High Court in the case of Ashok Kumar Rathi reported in (2018) 404 ITR 0173 (Mad) has clearly held that apart from revenue records classifying the land as agricultural land, AO accepted agricultural income declared from the said property for the AY and completed the assessment, merely because the property fetched an income only of Rs.65,300/- during the relevant AY, it was not a ground to discredit the assessment by itself which had determined the character of the land to be agricultural land. The Ld.AR further relied upon the decision of the Hon'ble jurisdictional High Court in the case of M.S.Srinivasa Naicker reported in (2007) 292 ITR 0481 wherein it had been held that the fact that the purchaser intended to put the land in question to a totally different use is not relevant for determining its character. It was a submission that the order of the

Ld.CIT(A) and that of the AO is liable to be reversed and the assessee was entitled to claim the exemption u/s.10(1) of the Act.

5. In reply, the Ld.DR vehemently supported the order of the AO and the Ld.CIT(A). It was submitted by the Ld.DR that the examination of the VAOs clearly showed that the land in question was not suitable for agricultural operations and consequently, could not be treated as agricultural land. It was a submission that the order of the AO and the Ld.CIT(A) was liable to be upheld.

6. We have considered the rival submissions.

7. A perusal of the facts in the present case clearly shows that the assessee is a HUF which is primarily doing agricultural activities and investment in shares. The assessee had admittedly purchased the agricultural land during the FY 2006-07. Before the AO as also before the Ld.CIT(A), the assessee has been maintaining that it was unable to do the agricultural operations which desires on a large scale, consequently, the assessee was forced to liquidate the said lands within one year of its purchase itself. Clearly the AO has not made any addition on account of the rejection of the assessee's claim of agricultural income. That the assessee owned more than 90 acres of land is also not disputed. A perusal of the Assessment Order clearly shows that the AO has examined the VAOs of the various villages wherein the assessee properties are

situated. It is also noticed that the said VAOs were not provided for cross-examination to the assessee. A perusal of what has been extracted by the AO in respect of the VAO statements recorded clearly shows that as per the revenue records, the said lands were agricultural lands during the relevant period. The examination of the VAOs has also brought out the fact that the agricultural operations had been done on the said lands. How the AO draws the conclusion that the lands were left barren after purchase by the assessee is not coming out of the Assessment Order. It is also an admitted fact that the said lands are beyond 8 kms from the nearest Municipality. Thus, clearly, the said lands do not fall within the purview of the definition of capital asset under Income Tax Act. Once, the revenue records clearly shows that the said lands are agricultural lands and it is also noticed that the agricultural operations have been done on the said lands, just because, the assessee has not been able to generate desired agricultural income from the said lands and the assessee had sold the said lands within one year of its purchase, would not change the character of agricultural land to a non-agricultural land. This view of ours is supported from the principles laid down by the Hon'ble Jurisdictional High Court in the case of M.S.Srinivasa Naicker referred to supra as also the decision in the case of Ashok Kumar Rathi referred to supra. This being so, we are of the view that what has been sold by the assessee is an agricultural land and consequently the assessee is entitled to claim the benefit of exemption u/s.10(1) of the Act. Consequently, the order of the Ld.CIT(A) is set-aside and the AO is directed to grant the assessee the

benefit of exemption u/s.10(1) as claimed in respect of the sale of the said agricultural lands.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on the 19th day of February, 2019 in Chennai.

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19th February, 2019.

TLN

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