

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

मजनीय श्री महावीर सिंह, उपाध्यक्ष एवम्
मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.591/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Nagappan Suganthi 3/261, Anna Street, Perumbakkam, Chennai-600 100.	बनम् / Vs.	ACIT Non-Corporate Circle-22, Tambaram, Chennai-600 045.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.	BZFPS-2085-G	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21-08-2023
घोषणा की तारीख / Date of Pronouncement	:	23-08-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of the learned Commissioner of Income Tax (Appeals)-10, Chennai [CIT(A)] dated 27-01-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w s. 147 of the Act on 27-12-2018. The Ld. Sr. DR submitted that the revenue has also filed cross-objections against the impugned order on 19-05-2023 in which the revenue submit that impugned land is situated within 5.1 Kms. Away from nearest municipality i.e. Tambaram and therefore, the land is capital asset as per amendment to Sec. 2(14) as applicable from AY

2014-15. It has also been submitted that Sholinganallur Town Panchayat has been brought into Chennai Corporation from 09-11-2010 as per Government order. The impugned property is situated in Perumbakkam, Sholinganallur Taluk. Perumbakkam is a well developed residential town and it is just 3 kms. from Sholinganallur town.

2. However, Ld. AR asserted that impugned land as sold by the assessee was agricultural land. In the alternative, the Ld. AR submitted that the assessee claimed deduction u/s.54B which has been denied for want of evidences. Drawing our attention to para 5.2(ii) of the impugned order, the Ld.AR submitted that additional evidences filed by the assessee, in this regard, were not admitted by the first appellate Authority. In the said background, Ld. AR submitted that the assessment may be restored back to Ld. AO keeping all the issues open. The Ld. Sr. DR, on the other hand, drew attention to the cross-objections and made similar prayer. Considering the same, the appeal is disposed-off as under.

3.1 The assessee being resident individual sold certain agricultural land for Rs.137.60 Lacs. However, in original return of income, no capital gains were shown and accordingly, the case was reopened and notice u/s.148 was issued on 08-11-2017. During the course of assessment proceedings, it transpired that the assessee sold vacant land admeasuring 86 cents comprised in survey No.249/1 (As per patta bearing No.3148) situated at 153, Perumbakkam Village, Sholinganallur Taluk, Kanchipuram Dist. for a consideration of Rs.137.60 Lacs. No capital gain was offered on the ground that agricultural operations were carried out on the said land and the land is situated more than 8 kms.

away from nearest Tambaram municipality. In other words, the assessee submitted that the said land was agricultural land and it could not be considered as a capital asset.

3.2 However, the Census Officer, vide letter dated 13-11-2018, informed that as per census 2011, population of Tambaram municipality was 1.75 Lacs. As per amendment provisions of Section 2(14) of the Act, the land should be situated beyond 6 kms as measured aerially from nearest municipality. From google map, it was ascertained that land was situated within only 5.1 kms and therefore, Ld. AO held that the land was a capital asset exigible to tax. Accordingly, the Ld.AO computed capital gain of Rs.137.18 Lacs.

3.3 The assessee claimed deduction u/s.54B on the ground that sale consideration to the extent of Rs.38.88 Lacs was invested in agricultural land in the name of her son Shri M. Chittibabu. However, in absence of any documentary evidences and considering the fact that the land was purchased in the name of her son much earlier to the sale of land in question, the said deduction was denied to the assessee.

3.4 During appellate proceedings, the assessee furnished new evidences to support the fact that property was not a capital asset. However, in absence of application for admission of new evidences under Rule 46A, said evidences were not admitted. The Ld. CIT(A) also held that since TDS was deducted on sale consideration u/s.194IA and the assessee claimed credit of TDS, the sale consideration would be taxable in the hands of the assessee. Accordingly, the action of Ld.AO was upheld. Aggrieved, the assessee is in further appeal before us.

Our Adjudication

4. We are of the considered opinion that Ld. CIT(A) erred in not admitting additional evidences since the same would have material bearing on the computation of capital gains in the hands of the assessee. It could also be seen that the assessee has made alternative claim u/s 54B which has not been considered primarily in the absence of sufficient evidences. Considering the prayer made before us in the appeal as well as in the cross-objection, we restore the matter of assessment back to the file of Ld. AO to frame fresh assessment keeping all the issues open.

5. The assessee's appeal stand allowed for statistical purposes.

Order pronounced on 23rd August, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :23-08-2023

DS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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