IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM :

The Hon'ble Mr.Justice T.S.SIVAGNANAM

AND

The Hon'ble Mr.Justice K.RAVICHANDRABAABU

T.C.A.No.590 of 2017

The Commissioner of Income Tax
Chennai. .. Appellant

-vs-

Shri.Ashok Kumar Rathi .. Respondent

Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order dated 24.06.2016 passed in I.T.A.No.763/Mds/2016 by the Income Tax Appellate Tribunal, Madras “C” Bench, Chennai, which was preferred against the Order dated 22/01/2016 by commissioner of Income Tax (Appeals)-3, Chennai-34, in ITA 131/2014-15/A-3 against the Order dated 02/03/2015 by the Assistant Commissioner Income Tax, Chennai-34, for the Assessment year 2010-2011.

For Appellant : Mrs.R.Hemalatha for T.RaviKumar

J U D G M E N T

(Order of the Court was made by T.S.Sivagnanam, J.)

Heard Mrs.R.Hemalatha, learned Standing Counsel for the appellant/Revenue.

2.This appeal by the Revenue is directed against the order dated 24.06.2016 passed by the Income Tax Appellate Tribunal, “C” Bench, Chennai, in I.T.A.No.763/Mds/2016 and has been filed raising the following substantial questions of law:

i. Whether the Tribunal was right in not considering the fact that the Assessee did not produce any evidence to substantiate the fact that he had performed agricultural operations on the said land while claiming exemption of agricultural income ?

ii. Is not the finding of the Tribunal bad, especially when the assessee has purchased the land for Rs.1.97 crores and sold the same within 2 years for Rs.5.31 crores which clearly indicates that the intention of the Assessee was not to carry out any agricultural operations and that the Assessee had also not produced any evidence relating to input costs on the land like manure, seed costs, labour costs details, regarding sale proceeds of the produce in any of the assessment years which would clearly show that no deduction is allowable ?

iii. Whether the reasoning and finding of the Tribunal is proper simply because the land is entered in the revenue records as agricultural would not mean that it is being used mainly for the purpose of agriculture and it is not material if a small portion of the land was being used for the purpose of agriculture as held by the Apex Court in the case of Nand Kumar Agarwal vs. State of U.P. ?

3. Before we consider as to whether a question of law arises for consideration in this appeal, it would be necessary to take note of certain facts:-

The Revenue preferred an appeal before the Tribunal challenging the order passed by the Commissioner of Income-tax (Appeals) [in short 'CIT (A)] dated 22.01.2016 pertaining to the Assessment Year 2010-11, wherein the CIT (A) held that the land sold by the respondent/assessee was an agricultural land. The respondent/ assessee had sold an extent of 7.38 acres of land located in Kunnam Village, Sriperumpudur Taluk, Kancheepuram District, on 26.08.2009 in his individual capacity as well as through Power Agent, Smt.Sushila Kumari and the total consideration received during the relevant Previous Year was Rs.5,31,02,160/- and registered documents were executed in favour of the purchaser, M/s.Grundfos Pumps India Pvt. Ltd. The assessee claimed that the capital gains arise on the sale of the above land is exempt on the ground that the same is arising on sale of agricultural land. The said claim of exemption of the profit on sale was not accepted by the Assessing Officer for the reason that the assessee had not adduced any evidence for carrying out agricultural activities in the said land and the income was only Rs.65,300/- for such a huge extent of land for the Assessment Year 2010-11. Further, the Assessing Officer held that the assessee had purchased the land on 11.09.2007 for Rs.1,97,61,000/- and within a short span of two years, sold the same for Rs.5,31,02,160/-, which clearly indicates the intention of the purchaser to buy a land at such huge cost and certainly not to carry out agricultural operations.

4.The correctness of the findings of the Assessing Officer was tested by the CIT (A). Before the Appellate Authority, the Revenue placed reliance on the decision of the Hon'ble Supreme Court in Smt.Sarifabibi Mohmed Ibrahim vs. CIT, (1993) 204 ITR 631 (SC) and pointed out that 13 tests have been laid down by the Hon'ble Supreme Court and by applying those tests, the Appellate Authority has to reject the appeal affirming the order passed by the Assessing Officer. The Appellate Authority considered the decision of the Hon'ble Supreme court in the case of Sarifabibi Mohmed Ibrahim (supra) and proceeded to take a decision in the matter taking note of the factual position and found that the assessee had furnished original return of income in which agricultural income of Rs.65,300/- was disclosed and an order of assessment to the said effect was passed on 02.03.2015 by the Assistant Commissioner of Income Tax (OSD), Corporate Range V, Chennai 600 034. Further, it was pointed out that the land is located approximately 15 km. by road from Sriperumpudur, which is the nearest panchayat limit. That apart, the village in which the lands are situated, has a population of 3000 and the Revenue records, namely, Chitta Adungal, showed that the land is an agricultural land and the sale deed which was executed also mentioned the land as agricultural land and the lands were not converted by the assessee for non-agricultural purpose before the competent authorities. On facts, thus, the Appellate Authority held in favour of the assessee and allowed the appeal.

5.Challenging the same, the Revenue preferred an appeal before the Tribunal. The contentions, as advanced before the CIT(A), were reiterated before the Tribunal, by placing reliance on the decision of Smt.Sarifabibi Mohmed Ibrahim vs. CIT (supra) as well as on an order dated 24.03.2016 passed by the Tribunal in I.T.A.No.16/Mds/2015 for the Assessment Year 2011-12, in the case of M.Karthik. The Tribunal made a thorough factual exercise and taking note of the decisions placed on either side, concurred with the factual finding recorded by the CIT (A) with regard to the character of the land. The Tribunal noted that as held in the case of M.Karthik, the question as to whether the land is an agricultural land or not is essentially a question of fact and the question has to be answered in each case having regard to the fact and circumstances of the case.

6.Further, the Tribunal noted the tests laid down by the Hon'ble Supreme Court in Sarifabibi Mohmed Ibrahim (supra) and also on facts, concluded that the land is an agricultural land. One among the tests laid down by the Hon'ble Supreme Court in Sarifabibi Mohmed Ibrahim (supra) was that the fact that the land is entered as agricultural land in the revenue records and is assessed as such under the Land Revenue Code would be a circumstance in favour of conclusion that it is an agricultural land. It was pointed out that this would raise only a prima facie presumption and the said presumption can be destroyed by other circumstances pointed to the contrary conclusion. In our considered view, the presumption that if the land is recorded as agricultural land in the revenue records, it would only enure in favour of the assessee and the onus to dislodge the said presumption is on the Revenue.

7.In the instant case, apart from the revenue records classifying the land as agricultural land, the Assessing Officer accepted the agricultural income declared from the said property for the Assessment Year 2010-11 and completed the assessment. Merely because the property fetched an income of only Rs.65,300/- during the relevant Assessment Year is not a ground to discredit the assessment by itself, which has determined the character of the land to be agricultural land. Thus, we find that the entire issue is purely factual and no substantial question of law arises for consideration in this appeal.

Accordingly, this Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To
1.The Registrar,
Income Tax Appellate Tribunal,
"C" Bench, Chennai.

2.The Commissioner of Income-Tax
(Appeals) - 3, Chennai-34

3.The Assistant Commissioner of
Income-Tax (OSD), Corporate
Range V, Chennai 600 034.

+1cc to Mr.T.Ravi Kumar, Advocate SR.No.87271

T.C.A.No.590 of 2017

TM(CO)
GN(17/01/2018)