

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.07.2016

CORAM:

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

T.C.A.No.481 of 2016

The Commissioner of Income Tax,
Chennai.

..Appellant

versus

Smt.Sakunthala Rangarajan

..Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in I.T.A.No.411/Mds/2015, dated 09.10.2015.

As preferred against the Commissioner of Income Tax (A)-19, Chennai-34, Dated 28.11.2014 in I.T.A.NO.433/13-14, as against the Income Tax Department, Central Circle III (3), 46, M.G.Road, Chennai-34, Dated 31.12.2010.

For Petitioner : Mr.J.Narayanasamy

ORDER

(Order 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.411/Mds/2015, dated 09.10.2015, by which, the Tribunal has dismissed the appeal preferred by the revenue.

2. The assessee is the Founder-Chairman of Veltech Group of Educational Institutions, Avadi. There was a search, in the premises of the educational institutions run by the Trust, in which, the assessee is one of the Trustees. The assessee's premises were also searched under Section 132 of the Act on 27.08.2008. For the AY 2009-10, the assessee filed a return of income on 31.07.2009, disclosing a total income of Rs.3,50,07,409/-. He filed a revised return of income on 29.10.2009, disclosing a total income of Rs.4,38,44,341/-. Subsequently, a revised return was filed on 22.12.2010,

declaring a total income of Rs.1,29,32,780/-. According to the department, the difference in the income originally returned and the revised return, represented capital gains of Rs.3,09,11,561/- on the sale of land, at Morai Village, Ambattur Taluk originally offered, but withdrawn, in the revised return. During the course of the original assessment proceedings, the assessee contended that the land sold by him, at Morai village is an agricultural land and therefore, contended that the profit on sale of such agricultural land is not liable to tax.

3. According to the assessee, the land is situated at a distance of more than 8 km from the nearest Avadi Municipality and the land being agricultural land, profit on sale of such land is not liable to tax. The department found that the land is not agricultural land, it was sold to a Trust and the assessment was completed, by bringing the entire capital gains of Rs.3,09,11,561/-, as originally offered, in the return of income, and accordingly, determined the income at Rs.4,38,44,341/-. On appeal, the Commissioner of Income-Tax (Appeals), vide his order, dated 23.08.2011 in I.T.A.No.336/10-11, confirmed the assessment of capital gains, on the sale of the land, at Morai village.

4. The assessee further went on appeal in ITA No.1779/Mds/2011 to the Income Tax Appellate Tribunal. He has filed a certificate from the Public Transport Department, showing that the land is situated, at a distance of more than 8 kms from Avadi limits. The assessee has also filed a certificate from the Village Administrative Officer, to the effect that the land was given on lease to M/s.Vel Horticultures Ltd, for doing agricultural operations. As the said evidence produced before the Tribunal, was not considered originally by the Assessing Officer, the Tribunal, set aside the orders of the lower authorities and remanded the matter back to the file of the Assessing Officer for re-adjudicating the issue afresh, after verifying all the documents, and to pass a speaking order.

5. Thereafter, placing reliance on the decision of Hon'ble Supreme Court in Sarifabibi Mohamad Ibrahim v. CIT reported in (204 ITR 631), the Assessing Officer held that the assessee's land is not an agricultural land, as it does not fulfil the criteria laid down by the court, in the aforesaid decision. In the subject assessment order, he has also stated that the land was barren, when the Inspector inspected the land, that the buyer was not an agriculturist, and the land was situated in a developed area. Thus, the Assessing Officer completed the assessment under Section 143(3) r/w. Section 254 r/w. Section 153A of the Income-Tax Act. Holding that the land is not an agricultural land and by denying the assessee's claim for exemption on the profit, by sale of the land at Morai village, Rs.4,38,44,341/- was brought to tax as capital gains. The

respondent filed an appeal to the Commissioner of Income Tax (Appeals).

6. On appeal, after going through the earlier appellate orders, submissions of the assessee and evidence on record, in particular, the certificates of the Village Administrative Officer, Deputy Surveyor, Ambattur Taluk and General Manager, Metropolitan Transport Corporation (Chennai) Ltd's, certifying that the land is situated, at a distance of more than 8 Kms., from Avadi Municipality and the lease deed, between the assessee, other family members & M/s.Vel Horticultures, leasing the land for agricultural operations, accepted in the scrutiny assessment, and also the fact that a source of investment has been made made by the assessee, the appellate authority held that the land in question, is an agricultural land, situated at a distance more than 8 Kilometres, from the nearest Municipality (Avadi). The appellate authority further observed that it is evident from the letter No.5729/2013/A1, dated 03.08.2013, from the Tahsildar, Ambattur that she had made independent enquiries with regard to the distance of the land in question, from the nearest Municipality (Avadi), result of which, clearly proves that the land in question is not situated within a distance of 8 Kms from the nearest Municipality. The appellate authority has further held that no reason has been assigned by the Assessing Officer, in the assessment order, as to why, he has not accepted the report of the Tahsildar. With regard to the report of the departmental Inspector that the land in question is situated at a distance of 5.5 Kms and submitted before the Assessing Officer, the Commissioner of Income Tax (Appeals) held that the route used by the inspector to reach the land is a private road laid and maintained by CRPF and on the facts and circumstances of the case, evidence adduced by both parties, the Commissioner of Income Tax (Appeals) observed that public have no free access to the said road, as it is not under the control of local administration.

7. On the question, as to whether the subject land is an agricultural land or not, the Commissioner of Income Tax (Appeals) has categorically held that the issue is squarely covered by the judgment of this Court in Mrs.Shakunthala Vedachalam v. Mrs.Vanitha Manickavasagam reported in (2014) 369 ITR 558 and following the aforesaid decision, the Commissioner of Income-Tax (Appeals) held that the assessee's land in question is an agricultural land situated at a distance of more than 8 Kms from the nearest Municipality and as the profit on sale of such land is not liable to tax, the Commissioner of Income Tax (Appeals) has deleted the addition, on account of capital gains, in the hands of the assessee, on account of transfer of the said land.

8. Being aggrieved by the said order, Revenue has preferred an appeal before the Income-Tax Appellate Tribunal, Chennai, on the following grounds,

"2.1. The CIT(A) erred in directing the AO to delete the addition on account of capital gains in the hands of the assessee on account of transfer of the land.

2.2 The learned CIT(A) erred in, the land sold was an agricultural land and situated at a distance of more than 8 km from the nearest Avadi Municipality and therefore the profit on the sale of such land is not liable to tax.

2.3 The CIT(A) erred in the land sold was situated at a distance of 10Kms from the nearest Avadi Municipality based on the VAO's certificate without any evidence with respect to Village administrative records.

2.4 The CIT(A) erred in the land sold was situated at a distance of 10Kms from the nearest Avadi Municipality based on the Metropolitan Transport Corporation (Chennai) Ltd's letter dated 20.12.2010 wherein it was stated that the bus route No.61B,61K,61D and 61E playing between Avadi and Morai Village is 10 KMs. From the letter itself it was established that various route are available to reach Morai village and hence it will not be treated as concrete evidence for measuring distance between Avadi and Morai village.

2.5 The CIT(A) has failed to note that the Assessing Officer had clearly established that the land was very much within 8 Kms from the Avadi Municipality. He deputed three Income-tax Inspector to ascertain actual distance and as per their report, the distance between Avadi Municipality and Morai Village is 5.5 Kms only.

2.6 The CIT(A) has failed to note that the Assessing Officer had followed the direction of the Hon'ble ITAT and by examining all evidences placed before them and passed the order in accordance with law."

9. Upon considering the evidence adduced by the assessee and the Department and following the decision of the Punjab and Haryana High Court in CIT v. Satinder Pal Singh reported in 229 CTR 82, the Income Tax Appellate Tribunal, Chennai, dismissed the appeal filed by the revenue. Against which, the instant Tax Case Appeal has been filed, on the following substantial questions of law,

"(i) Whether on the facts and in the circumstances of the case the tribunal was right in holding that the

distance between the land sold by the assessee situated at Morai and the end of the Avadi Municipality is beyond 8 Kms by ignoring the evidences collected by the department through the inspector of the department as per which the distance is 5.5 Kms as measured per section 11 of the General Clauses Act and thereby holding that the gain on sale of the land cannot be assessed to capital gains.

(ii) Whether on the facts and in the circumstances of the case the tribunal was right in holding that land is agricultural land merely because the Tribunal had concluded that the land was situated beyond 8 Kms from the end of the Municipality without enquiring into the use of the land and thereby holding that the gain on sale of the land cannot be assessed to capital gains.

(iii) Whether on the facts and in the circumstances of the case the tribunal was right in holding that since the straight line measurement was mandated as per the amendment to section 2(14)(iii)(b) as on 1.4.2014, the same cannot be applied to the earlier assessment without appreciating that the amendment was clarificatory and is applicable for earlier assessment years."

10. Praying for an answer on the substantial questions of law, in favour of the appellant, Mr.J.Narayanasamy, learned counsel appearing for the revenue assailed the correctness of the order of the Income-Tax Appellate Tribunal, "A" Bench, Chennai, dated 09.10.2015, on the grounds, inter alia that the land is situated at a distance of 5.5 Kms, from the end of Avadi municipality, as per the report of the departmental inspector, who had made a field visit and therefore, the land cannot be treated as an agricultural land, as per section 2(14)(iii) of the Income Tax Act.

11. He further submitted that the Income Tax Act, 1961, does not define, as to how, the land has to be measured and in such circumstances, as per Section 11 of the General Clauses Act, 1897, measurement of any distance, for the purpose of any Central Act or Regulation, made after the commencement of the General Clauses Act, 1897, that distance shall, unless a different intention appears, should be measured in a straight line on a horizontal plane and therefore, submitted that the aerial distances should be taken. He further submitted that straight line measurement is mandated, as per the amendment to Section 2(14)(iii)(b) of the Income Tax Act, from 1.4.2014 and without appreciating the fact that the amendment is only clarificatory in nature, the Tribunal has erred in accepting the

case of the respondent. According to him, the amendment is applicable to the earlier years also.

12. Mr.J.Narayanasamy, learned counsel for the appellant further submitted that if the distance is measured between the end of Avadi Municipality and the assessee's land, in straight line, on horizontal plane, the distance is less than 8 Kms and therefore, the land cannot be treated as an agricultural land. He also submitted that measuring the distance via CRPF Road, is permissible and that the same cannot be rejected, on the ground that it is not a public road.

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

13. On the issue, as to whether, the agricultural land sold by the assessee, is situated more than the distance of 8 Kms from Avadi Municipality and as to whether, the same falls within the definition, "agricultural land", it is necessary to have a cursory look at few provisions, referred to, by the learned counsel for 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 aerially.-

(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."

14. 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."

15. In the case on hand, the assessing officer sent his own departmental inspector to measure the distance from Avadi Municipality, to the plot and found that the distance is 5.5 Kms and on that basis, treated the sale of the agricultural land, as long time capital gains, and added an amount of Rs.3,06,74,615/- to the total income of the assessee, and imposed penalty under Section 271(1)(c) of the Income-Tax Act. While assailing the correctness of the order, the respondent filed an appeal in I.T.A.No.433/13-14, before the Commissioner of Income-Tax (Appeals) and contended that the assessing officer has erred in selecting a private road, to measure the distance to the land, from the nearest municipality and that the assessing officer ought not to have disagreed with the certificates issued by the competent authorities, who have considered the access to the land, through public road, which alone should have been considered for measuring the distance.

16. On the above aspect, after considering the certificates of the Village Administrative Officer, Deputy Surveyor, Ambattur Taluk and General Manager, Metropolitan Transport Corporation (Chennai) Ltd's, certifying that the land is situated more than 8 Kms, from Avadi Municipality, the appellate authority, at Paragraph 7 of the order in I.T.A.No.433/13-14, dated 28.11.2014, has categorically held that the land in question, is an agricultural land situated, at a distance of more than 8 Kms, from the nearest Avadi Municipality. The appellate authority has further held that from the letter No.5729/2013/A1, dated 03.08.2013, of Mrs.M.Bhushna Devi, Tahsildar, Ambattur, it could be seen that independent enquiries have been made, regarding the distance of the land in question, from the nearest Municipality (Avadi), result of which, clearly shows that the land in question is not situated, within a distance of 8 Kms from the nearest Municipality. The appellate authority has also held that no reason has been assigned by the Assessing Officer, in the assessment order, for not accepting the report of the Tahsildar.

17. Adverting to the report of the Departmental Inspector that the land in question is situated at a distance of 5.5 Kms and while observing that the route used by the Inspector to reach the land is a private road, laid and maintained by CRPF, the appellate authority held that public have no free access to

CRPF road, as the said road is not under the control of the local administration. Thus, holding that the subject land is an agricultural land, situated at a distance of more than 8 Kms from the nearest municipality and that the profit on sale of such land is not liable to tax, the appellate authority, vide order in I.T.A.No.433/13-14, dated 28.11.2014, deleted the addition on account of capital gains, in the hands of the assessee, on account of transfer of the said land.

18. Being aggrieved by the aforesaid order, the Deputy Commissioner of Income-Tax, Chennai, has filed an appeal in I.T.A.No.411/Mds/2015 before the Income Tax Appellate Tribunal, "A" Bench, Chennai. On the aspect of measurement, after adverting to the rival submissions, vide order, dated 09.10.2015, the Tribunal, at Paragraphs 5 to 7, answered the challenge, as hereunder:

"5. We have heard both the sides and perused the material on record. The main argument of the Department is that the land sold by the assessee is a capital asset, as it is situated within the distance of 8 kms. from the nearest Municipality limit (Avadi). For arriving at a conclusion, the AO disputed the certificates issued by the Deputy Surveyor Ambattur Taluk and General Manager, Metropolitan Transport Corporation (Chennai) Ltd., as per which the land was situated at a distance of more than 8 kms. from Avadi Municipality. The AO has also disputed the lease deed between the assessee, other family members and M/s. Vel Horticultures leasing the land for agricultural operations, which had been accepted in the scrutiny assessment and as a source of investment made by the assessee. The AO has also made independent enquiries from the Tahsildar, Ambattur with regard to the distance of the land in question. The result showed that the land in question is not situated within a distance of 8 kms. From the nearest Municipality. The AO was not ready to accept this certificate and he has not given any reason for the same. However, the Inspector reported that the land in question was situated at a distance of 5.5. kms. from the nearest Avadi Municipality. It was the contention of the ld. AR that to reach the land, there is a private road, which is laid and maintained by the CRPF, in which public has no access. Thus, the contention of the DR that the nearest route is to be considered to access the distance of the property from the nearest Municipality limit is not acceptable. It is to be noted that the distance to be measured from the accessible road and not from the road made under the control of the CRPF.

6. In our opinion, Tahsildar is the competent authority to issue certificate, which is to be accepted. Further, the distance of agricultural land has to be measured in terms of the approach by road and not by a straight-line distance on horizontal plane or as per crow's flight as held by the Punjab & Haryana High Court in the case of CIT vs. Satinder Pal Singh (229 CTR 82). In view of this, the AO has no material to prove the contention of the assessee that the distance of the land as on date of sale has to be held more than 8 kms. From the nearest Municipality, is not correct. Therefore, the assessee has to prove one essential condition that the land owned by him or her is situated at a distance more than 8 kms. from the nearest Municipality, which was proved by the assessee. To sum up, in our opinion, the distance has to be measured in terms of the approach by road and not by a straight-line distance on horizontal plane or as per crow's flight. Further, the assessee has also proved that the land was situated at a distance more than 8 kms. from the nearest Avadi Municipality.

7. Measurement of aerielly distance came into force with effect from 1.4.2014 under sec. 2(14)(iii) (b) of the Act and it cannot be applied to the present assessment year 2009-10. Regarding carrying out of agricultural activities in the said land, there is an evidence in the form of lease deed between the assessee (and other family members) and M/s. Vel Horticultures leasing the land for agricultural operations, the leasing company claimed agricultural income which had been accepted in the scrutiny assessment as noted by the CIT(Appeals) in his order, which was not controverted by the ld. DR. As such it cannot be denied that the land in question was an agricultural land situated at a distance more than 8 kms., from the nearest Municipality (Avadi). Similar view has been followed by the Tribunal in ITA No.2716/Mds/2014 dated 22.6.2014 in the case of KRN Prabhakaran (HUF). Therefore, there is no merit in the argument of the ld. DR and we are inclined to dismiss the appeals of the Revenue."

19. Let me consider few decisions on this aspect. 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".

20. 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.

21. 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." (emphasis supplied)

22. 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."

23. 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."

24. 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.

25. While considering the rival contentions, the question to be decided in this appeal is, as to how, the distance between an agricultural land and the nearest municipality, should be measured? whether should be measured, by the approach road, or by straight line distance on horizontal plane? When a person cannot approach the land by the distance in straight line on horizontal plane, should the measurement be taken, by approach road?

26. In a given case, the agricultural land is located in a village X and if there is a lake, measuring 4 Kms x 6 Kms, by length and breadth and if on the banks of the lake, the outer limits of the nearest municipality starts, one has to visualise distance which a person has to travel, through an approach road, permitted to be used by public and in such circumstances, it cannot be contended that the distance between the land and the nearest municipality should be measured in straight line on horizontal plane or crow flight/aerial distance.

27. For illustration, take the case of a person, who has a shop in Fort Road, Parrys, on the eastern side. If he has to go to a shop or office or any place located in NSC Bose Road, on the Western Side, he has to go round the High Court, and reach the place of destination. He has no right to use the High Court premises, which is not a public pathway/road and therefore, the distance has to be measured, only by approach road and not through the place, which is restricted to public. Therefore, if only a person has access, through an approach road, permitted by the authorities or used as a common pathway/road, the distance can be measured. Between an agricultural land and the nearest municipality, if there is a mountain, lake or private lands, government properties and where public has no access and if there is an alternate road/route, permitted by the authorities for use of public, then the distance has to be measured only through the access road and not in a straight line on horizontal plane.

28. While carving out Section 11 of the General Clauses Act, 1897, legislature has also made it clear that for the purpose of any Act, that distance, shall unless a different, intention appears, be measured in a straight line on a horizontal plane. The proper interpretation to Section 11 of the General Clauses Act, 1897, depends upon the purposes for which, an Act is enacted. In the case of an explosive unit or stone quarry operations, aerial distance/crow's flight can be taken. In such circumstances, the distance falls within the ambit of prohibited distance. Thus in Section 11 of the General Clauses Act, 1897, the legislature has also foreseen that measurement of distance, should be in the context and the purposes to be achieved, in any enactment and it is not a straight jacket formula, that in all cases and under all circumstances and notwithstanding the purposes, for which, an Act is enacted, measurement of distance should be done only in straight line on horizontal plane.

29. Reverting to the case on hand, in the light of the above decisions and discussion, on the aspect, as to how, the distance between an 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 decisions of

the fact finding authorities that there cannot be any justifiable reason to reject the certificates of the Village Administrative Officer, Deputy Surveyor, Ambattur Taluk, Tahsildar, Ambattur and the General Manager, Metropolitan Transport Corporation (Chennai) Ltd's., are not perverse, warranting intervention.

30. On the facts and circumstances of this case, we also wish to state that in the matter giving weightage to the evidence, report of the departmental inspector vis-a-vis the certificates of the Village Administrative Officer, Deputy Surveyor, Ambattur Taluk, Tahsildar, Ambattur and General Manager, Metropolitan Transport Corporation (Chennai) Ltd's, for the purpose of Section 2(14)(iii)(b) of the Income Tax Act, certificates of the revenue authorities, who are competent to measure the land and distance, and whose reports are accepted by the Government for demarcation of the limits of an area and the certificate of the Public Transport Corporation Ltd., should be given weightage and accepted, unless the contrary is proved. In the case on hand, there are no materials to reject the said certificates, and no reason has been assigned by the assessing officer, for rejection.

31. In the light of what is stated above, it is not open to the revenue to contend that as per Section 11 of the General Clauses Act, 1857, the distance between the agricultural land and the nearest municipality, should be measured, only in a straight line on horizontal plane. In between agricultural land and the nearest municipality, if there is a mountain, or lake or private lands or government properties, and in such other cases, where the public has no access to reach the municipality and if there is an alternative public road route, the distance has to be measured only through the access road and not in a straight line or horizontal plane.

32. For the reasons, stated supra, we are of the view that there are no valid grounds to reverse the abovesaid orders, stated supra. Questions of law raised are answered against the revenue and in favour of the assessee.

33. In the result, the Tax Case Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

skm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Income Tax Appellate Tribunal,
"A" Bench, Chennai.

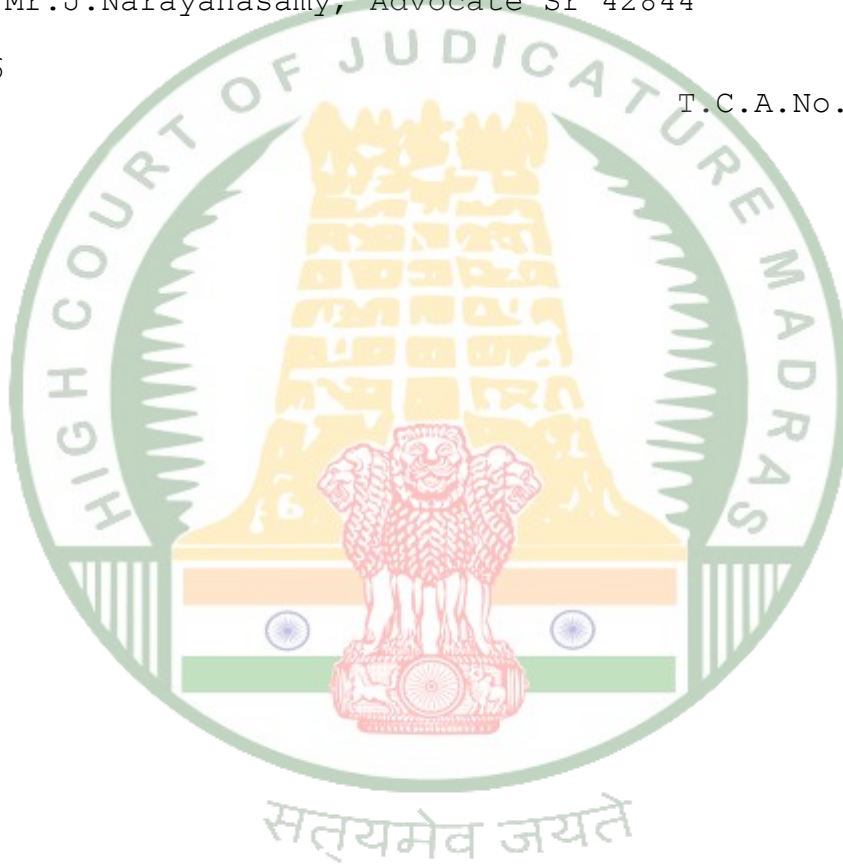
2. The Commissioner of Income Tax, Chennai 34.

3. The Income Tax Department,
Central Circle III, Chennai 34.

+ 1 cc to Mr.J.Narayanasamy, Advocate Sr 42844

KR/29/8/16

T.C.A.No.481 of 2016



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