

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

T.C.A.No.1189 of 2015

The Commissioner of Income Tax
63 Race Course Road
Coimabtores

... Appellant

Vs

Shri.K.R.N.Prabhakaran (HUF)
Old No.291 New No.55/1
Avarampalayam Road
New Siddhapudur
Coimbatore 641 044.

... Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, made in I.T.A.No.2716/Mds/2014, dated 22/6/2015, preferred against the order of the Commissioner of Income Tax (Appeals) - I, Coimbatore, order dated 13.08.2014 made in ITA.No.192/13-14 and against the order of the Assistant Commissioner of Income Tax, Circle - II, Coimbatore, order dated 31.03.2013, made in PAN/GIR.No.AAIHK0748M for the Assessment Year 2008 - 2009.

For Petitioner : Mr.T.R.Senthil Kumar
for Ms.R.Hemalatha

For respondent : Mr.K.R.N.Prabhakaran
party-in-person

J U D G M E N T
(Judgment of the Court was made by S.MANIKUMAR, J)

Challenge in this Tax Case Appeal, is to an order made by the Income Tax Appellate Tribunal in I.T.A.No.2716/Mds/2014, dated 22/6/2015, by which, the Tribunal has dismissed the appeal preferred by the revenue.

2. Brief facts of the case are as follows:-

The assessee is a HUF, filed its original return of income, on 14/3/2011, for the assessment year 2008 - 09, admitting income under the head "income from other sources" of Rs.8,72,770/- and NIL income under the head "long term capital gain". In the return of income, the assessee further disclosed that the sale of its agricultural land at Keeantham village for Rs.9,25,47,000/- and the capital gain arising from the sale of the land, as exempt, because the assets sold was agricultural land situated beyond 8 Kms of municipal limit. Since the Assessing Officer reasoned to believe that the land was situated within 8 Kms of municipal limit, a notice under Section 148 was issued. The Assessing Officer, vide letter, dated 07.03.2013, requested the Inspector of Survey and Land Records (Maintenance), Coimbatore, to furnish the distance, as per record (measured at shortest route) with respect to S.Nos.574/2, 575/2, 577, 578/1, 579/1 & 578/1 located at Keeranam Pudupalayam village to the nearest Coimbatore Corporation limits. Responding to the query, the Inspector of Survey and Land Records (Maintenance), Coimbatore, has answered as follows:-

"I have measured the distance from the Coimbatore Corporation limit at Sathy road, Coimbatore being exact starting point (Land mark: beyond Ramakrishna mills at LGB Nagar, Piriru-Gowtham tower, Aiswarya bakery and Jayam medical) to measure the distance as required to the said land as per the Coimbatore Corporation limit plan as was in the year 007 - 08. From that point as mentioned above by the distance road route to the said agricultural land the distance measures at 9.13 Kms."

3. However, the Assessing officer, relied on the report of the investigation wing, which reported that the land is located within 8 Kms from City bakery, which according to them is not more than 100 meters from the Corporation limits of Coimbatore. Finally, assessment was made on 31.03.2013 under Section 143 (3) r/w. Section 147 of the Act, wherein, the Assessing Officer held that the land was situated within 8 Kms of the municipal limit and the assessee was liable to capital gain tax and accordingly, assessed the long term capital gain as Rs.9,25,19,770/-.

4. On appeal, the Commissioner of Income Tax (A), decided the matter in favour of the assessee. The Assistant Commissioner of Income Tax, Circle II, Coimbatore, filed appeal in ITA No.2716/Mds/2014, before the Income Tax Appellate Tribunal.

5. Before the Income Tax Tribunal, the learned D.R appeared on behalf of the revenue, submitted that the investigation wing of the revenue had forwarded a report, wherein, it is clearly stated that the land is located within 8 Kms from City Bakery, which is not more than 100 meters from the Corporation limits of Coimbatore. He submitted that the finding of the Revenue, will supersede the certificates given by the State government departments and that therefore, the issue has to be decided on that basis.

6. The Tribunal, while dismissing the appeal filed by the revenue, held that the Survey Department of the State government and the Tahsildar of the relevant zone, have consistently certified that the land is situated beyond 8 Kms from the Corporation limits of Coimbatore. The Tribunal further held that the land sold by the assessee is an agricultural land and situated beyond 8 Kms from the Corporation municipal limit, therefore, the capital gain arising from the sale of the aforesaid land is exempt from capital gain tax, as per the provisions of the Income Tax Act, 1961.

7. Aggrieved by the aforesaid order, instant Tax Case Appeal has been filed, on the following substantial questions of law:-

"1. Whether on the facts and circumstances of the case, the Appellate Tribunal was correct in holding that the sale land is agricultural land and eligible to claim of exemption under Section 2 (14) of the Income Tax Act?

2. Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in ignoring the evidences gathered by the department for ascertaining the correct distance for the purpose of Section 2 (14) of the Income Tax Act?"

8. Praying for an answer on the substantial questions of law, in favour of the appellant, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the Income Tax Department, assailed the correctness of the order of the Income-Tax Appellate Tribunal, "A" Bench, Chennai, dated 22.06.2015, inter alia that,

(i) There are two possible routes to the property of the assessee in question and the authorities in support of the assessee's claim adopted a longer route (via Saravanampatti) whereas the shorter route (via Chinnavedampatti) on which the Department relied has been totally ignored.

(ii) The evidences collected by the ITO (Inv.) clearly indicate that from the Corporation limits, the

lands sold by the assessee is situated within 8 Kms only.

(iii) The land in question was not put to use for any agricultural purpose during the two years' period immediately preceding the date of transfer, as laid down in Section 10 (37) (ii) of the Income Tax Act.

(iv) No agricultural income was returned by the assessee for the earlier assessment years.

(v) The Tribunal had failed to appreciate that the assessee had sold the lands to the real estate developer, namely M/s.CeeDeeYes Housing and Infrastructure Ltd., to develop the same into multiple residential villas. This fact establishes that the operations are not agricultural.

(vi) Between the three concerned State Government authorities relied upon by the CIT (A), there is difference in the distance, as tabulated hereunder:

NAME OF THE AUTHORITY	DISTANCE OF THE ASSESSEE'S PROPERTY FROM THE CORPORATION LIMITS
Inspector of Survey & Land Records Maintenance, Coimbatore North	9.13 Kms
Sub-Inspector of Surveys, Coimbatore Corporation-North Zone, Coimbatore	9.10 Kms.
Tahsildar (North Coimbatore)	8.40 Kms

9. According to the learned Standing Counsel, being a fact, there can be only one fixed distance, between the Corporation limits and the assessee's property. The point of reckoning for the above authorities was the limits on the Coimbatore-Sathy road, and the route taken was, via Saravanampatty.

10. By way of written submissions, Mr.K.R.N.Prabhakaran, party-in-person, submitted that he has submitted all the valid proof issued by the government authorities, who are competent to measure and certify the distance and maintain relevant land records of Tamil Nadu, to the Income Tax Department. They have certified that the agricultural land is situated, at a distance of above 8 Kms from the corporation limit. The Income Tax Inspector is not technically qualified or an authorised person to measure distance. The Income Tax Inspector has stated that the distance, as 7.9 Kms (only 100 metres less of 8 Kms), whereas, the reports of the revenue and survey departments have to be accepted. He also submitted that the evidence considered by the appellate authority and the Tribunal are relevant, for

the purpose of rendering a decision and thus, rightly taken note of, by the appellate authority and the Tribunal.

11. He further submitted that agricultural lands in question are situated in Keeranam Puduppalayam Village, located in Keeranatham Village Panchayat, which is not under the control of any Municipality. He further added that as per Section 2 (14) (iii) of the Income Tax Act, the sale value of above lands are exempted from tax and not to be included as a capital asset, as per the decision reported in 1970-75 ITR - St.90)

12. The certificates, considered by the appellate authority and Tribunal, are issued by the following authorities:-

1. Tahsildar (Coimbatore North) dated 30/4/2008.
2. Inspector of Survey & Land Records Maintenance, Collectorate Compound, Coimbatore, dated 20.12.2010.
3. Sub-Inspector of Survey, Coimbatore Corporation, North Zone, dated 31/8/2012.
4. Letter from Sub-Inspector of Survey stating the exact place of Corporation limit end to measure the distance along with a map.
5. Certificate of Inspector of Survey & Land Records Maintenance dated 15/3/2013 in response to A.O's letter dated 7/3/2013.
6. Letter of Inspector of Survey and Land Records Maintenance, dated 25/3/2013, in response to A.O's letter, dated 15/3/2013, regarding exact place from which distance is measured and
7. Patta passbook and certificates from Keranatham Panchayat."

In the light of the above, he submitted that the well considered order of the Tribunal, does not call for any interference and prayed for dismissal of the appeal.

13. Heard the learned counsel appearing for the appellant and perused the materials available on record.

14. On the issue, as to whether, the agricultural land sold by an assessee, is situated more than the distance of 8 Kms from the exact place of Corporation limits, and as to whether, that the same falls within the definition, "agricultural land", it is necessary to have a cursory look at few provisions, referred to, by the appellant. Section 2(14)(iii) of the Income Tax Act, reads as follows:

"(iii) agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area

committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(b) in any area within the distance, measured aeri ally.-

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh."

15. Section 11 of the General Clause Act, 1897, deals with measurement of distance and the same is extracted hereunder:

"In the measurement of any distance, for the purpose of any Central Act or Regulation, made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane."

16. In Commissioner of Income-Tax v. Lal Singh reported in 325 ITR 588 (P & H), the Punjab and Haryana High Court, held that the measurement of distance made by the Tahsildar, for determining the distance between the agricultural land and the nearest municipality, cannot be ignored and there was no justification for the Assessing Officer to reject the report.

17. In CIT v. Satinder Pal Singh reported in 229 CTR 82, the Tribunal therein, while considering the question of measuring distance between the agricultural land and the municipal limits of city, decided the issue, holding that the distance of 2 kms., from the municipal limits of city, has to be reckoned for the purposes of Section 2(14)(iii) of the Act, by measuring the same, as per the road distance and not as per straight line distance on a horizontal plane or as per crow's flight. When the said decision was challenged, the Punjab and Haryana High Court, held as follows:

"A perusal of the aforesaid provision shows that 'capital asset' would not include any agricultural land which is not situated in any area within such distance as may be specified in this behalf by a notification in the official gazette which may be issued by the Central Government. The maximum distance

prescribed by Section 2(14)(iii)(b) of the Act which may be incorporated in the notification could not be more than 8 Kms. from the local limits of municipal committee or cantonment board etc. The notification has to take into account the extent of, and scope for urbanization of that area and other relevant considerations. The reckoning of urbanization as a factor for prescribing the distance is of significant which would yield to the principle of measuring distance in terms of approach road rather than by straight line on horizontal plane. If principle of measurement of distance is considered straight line distance on horizontal plane or as per crow's flight then it would have no relationship with the statutory requirement of keeping in view the extent of urbanization. Such a course would be illusory. It is in pursuance of the aforesaid provision that notification No.9447, dated 6.1.1994 has been issued by the Central Government. In respect of the State of Punjab, at item No.18 the sub division Khanna has been listed at serial No.19. It has inter-alia been specified that area upto 2 kms., from the municipal limits in all directions has to be regarded other than agricultural land. Once the statutory guidance of taking into account the extent and scope of urbanization of the area has to be reckoned while issuing any such notification then it would be incongruous to the argument of the Revenue that the distance of land should be measured by the method of straight line on horizontal plane or as per crow's flight because any measurement by crow's flight is bound to ignore the urbanization which has taken place. Moreover, the judgement of the Mumbai Bench appears to have attained finality. Keeping in view the principle of consistency as laid down in Radha Soawami Satsang v. CIT, (1992)193 ITR 321, we are of the view that the opinion expressed by the Tribunal does not suffer from any legal infirmity warranting interference of this Court."

18. In Commissioner of Income Tax v. Shabbir Hussain Pithawala reported in 2014 (226) Taxman 174, the Madhya Pradesh High Court held that,

"the distance of the agricultural land belonging to the assessee within the meaning of Section 2(14)(iii)(b) has to be measured in terms of the approach road and not by the straight line distance on horizontal plane or as per crow's flight.

19. In Commissioner of Income Tax v. Nitish Rameshchandra Chordia reported in (2015) 57 Taxman 394 (Bom.), the Bombay High Court held that,

"The distance between municipal limits and assessed property/asset is to be measured having regard to the shortest road distance and not as per the crow flies i.e. straight line distance as canvassed by the Revenue."

20. In Commissioner of Income Tax v. Sri Vijay Singh Kadan [I.T.A.No.714 of 2015, dated 14.09.2015], the Delhi High Court, held that for the purpose of Section 2(14)(iii)(b) of the Act, the distance has to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route. The distance has to be measured from the land in question itself and not from the village in which the land is situated.

21. In Kunhunarayanan v. Aravindakshan reported in 1974 KLT 300, in the case of shifting of Kudikidappu under the Kerala Land Reforms Act, 1964 and dealing with Section 78(2)(e)(ii) of the Act, directing that the new site should be "within a distance of one mile from the existing Kudikidappu, the Kerala High Court held that the distance has to be calculated by some road or pathway over the which a person will have a right to approach the alternative site when proceeding thereto from the site of the existing Kudikidappu".

22. Reverting to the case on hand, let us consider the documents produced by the respondent,

TEHSILDAR OFFICER

Coimbatore North,
Coimbatore 641 018.

M.M. 4974/2008 (A8)

Date: 30.4.2008

CERTIFICATE

This is to certify that Coimbatore North Taluk, in Keeranatham Village, the agricultural lands having the below mentioned SF Numbers, containing a total area of 4.02 Hectare are situated at a distance of 8.4 KM from the Coimbatore corporation limits.

S.F. Number	Area
574/2	0.39.0 Hectare
575/2	0.17.0 Hectare
576/2	0.09.0 Hectare

S.F. Number	Area
577	0.66.5 Hectare
578/1	0.62.5 Hectare
579/1	1.57.0 Hectare
582/1	0.51.0 Hectare
Total	4.02.0 Hectare

30.4.08

Signed TEHSILDAR Dt.

Coimbatore - (North)

Round Seal of Tehsildar/ Taluk

Judge.

Coimbatore

Recipient

Mr. K. Prabakaran,
291, Avaram Palayam Road,
Sidha pudur, Post,
Coimbatore 641 044.

[TRANSLATED FROM TAMIL TO ENGLISH]

INSPECTOR OF SURVEY AND
LAND RECORDS MAINTANCE,
Coimbatore (North)
Collectorate Compound,
Coimbatore 641 018.

Dated : 20.12.2010.

C/ office ref: L. Dis.1189/10.

CERTIFICATE

This is to certified that the agricultural land in Keeranathan panchayat, Coimbatore district bearing survey numbers 574/2,575/2,576/2, 577, 578/1, 579/1 and 582/1 at Keeranam puduppalayam village is situated at a distance of 9.15 kms measured as shortest distance from the near by Coimbatore corporation limit ends on sathy road (land mark when visited: near Gowtham complex, Aishwarya bakery, and Jayam medicals) taken by the approachable shortest road route from boundary of Coimbatore corporation limits at Sathy road via Sivananda puram, Saravanampatty, Keeranatham village to Keeranatham puduppalayam village till the land is situated and 16 km from Coimbatore railway station as per Coimbatore corporation limit plan.

Inspector of Survey and Land
Records maintenance
Coimbatore (North)
Collectorate compound
Coimbatore.

To
Mr. K. Prabakaran,
291, Avaram Palayam Road,
Sidhapudur, Post,
Coimbatore 641 044.

31.08.2012

SUB INSPECTOR OF SURVEYS,
Coimbatore Corporation - North Zone,
Coimbatore.

C/office ref: Your letter dated 06.07.2012
Sub: Issue of distance certificate - Reg.

CERTIFICATE

I have been requested to certify the distance by road from the limit of Coimbatore corporation (as existed in the year 2007-2008) till the location of agricultural land in SF Nos.574-579 and 582 at Keeranatham puduppalayam village by Mr. K. Prabakaran residing at 291, Avarampalayam road, Sidhapudur, Coimbatore 641 044.

In this regard, I hereby certify that I have personally visited and found the shortest distance from the near by Coimbatore corporation limits (as was in the year 2008) at Sathy road (land mark when visited: near Gowtham complex, Aishwarya bakery, and Jayam medicals) to the agricultural land in SF numbers 574/2, 575/ 2, 576/2, 577, 578/1, 579/1 and 582/1 at Keeranatham puduppalayam village is 9.1 kms measured by the shortest approachable road route taken from boundary of Coimbatore Corporation limit via. Sivananda puram, Saravanampatty, Keeranatham Villge to Keeranathan puduppalayam village till the land is situated.

Surveys

Sub Inspector of
Coimbatore Corporation
North Zone

To
Mr. K. Prabakaran,
291, Avaram Palayam Road,
Sidhapudur, Post,
Coimbatore 641 044.

INSPECTOR OF SURVEY AND
LAND RECORDS MAINTANCE,
Coimbatore (North),
Collectorate

Compound,

Coimbatore 641 018.

Dated 15.03.2013.

Sub: Request the distance to land in SF Nos. 574-
579 and 582 in Keeranatham Village - Reg.

Ref: Your letter F. No.AAIHK 0748M/ CIR
II/CBE /12-13 Our off. Ref. C. No.112/13, Dated
11.03.2013.

CERTIFICATE

With reference to the above cited letters, also
as required by your end, I have visited the
agricultural land with survey numbers 574/2,
575/2, 576/2, 577, 578/1, 579 and 582/1 in Keeranatham
Panchayat, Keeranam Puduppalayam Village, Coimbatore
district to measure the shortest distance to the said
land from the Coimbatore corporation limit (2007-
2008).

For this purpose, I have measured the distance
from the Coimbatore corporation limit at Sathy road,
Coimbatore, being the exact starting point (land mark:
beyond Ramakrishna Mills at LGB Nagar Pirivu- Gowtham
tower, Aiswarya bakery and Jayam medical) to measure
the distance as required to the said land as per the
Coimbatore Corporation Limit plan as was in the year
2007-2008. From that point as mentioned above by the
shortest road route to the said agricultural land the
distance measures at 9.13 km.

Inspector of Survey and Land
Records.

(Maintenance)

Coimbatore.

To
Assistant Commissioner of Income Tax,
Circle II, Coimbatore.

23. Though the assessee has submitted that the abovesaid documents to prove that the distance between agricultural land and municipal limit was more than 8 Kms, the assessing officer has only relied on the report of the Inspector of Income-Tax. Though the assessing officer has sought for clarifications from the Inspector of Survey and Land Records Maintenance, Coimbatore, regarding the place, where the Corporation limits ends, as to whether, Gopalkrishna Mills/city bakery or beyond Ramakrishna Mills at LGB Nagar Pirivu - Gowtham tower or Aishwarya bakery or Jayam medicals, which has also been responded, stating that the distance between the municipal limits and the agricultural lands, is 9.13 Kms., the assessing officer has totally ignored the report of the Inspector of Survey and Land Records Maintenance, Coimbatore and recorded as:

"While considering the assessee's reply, the Inspector of this Office was deputed to ascertain the Government Department from which both the city limit and the distance to measure between the limit and the land which was sold. She was went to Coimbatore Local Town Planning Office from where she was directed to Inspector of Survey and Land Record Maintenance, Collectorate Compound, Coimbatore, to get the details for this purpose. Based on this letter, dated 07.03.2013, was sent to the Inspector of Survey and Land Record Maintenance, Coimbatore, asked "to furnish the distance (measured at shortest route) with respect to Survey Nos.574/2, 575/2, 577, 578/1, 579/1 & 578/1 located at Keeranam Pudupalayam village to the nearest Coimbatore Corporation limit as per the records for the F.Y.2007 - 08. In response to the letter, Inspector of Survey and Land Records (Maintenance) gave certificate that, "I have measured the distance from the Coimbatore Corporation limit at Sathy road, Coimbatore being exact starting point (Land mark: beyond Ramakrishna mills at LGB Nagar, Piriru-Gowtham tower, Aiswarya bakery and Jayam medical) to measure the distance as required to the said land as per the Coimbatore Corporation limit plan as was in the year 007 - 08. From that point as mentioned above by the distance road route to the said agricultural land the distance measures at 9.13 Kms".

Another letter, dated 15.03.2013, was sent to the Inspector of Survey and Land Record Maintenance, Coimbatore, asked, "With reference to the certificate

issued, you have mentioned the exact starting point to measure the distance for the survey numbers 574/2, 575/2, 576/2, 577, 578/1, 579 and 582/1 has been mentioned as land mark: beyond Ramakrishna Mills at LGB Nagar Pirivu- Gowtham tower, Aiswarya bakery and Jayam medical), as per the Coimbatore Corporation Limit plan as was in the year 2007-2008. However, from the Inspector of Income-Tax enquiry at Chinnavedampatti Panchayat, we have been informed that the Corporation limit ends at Gopala Krishna Mills/City Bakery. Hence, we require the exact place from which the distance to be measured." The Inspector of Survey and land records in his certificate mentioned that, " for measuring the distance from corporation limit, to the agricultural lands with Survey Nos.574/2, 575/2, 577, 578/1, 579/1 & 578/1 located at Keeranam Pudupalayam village, Coimbatore district, the exact place of starting point will be only at (Land mark: beyond Ramakrishna Mills at LGB Nagar Pirivu- Gowtham tower, Aiswarya bakery and Jayam medical) and not from Gopalkrishna Mills/city bakery nor any other place as per Coimbatore Corporation Plan, as was in the year 2007-08.

Meanwhile, the investigation wing forwarded a report with respect to Mr.K.R.N.Prabakaran case in which it was mentioned that the said land is located within the 8 kilometers from city bakery which according to them is not more than 100mts from the corporation limit of Coimbatore."

24. On the appeal preferred by the assessee, considering the grounds of challenge, submissions and evidence, the Commissioner of Income Tax (Appeals), at Paragraphs 9 to 16, held as follows:

"9. I have gone through the grounds of appeal and also the order of the Assessing Officer. As seen from the facts available on record, the predominant activity of the appellant was agriculture and the said property sold by the appellant was an ancestral property. In the year 2008, the entire land was sold. The income tax return for the HUF was filed mentioning that the said land is an agricultural land and the income on sale of the same will be out of the purview of capital asset as per Section 2(14)(iii) of the Income Tax Act, 1961. The claim of exemption was made in the return based on the certificate of distance issued by the Tahsildar (North Coimbatore) in April 2008. The appellant filed a copy of the letter obtained from the Tahsildar (North Coimbatore)

certifying that the SF Nos.574/2, 575/2, 576/2, 577, 578/1, 579/1, and 582/1 are lands clearly situated beyond 8.4 KMs from the Coimbatore Corporation Limits. The land measuring 4.02 Hectares is situated at a distance of 8.4 KMs from the Coimbatore Corporation limits. This certificate was issued by the Tahsildar (North Coimbatore) being the Revenue Authority of the village and is competent to issue such a certificate. This certificate was issued on 30.04.2008.

10. The notice- u/s 148 was issued by the Assessing Officer indicating the reasons to the appellant stating that the claim of exemption cannot be allowed since the Inspector of the Department has reported that the said land is situated at a distance of 7.5 KMs from the Coimbatore Corporation Limits. A detailed reply was filed on 15.02.2013 with the Assessing Officer objecting to the re-opening. The appellant also filed the relevant evidence to confirm that the location of the land is more than 8 KMs from the Coimbatore Corporation Limits. The appellant filed the details of Patta passbook and also the adangal and chitta register copies' to prove that the land is agricultural land. The appellant also filed a copy of the starting point and the Corporation Limits of Coimbatore Municipal Corporation certified by the Sub Inspector of Survey, North Zone, Coimbatore Corporation dated 08.02.2013. A certificate issued by the Inspector of Survey and Land Records Maintenance, Coimbatore North, Collectorate Compound dated 20.12.2010 was filed before the Assessing Officer. In this certificate it was clearly mentioned that the agricultural land in Keeranatham Panchayat, Coimbatore District bearing Survey Nos. 574/2, 575/2, 576/2, 577, 578/1, 579/1 and 582/1 at Keeranam Puduppalayam Village is situated at a distance of 9.15 KMs measured as shortest distance from the nearby Coimbatore Corporation limit which ends on Sathy Road (landmark when visited : Near Gowtham Complex, Aishwarya Bakery, and Jayam Medicals). Taken by the approachable shortest road route from boundary of Coimbatore Corporation limits at Sa thy Road via Sivanandapuram, Saravanampatty, Keeranatham Village to Keeranatham Puduppalayam Village where the land is situated at 16 KM from Coimbatore Railway Station as per Coimbatore Corporation limit plan. The appellant also filed a certificate from the Tahsildar [North Coimbatore] dated 30.04.2008 which states that the said land bearing Survey Nos. 574/2, 575/2, 576/2, 577, 578/1, 579/1 and 582/1 is situated at 8.4 KMs from the

Coimbatore Corporation Limits. The learned Authorized Representative submitted that this certificate was obtained before the appellant filed the return of income in order to be clear whether the income on the sale of agricultural land was taxable or not.

11. The appellant also filed a certificate dated 31.08.2012 issued by the Sub Inspector of Surveys, Coimbatore Corporation - North Zone, Coimbatore. In this Certificate it was mentioned that the distance by road from the limit of Coimbatore Corporation (as existed in the year 2007-2008) till the location of agricultural land in SF Nos.574-579 and 582 at Keeranatham Puduppalayam Village is 9.1 KMs. The land mark when visited was shown as near Gowtham Complex, Aishwarya Bakery and Jayam Medicals. The Sub Inspector of Surveys, Coimbatore Corporation - North Zone in his Certificate dated 08.02.2013 [which was submitted to the Assessing Officer] included a map showing the place of Corporation Limit end. It was mentioned in the Certificate that the place of Corporation Limit would be only from L.G.B. Nagar Pirivu, Gowtham Complex, Aishwarya Bakery and Jayam Medicals [Near Ramakrishna Mills] at Sathy Road, Ganapathy Village. The Inspector of Income Tax, % ACIT, Circle-II, Coimbatore, in her report dated 08.02.2013 submitted that as per the details gathered it was ascertained that the limit for the Coimbatore Corporation ends near a bakery called the "CITY BAKERY" on the Coimbatore - Keeranatham Road during the Financial Year 2007-08. Keeping this as the starting point for measuring the distance to the site it was found to be 7.9 KMs. The Assessing Officer after examining the details wrote a letter to the Inspector or Survey and Land Records Maintenance, Coimbatore (North) Collectorate Compound, Coimbatore on 07.03.2013 asking the Inspector of Survey to furnish the distance measured at shortest route with respect to Survey Nos. 574/2, 575/2, 576/2, 577, 578/1, 579/1 and 582/1 located at Keeranam Puduppalayam Village to the nearest Coimbatore Corporation limit as per the records for the Financial Year 2007-08.

12. As seen from the records on 08.03.2013, a letter was addressed by the ACIT, Circle-II, Coimbatore to the ITa (Investigation), Coimbatore referring to the letter of the letter of the ITa (Inv.) dated 05.03.2013 wherein it was stated that the land seems to be located within 8 KMs from the municipal limits of Coimbatore. The ITa (Inv.) in his letter dated 13.03.2013 stated that the distance was

measured from the "City Bakery" which is situated in the corner of Athipalayam Road which leads to Keeranatham Puduppalayam Village [bearing Survey Nos. 574/2, 575/2, 576/2, 577, 578/1, 579/1 and 582/1] via Chinnavedampatti (where property of Sri Prabhakaran is situated) and Rabindranath Tagore Road. The letter also states that the Rabindranath Tagore Road is the Corporation Limit during the period in which Shri Prabhakaran had disposed off his HUF property. Therefore, "City Bakery" was taken as the starting point for measuring the distance of Shri Prabhakaran's HUF property from the Coimbatore Corporation Limit. The ITa (Inv.) also stated that the distance of Shri Prabhakaran's HUF property was 7.5 KMS from the Coimbatore Corporation limit. One side of Rabindranath Tagore Road is Corporation Limit and the other side is not coming under Corporation Limit earlier. The width of the road is only 10 meter. At present both the sides are within the Corporation Limit. A photocopy of the Municipal Passbook and property tax receipts issued by the Coimbatore Corporation for the period from 2001-02 to 2011-12 to a property belonging to Shri P.G. Mahalingam and Shri P. Mani which is situated on Rabindranath Tagore Road, adjacently opposite to the "City Bakery" is enclosed as proof/evidence of Corporation Limit. The distance between these "City Bakery" and the property of Shri P.G. Mahalingam and Shri P. Mani is less than 100 Meters. Therefore, the ITO (Inv.) submitted that the capital gains exemption claimed by the assessee is ineligible.

13. On an examination of the ITO (Inv.) letter to the Assessing Officer, it is very clear that the ITO (Inv.) did not specify the basis / evidence on which he came to the conclusion that Rabindranath Tagore Road is the Corporation Limit during the period in which Shri Prabhakaran had disposed-off the property. Hence taking "City Bakery" as the starting point for measuring the distance is not on sound reasoning of any evidence from Corporation Authorities. The municipal tax passbook and property tax receipt did not indicate the Corporation Limit to measure the distance from the Corporation Limit to the lands of the appellant. The Assessing Officer again wrote a letter dated 15.03.2013, to the Inspector of Survey after receiving a Certificate from the Inspector of Survey and Land Records Maintenance. In the Certificate dated 15.03.2013, the Inspector of Survey and Land Records (Maintenance), Coimbatore submitted

that "as required by your end, I have visited the agricultural land with Survey Nos. 574/2, 575/2, 576/2, 577, 578/1, 579/1 and 582/1 in Keeranantham Panchayat, Keeranam Puduppalayam Village, Coimbatore District to measure the shortest distance to the said land from the Coimbatore Corporation Limit (2007-2008). For this purpose, I have measured the distance from the Coimbatore Corporation Limit at Sathy Road, Coimbatore, being the exact starting point (landmark : beyond Ramakrishna Mills at LGB Nagar Pirivu - Gowtham Towers, Aishwarya Bakery and Jayam Medicals) to measure the distance as required to the said land as per the Coimbatore Corporation Limit plan as was in the year 2007-2008. From that point as mentioned above by the shortest road route to the said agricultural land the distance measures at 9.13 KMs".

14. Basing on the certificate issued by the Inspector of Survey and Land Records (Maintenance), Coimbatore (North), Collectorate Compound, Coimbatore, the Assessing Officer issued a letter dated 15.03.2013 asking him to clarify the exact place from which the distance is to be measured. In this letter addressed to the Inspector of Survey and Land Records (Maintenance), Coimbatore (North), it was also mentioned that the Inspector of Income Tax made enquiry at Chinnavedampatti Panchayat and the Corporation Limit ends at Gopalakrishna Mills / City Bakery. In reply to the letter of the Assessing Officer, the Inspector of Survey and Land Records (Maintenance), Coimbatore (North), clarified that the exact point will be only at (landmark) beyond Ramakrishna Mills, at LGB Nagar Pirivu - Gowtham Towers, Aishwarya Bakery and Jayam Medicals) and not from Gopalakrishna Mills / City Bakery or any other place as per the Coimbatore Corporation Limit plan as was in the year 2007-2008.

15. As seen from the assessment order, the Assessing Officer has considered the report of the Investigation Wing as also the report of the Inspector of Survey and Land Records (Maintenance), Coimbatore (North) and also the certificate issued by the Tahsildar, Coimbatore (North) and has taken a decision to bring to tax the consideration received on sale of agricultural land based on the Departmental report. The Assessing Officer in the order stated that "so the decision was taken in favour of revenue based on the Departmental Report and the consideration received on sale of agricultural land by the assessee attracts capital gains and the assessment is completed

accordingly". As seen from the ITO (Inv.) report and the Inspector's report, the outer limit of Municipal Corporation was considered as "City Bakery" from which the distance was measured. The ITO (Inv.) letter does not specify the basis on which Rabindranath Tagore Road was taken as the Corporation Limit by him for measuring the distance of Municipal Limits. It is not clear how the Municipal Tax Passbook and Property Tax Receipts issued by Coimbatore Corporation to a property belonging to Shri P. G. Mahalingam and Shri P. Mani (situated at Rabindranath Tagore Road) can be considered as the proof/ evidence of Corporation Limits.

16. As seen from the records, the Assessing Officer has written to the Inspector of Survey and Land Records (Maintenance) regarding clarification on the enquiries made by the Inspector of Income Tax at Chinnavedampatti Panchayat to be informed that the Corporation Limit ends at Gopalakrishna Mills / City Bakery. The Inspector of Survey and Land Records (Maintenance) who is the authority has clarified that the exact starting point will be only at LGB Nagar Pirivu - Gowtham Towers, Aishwarya. Bakery and Jayam Medicals and not from City Bakery or any other place, as per Coimbatore Corporation City Limits in the year 2007-2008. Since it is the information received by the Assessing Office-r from the concerned Department, the Assessing Officer cannot brush aside the information received from the Inspector of Survey and Land Records (Maintenance). The Inspector of Income Tax has only made enquiry with the Chinnaveqampatti Panchayat and has come to the conclusion that the Corporation Limit ends at Gopalakrishna Mill / City Bakery. There is no authenticated map or information to this extent. The report of the ITO (Inv.) as discussed earlier cannot be considered without proper authentication from the concerned Authority regarding the Municipal Corporation out limit. In my opinion the Assessing Officer erred in taking a decision in favour of the Revenue based on the Departmental Report which is not properly authenticated. The Inspector of Income Tax report against the clarification by various State Government Authorities, (that too, independently verified by the Assessing Officer) cannot be accepted relying on the case of CIT Vs Lalsingh and Other (reported in 325 ITR 588) - Punjab & Haryana High Court. Since it is very clearly proved that the lands are agricultural land situated beyond 8 KMs from the Corporation Municipal Limits, the income on sale of

the agricultural land is exempt from taxation. The Assessing Officer is directed to delete the addition. The grounds of appeal are ALLOWED."

25. When the matter was taken on appeal by the revenue, before the Income-Tax Appellate Tribunal, after considering the submission of the departmental representative that the investigation wing of the revenue has forwarded a report, in which, they have clearly stated that the said land is located within 8 Kilometers from city bakery, which is not more than 100 Mts., from the corporation limits of Coimbatore and the further contention that the finding of the Revenue would supersede the certificates given by the state government departments, the Tribunal, vide order in I.T.A.No.2716/Mds/2014, dated 22.06.2015, dismissed the same, as follows:

"6. From the above it is crystal clear that the Survey department of the state Government and the Thasildar of the relevant Zone have consistently certified that the land is situated beyond 8 Kms from the Corporation limit of Coimbatore. The genuineness of the letters from the State Government authorities is also not in dispute. Moreover, the Ld. CIT (A) in his detailed order, the relevant portion of which is extracted herein above, has held that the land sold by the assessee is an agricultural land and situated beyond 8 Kms from the Corporation municipal limit, thereby the capital gain arising from the sale of the aforesaid land is exempt from capital gain tax as per the provisions of the Act. In this situation we do not have any hesitation to confirm the order of the Ld. CIT (A)."

26. In the light of the decisions of the Courts, considered in the foregoing paragraphs and the question called upon to decide, as to whether, both the fact finding authorities, are right in accepting the reports of the Tahsildar and on the aspect, as to how, the distance between the agricultural land and the nearest Municipality has to be measured, vis-a-vis, the report of the departmental inspector, we are of the view that the decision of the fact finding authorities that there cannot be any justifiable reason to reject the certificates produced, is correct. Our view is also fortified by the decision of the Punjab and Haryana High Court in Commissioner of Income-Tax v. Lal Singh reported in 325 ITR 588 (P & H).

27. As rightly contended by the respondent, revenue department and survey authorities are competent to measure the land and issue appropriate certificates, and the same cannot be

ignored by the assessing officer, by relying on the report of the investigation wing. In such matters, it would be appropriate, to take the assistance of the survey authorities, to arrive at the conclusion. On the facts and circumstances of this case, we also wish to state that in the matter giving weightage to the evidence adduced in this regard, report of the departmental inspector vis-a-vis certificates of the revenue authorities, produced before the assessing officer, the latter should be given weightage and accepted, unless the contrary is proved.

28. A substantial question of law does not arise on the findings of fact, unless it is substantiated that there is perversity. In *Bhagat Construction Co. (P) Ltd., v. CIT* reported in (2001) 250 ITR 291 (Del.), the Delhi High Court held that a question of fact, becomes a question of law, if the finding is either without any evidence or material or, if the finding is contrary to the evidence, or is perverse or there is no direct nexus between the conclusion of fact and the primary fact upon which that conclusion is based. But it is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law the authority came to the correct conclusion on a matter of fact.

29. In *M. Janardhana Rao v. Joint CIT* reported in (2005) 273 ITR 50 (SC), the Hon'ble Supreme Court held that in the exercise of the powers under Section 260A, the findings of fact of the Tribunal cannot be disturbed. In the said judgment, the Apex Court further held that the tests for determining whether a substantial questions of law, is involved in an appeal are,

- "(a) whether directly or indirectly it affects substantial rights of the parties, or
- (b) the question is of general public importance, or
- (c) whether it is an open question in the sense that the issue is not settled by a pronouncement of the Supreme Court or Privy Council or by the Federal Court, or
- (d) the issue is not free from difficulty, or
- (e) it calls for a discussion for alternative view."

30. There are no valid grounds to reverse the abovesaid orders, stated supra. Question of law raised is answered against the revenue and in favour of the assessee.

31. In the result, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skm

To

- 1.The Income Tax Appellate Tribunal,
"A" Bench, Chennai.
- 2.The Commissioner of Income Tax(Appeals) - I,
Coimbatore.
- 3.The Assistant Commissioner of Income Tax,
Circle - II, Coimbatore.

+2cc's to Mr.K.R.M.Prabhakaran, Party in Person, S.R.No.46840
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.47032

ALA(CO)
CA(09/09/2016)

T.C.A.No.1189 of 2015

सत्यमेव जयते

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