INCOME TAX : Mere classification of land in revenue record, as agricultural land, will not conclusively prove that nature of land was an agricultural land , hence, where no evidence was produced by assessee to establish character of land sold by it as agricultural land, Assessing Officer had rightly held that land was not an agricultural land

[2021] 123 taxmann.com 291 (Madras)

HIGH COURT OF MADRAS

Commissioner of Income Tax, Business Ward III(4), Chennai

v.

GRK Reddy & Sons (HUF)*

T. S. SIVAGNANAM AND MRS. V. BHAVANI SUBBAROYAN, JJ.
T.C.A.NO.394 OF 2019†
DECEMBER 16, 2020

Section 2(14), read with section 45, of the Income-tax Act, 1961 - Capital asset (Agricultural land) - Assessment year 2008-09 - Whether mere classification of land in revenue record, as agricultural land, will not conclusively prove that nature of land was an agricultural land - Held, yes - Assessee filed return claiming exemption on profit arising on sale of agricultural land - Assessing Officer treated land as non-agricultural land and held that it would come within category of capital asset under section 2(14), chargeable to tax under head capital gains - Commissioner (Appeals) dismissed assessee's appeal - Tribunal reversed order passed by Commissioner(Appeals) only on ground that lands were shown as agricultural lands in revenue record during relevant period and, therefore, would not fall within purview of definition of capital asset under Act- However, it was found that nothing was brought on record by assessee to establish that agricultural operations were carried on prior to his purchase and after purchase - Further, conduct of assessee in selling property within a short period of one year to non-agriculturists and property being used to develop SEZ had not been taken note of by Tribunal while deciding character of land - Whether therefore, Tribunal erred in interfering with order passed by Commissioner(Appeals) - Held, yes [Paras 15 and 16][In favour of revenue]

CASE REVIEW

CIT v. *Ashok Kumar Rathi* [2018] 89 taxmann.com 406/404 ITR 0173 (Mad.) (para 11) and *M.S. Srinivasa Naicker* v. ITO [2008] 169 Taxman 255/[2007] 292 ITR 481 (Mad.) (para 16) *distinguished*.

CASES REFERRED TO

Smt. Sarifabibi Mohmed Ibrahim v. *CIT* [1993] 70 Taxman 301/204 ITR 631 (SC) (para 5), *CIT* v. *Ashok Kumar Rathi* [2018] 89 taxmann.com 406/404 ITR 173 (Mad.) (para 11), *Pr. CIT* v. *Mansi Finance Chennai Ltd.* [2016] 73 taxmann.com 312/388 ITR 514 (Mad.) (para 13), *Fazalbhoy Investment Co. (P.) Ltd.* v. *CIT* [1989] 42 Taxman 22 (Bom.) (para 15), *Rajiv Dass* v. *Dy. CIT* [2019] 103 taxmann.com 192/264 Taxman 40/414 ITR 37 (Delhi) (para 15) and *M.S. Srinivasa Naicker* v. *ITO* [2008] 169 Taxman 255/[2007] 292 ITR 481 (Mad.) (para 16).

V. Pushpa, Jr. St. Counsel *for the Appellant.* **Ashokpathy** *for the Respondent.*

JUDGMENT

T.S. Sivagnanam, J. - This appeal has been filed by the Revenue under section 260-A of the Income-tax Act, 1961 [the 'Act' for brevity] challenging the order dated 19-2-2019 in I.T.A.No.2685/Chny/2018 passed by the Income-tax Appellate Tribunal Madras 'C' Bench, Chennai [hereinafter referred to as 'Tribunal'] for the assessment year 2008-2009 [for brevity 'AY'] .

2. The Appeal was admitted on 26-6-2019 on the following Substantial Questions of Law:

> "*i.* Whether, on the facts and circumstances of the case and in law, the Income-tax Appellate Tribunal was correct and justified in holding that the land sold was an agricultural land when the assessee purchased it with an intention to sell and sold it within short period of less than one year? and
>
> *ii.* Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in ignoring the fact that the land purchased had potentiality of being developed into building site and no agricultural operations were carried out on the land by the assessee and hence, it was clearly an adventure in the nature of trade?"

3. The assessee filed a return claiming exemption under section 10(1) of the Act with regard to the profit arising on sale for a land to the extent of Rs. 2,66,49,124/- on the ground that the land, which was sold was agricultural land.

4. The assessee declared an agricultural income of Rs. 1,80,000/-for rate purposes. The regular assessment in the assessee's case was completed under section 143(3) of the Act by order dated 28-12-2010. Subsequently, the proceedings were initiated by the Commissioner of Income-tax under section 263 of the Act dated 28-3-2013 and the show cause notice was issued to the assessee calling upon them to explain as to why the subject capital asset should not be considered as 'not being an agricultural land'. Inspite of opportunity, the assessee did not appear before the Commissioner of Income Tax. The authority proceeded to decide the matter on merits and passed an order on 28-3-2013 held the assessment order dated 28-12-2010 suffers from errors and it is prejudicial to the interest of the revenue and accordingly, the same was *set aside* and the assessing officer was directed to cause necessary enquiry giving reasonable opportunity to the assessee and to redo the assessment. This direction was complied by the assessing officer and notices were issued to the assessee, who appeared through the authorised representative, though belatedly, questionnaires were prepared and issued to the assessee and after considering all the aspects, the assessment was completed by order dated 14-3-2014 treating the land as 'non-agricultural land' and would come within the category of 'capital asset' under section 2(14) of the Act, chargeable to tax under the head 'capital gains'. Aggrieved by such order, the assessee preferred appeal to Commissioner of Income-tax (Appeals)-14, Chennai (CITA), who by order dated 26-4-2018 dismissed the assessee's appeal. Aggrieved by the same, the assessee preferred the appeal before the Tribunal, which was allowed by the impugned order, challenging the order passed by the Tribunal, assessee is before us, by way of this Appeal.

5. The Tribunal reversed the order passed by the CITA, who confirmed the order of assessment only on the ground that the lands were shown as agricultural lands in the revenue record during the relevant period and therefore, would not fall within the purview of the definition of 'capital asset' under the Act. Unfortunately, the Tribunal applied the wrong test and ignored the settled legal position, as held in the case of *Smt. Sarifabibi Mohmed Ibrahim* v. *CIT* [1993] 70 Taxman 301/204 ITR 631 (SC). The Hon'ble Supreme Court in the said decision had laid down thirteen factors/indicators, which would be relevant to determine the character of the land. They being as hereunder:—

"(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue ?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time ?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stopgap arrangement ?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land ?

(5) Whether the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land ? If so, when and by whom (the vendor or the vendee) ? Whether such permission was in respect of the whole or a portion of the land ? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date ?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use ? Whether such cesser and/or alternative user was of a permanent or temporary nature ?

(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled ? Whether the owner meant or intended to use it for agricultural purposes ?

(8) Whether the land was situate in a developed area ? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that 6 6 the land was agricultural ?

(9) Whether the land itself was developed by plotting and providing roads and other facilities ?

(10) Whether there were any previous sales of portions of the land for non-agricultural use ?

(11) Whether permission under s. 63 of the Bombay Tenancy & Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist was for nonagricultural or agricultural user ?

(12) Whether the land was sold on yardage or on acreage basis ?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield ?"

6. The Hon'ble Supreme Court has also laid down as to how these factors are to be considered in each case and the ultimate decision will have to be reached on the balanced consideration of the totality of circumstances.

7. Of the 13 questions, the question Nos. 5 and 11 may not be relevant for the case on hand. The answer to the other questions are as hereunder:—

(*i*) Yes. The land is classified as agricultural wet/dry land.

(*ii*) No

(*iii*) Stopgap arrangement.

(*iv*) No

(*vi*) No

(*vii*) No

(*viii*) Yes

(*ix*) No

(*x*) No

(*xii*) Sold on acreage basis

(*xiii*) No

8. The answers, which we have given to the above questions are after noting the factual details, as culled out by the assessing officer, after direction was issued under section 263 of the Act by the CITA.

9. The assessing officer has framed the questionnaire and has referred to Question Nos.8, 9, 10, 11, 12, 13 and 14 in the assessment order, unfortunately, the assessee did not give any reply to the questionnaire supported by required documentary evidence. The submission of the authorised representative were all pertaining to the bank statement and other financial details, but nothing pertaining to the character of the land, which was specifically put to the assessee. Furthermore, we find from the assessment order dated 14-3-2014, the assessee failed to co-operate in the assessment proceedings. Repeated notices were issued and only after summons were issued to the Kartha of the HUF, he had executed a power of attorney in favour of the another person, who appeared before the assessing officer. That apart, the lands were held by the assessee only for a short period of one year, sold to a company, in which the Kartha of the assessee was the Chairman. The land was put to use for construction of a special economic zone. The assessee offered in the assessment a sum of Rs. 1,80,000/- stated to be agricultural income, this plea was unsubstantiated.

10. The Village Administrative Officer, who had been examined by the assessing officer stated that the land are barrel land, therefore, a decision cannot be taken merely based on entry in the revenue record. To be noted that the revenue records were not mutated in the name of the assessee, but stood in the name of the assessee's vendor. The holding period by the assessee is very crucial in the case, as it is only one year, all these factors were rightly taken note of by the assessing officer and held that the land is not an 'agricultural land'.

11. The argument of Mr.Ashok Pathy, learned counsel appearing for the respondent/assessee is that the burden of proof lies on the department and the land having been registered as an agricultural land, the assessee has discharged his burden and it is for the revenue to establish the same. In support of such contention, reliance was placed on the decision in the case of *CIT* v. *Ashok Kumar Rathi* [2018] 89 taxmann.com 406/404 ITR 173 (Mad). In our considered view, this decision will not help the assessee's case because in the said case, the agricultural income, which was offered by the assessee was accepted and the assessee was assessed to agricultural income tax, however, in the instant case, the Revenue disputed the character of the land, as claimed by the assessee to be agricultural.

12. A *prima facie* opinion was formed by the Commissioner while issuing direction under section 263 of the Act. The assessee was given opportunity to explain, which they fail to do. Thus, the initial onus though partially discharged by the assessee, when the same was put to challenge with relevant materials, the assessee could not explain, or in other words, failed to give any explanation. Therefore, onus on the revenue has been discharged and it shifted to the assessee, who failed to discharge the burden cast on them. Therefore, the decision cannot assist the assessee.

13. Apart from the above, reliance was also placed in the case of *Pr. CIT* v. *Mansi Finance Chennai Ltd.* [2016] 73 taxmann.com 312/388 ITR 514 (Mad.). In the said decision, the fact finding authority as well

as the Tribunal held that there was sufficient evidence adduced by the assessee to prove that the subject lands have been put to agricultural operation before sale.

14. Under the said facts and circumstances, the revenue's appeal was dismissed. The fact situation in the case on hand is entirely different and there was no evidence placed before the assessing officer or before the CITA or before the Tribunal to establish the character of the land, as claimed by the assessee to be agricultural. It is argued by the learned counsel for the assessee that the statements of the Village Administrative Officer was not put to the assessee, however, no such plea was raised before the Tribunal that they were put to prejudice on account of a statement given by the Village Administrative officer, therefore, to raise such a plea at this juncture, is impermissible.

15. We also take note of the decision relied on by Ms.V.Pushpa, learned standing counsel for the appellant in the case of *Fazalbhoy Investment Co. (P.) Ltd.* v. *CIT* [1989] 42 Taxmann 22 (Bom) to hold that the finding of the Tribunal in the impugned order is utterly perverse. It has totally brushed aside the evidence, which was brought on record by the assessing officer, which was re-appreciated by the CITA to hold against the assessee. We also refer to the decision relied on by the revenue in the case of *Rajiv Dass* v. *Dy. CIT* [2019] 103 taxmann.com 192/264 Taxman 40/414 ITR 37 (Delhi), wherein the Tribunal took note of the facts and held that the assessee therein had undertook the agricultural activities for two years on sharing basis through a person on crop sharing (batai) basis. In the instant case, nothing was brought on record by the assessee to establish that the agricultural operations were carried on prior to his purchase and after purchase.

16. Further, the conduct of the assessee in selling the property within a short period of one year and the property being used to develop the SEZ ought to have taken note of by the Tribunal while deciding the character of the land, as mere classification of the land in the revenue record, as agricultural land, does not conclusively prove that the nature of the land is an agricultural land. As noted above, the lands were transferred to non-agriculturists for non-agricultural purpose and this would also be one of the relevant factors to test the case of the assessee. The Tribunal relied on the decision in the case of *M.S. Srinivasa Naicker* v. *ITO* [2008] 169 Taxman 255/[2007] 292 ITR 481 (Mad.), the said Judgment could not have been applied to the case on hand because in the said decision on examining the facts and as admitted by the revenue, on the date of sale, agricultural operations were carried on in the lands, which is not so in the case of the assessee. Thus, for all the above reasons, we find that the Tribunal erred in interfering the order passed by the CIT[A] affirming the order of assessment dated 14-3-2014.

In the result, the present Tax Case Appeal is allowed and the impugned order passed by the Tribunal is *set aside* and the substantial questions of law are answered in favour of the revenue. No costs.

JK

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*In favour of revenue.

†Arising out of Order passed by ITAT Chennai Bench 'C' in IT Appeal No. 2685 of 2018, dated 19-2-2019.