

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.6 of 2014

The Commissioner of Income Tax,
Chennai. Appellant/Appellant

Vs.

Gunawanthi Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 12.08.2013 in I.TA.No.633/Mds/2012 filed against the order of the Commissioner of Income Tax (Appeals)-VI, Chennai in ITA No.555/10-11 dated 13.12.2011 preferred against the orders passed by the Deputy Commissioner of Income Tax, Circle-I, Chennai-34, for the assessment Year 2007-2008 made in PAN No.AAEPG4984H.

For Appellant : Mrs.S.Premalatha,
Standing Counsel

For Respondent : Ms.Sriniranjani Srinivasan

JUDGMENT

(Judgment was delivered by M.DURAI SWAMY, J.)

Challenging the order passed in I.T.A.No.633/Mds/2012 in respect of the assessment year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, "A" Bench, the Revenue has filed the above appeal.

2.The above appeal was admitted on the following substantial questions of law:

"1)Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the land sold by the assessee are the agricultural lands when the assessee has not proved the same before the lower authorities?

2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in treating the land sold by the assessee as an agricultural land falling outside the purview of the capital asset and consequently holding that no capital gains tax is leviable on the sale of land?

3)Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that the land at Iyyappanthangal village, Sriperumbudur Taluk was agricultural land and the income arisen out of the sale of the said land is exempt from long term capital?

4)Whether on the facts and in the circumstances of the case, the Tribunal was right in following the judgment in the assessee's husband case P.Ashok Kumar which has not reached finality?"

3.Mrs.S.Premalatha, learned standing counsel appearing for the appellant - Revenue submitted that the issue involved in the present appeal is pertaining to the classification of the land.

4.According to the assessee, the land in question is an agricultural land, whereas, the Revenue contended that it is a non-agricultural land.

5.The Commissioner of Income Tax as well as the Income Tax Appellate Tribunal concurrently held that the land in question is an agricultural land and decided the issue in favour of the assessee.

6.Ms.Sriniranjani Srinivasan, learned counsel appearing for the respondent - assessee submitted that in respect of the land in the very same survey number, the respondent's husband's case was decided in his favour, classifying the land as an agricultural land and therefore, the very same finding would apply to the case of the assessee. In the case of the respondent's husband in T.C.A.No.268 of 2011 [The Commissioner of Income Tax, Chennai Vs. P.Ashok Kumar], the Hon'ble Division Bench of this Court, by order dated 02.01.2019, held as follows:

"...

5. The Assessing Officer conducted inspection of the property in the presence of revenue officials and submitted a remand report, in which, it has been categorically stated that the land is situated at a distance of more than 8 kms away from the outer limits of St.Thomas Mount Cantonment Board. Thus, the remand report was taken into consideration by the CIT (A) as

one of the factors for allowing the appeal filed by the assessee. Apart from that, CIT (A) also referred to the certificate issued by the Tahsildar and one of the important entry in the said certificate is by stating that the lands are classified as agricultural lands. Though the certificate may state that there is no cultivation carried on the lands as per the land records, there is nothing on record to show that the land in question was put to use for any non-agricultural purposes. Apart from that the assessee has also paid taxes which has been recorded by the CIT(A).

6. Thus, we are of the considered view that the concurrent factual findings recorded by the first Appellate Authority and the Tribunal does not call for any interference. Hence, we are of the considered view that no substantial questions of law have arisen for consideration in this appeal. Accordingly, the appeal stands dismissed. No costs."

7. It is not in dispute that the land belonging to the respondent - assessee and her husband, which is the subject matter in T.CA.No.268 of 2011, are adjoining lands and therefore, when the Hon'ble Division Bench finds that the respondent's husband's land is an agricultural land, the very same finding applies to the case of the respondent - assessee.

8. Mrs. S. Premalatha, learned standing counsel appearing for the appellant - Revenue submitted that the order passed in T.C.A.No.268 of 2011 has become final, since the Revenue has not filed any appeal.

9. In these circumstances, following the judgment dated 02.01.2019 made in T.C.A.No.268 of 2011, the concurrent findings recorded by the Commissioner of Income Tax and the Income Tax Appellate Tribunal does not call for any interference. We do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Commissioner of Income Tax and the Tribunal. The appeal stands dismissed. No costs.

sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

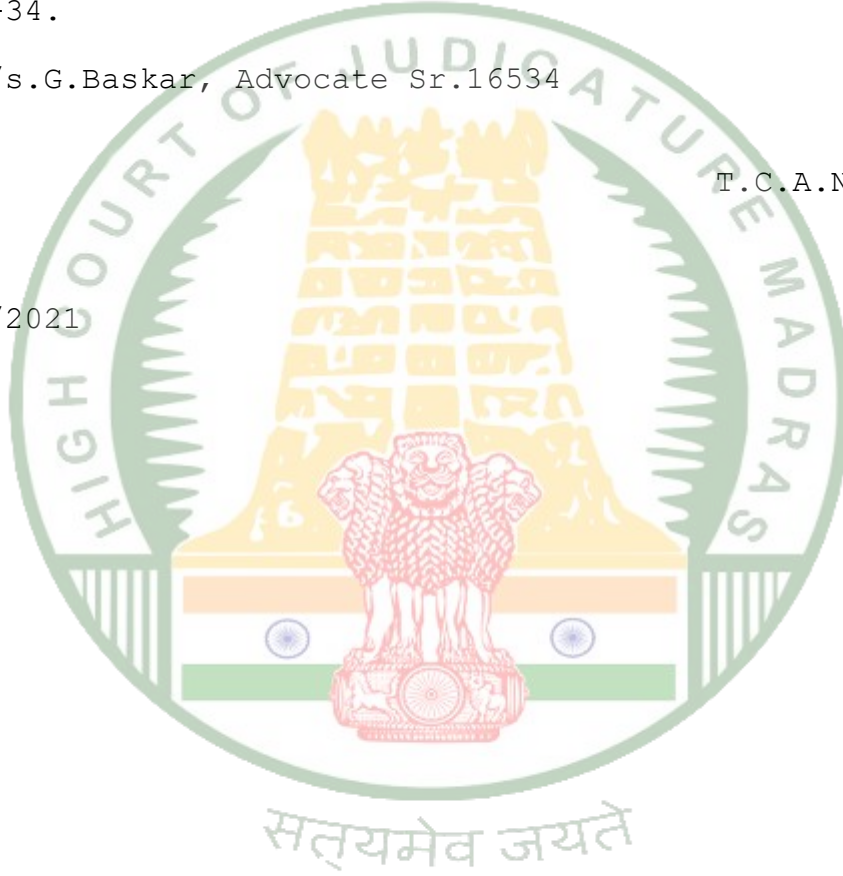
2.The Commissioner of Income Tax (Appeals)-VI,
Chennai-34.

3.The Deputy Commissioner of Income Tax Circle-I,
Chennai-34.

+1cc to M/s.G.Baskar, Advocate Sr.16534

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srg 08/04/2021



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