



T.C.A.No.190 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

T.C.A.No.190 of 2015

K.Badal Bai .. Appellant

Vs.

The Deputy Commissioner of Income Tax
Income Tax, Circle I, Vellore. .. Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act,
1961, against the order of the Income Tax Appellate Tribunal, "C"
Bench, Chennai dated 24.09.2013 in ITA No.551/Mds/2013.

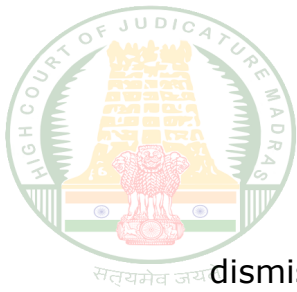
For the Appellant : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar

For the Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGMENT

This tax case appeal is directed against the impugned final
order dated 24.09.2013 passed by the Income Tax Appellate
Tribunal in I.T.A.No.551/Mds/2013.

2. By the impugned order, the Appellate Tribunal has



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dismissed the appeal filed by the appellant against the order dated 21.12.2012 made by the Commissioner of Income Tax (Appeals) IX, Chennai, for the Assessment Year 2009-10.

3. Earlier, the appellant suffered an adverse Assessment Order in the hands of the Deputy Commissioner of Income Tax on 28.12.2011 under Section 143(3) r/w Section 144A of the Income Tax Act, 1961 [for brevity, hereinafter referred to as "the Act of 1961"] for the Assessment Year 2009-10.

4. This appeal was admitted on 20.04.2015 on the following substantial questions of law:-

"i. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the land in question cannot be an agricultural land and the profit from the sale of such land is taxable as business profits ?

ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in law in holding that entries in revenue record will not be sufficient evidence to hold that the land was agricultural in nature ? and

iii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not following its order for the assessment year 2007-08 wherein under identical circumstances, it was accepted that the land purchased as well as sold was agricultural land ?"



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5. The brief facts of the case are that the appellant assessee had filed return of income for the Assessment Year 2009-10 on 13.09.2009, wherein, the appellant admitted a total income of Rs.33,55,100/-. The case of the appellant was selected for scrutiny through Computer Assisted Scrutiny Selection (CASS). Notice, under Section 143(2) of the Act of 1961 was also issued on 14.08.2010, which was served upon the assessee on 01.09.2010.

6. Subsequently, notice was issued under Section 142(1) of Act, 1961, wherein the appellant/assessee was called upon to produce the books of accounts, hard copy of the return of income, balance sheet, trading, profit and loss, audit report under Section 44AB, evidence for expense claimed and etc. During the course of the assessment proceedings, summons was also issued under Section 131 of the Act of 1961 and sworn statement was recorded.

7. It had become evident that the appellant had sold certain immovable property at Arasakuppam, Hosur Taluk, for a total sale consideration of Rs.1,15,35,000/- to M/s.Alchemy Leisure and Resorts Private Limited on 31.12.2008. From the sale on 31.12.2008, the appellant/assessee earned a profit.

8. It was the contention of the appellant that the income from



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the sale of the aforesaid land was not taxable, as the aforesaid land is not a capital asset within the meaning of Section 2(14)(iii) of the Act of 1961. It was therefore submitted by the appellant/assessee that he was neither required to declare the aforesaid amount in the returns nor liable to be taxed.

9. During the course of the assessment, a report was called from the Inspector of Income Tax, who visited the land in the presence of the appellant's authorized representative one *Shri.D.Nirmal Kumar*, Chartered Accountant and an employee of the assessee, who was looking after the land before it was sold to M/s.Alchemy Leisure and Resorts Private Limited on 31.12.2008. The relevant portion of the report reads as under:-

"The land is situated at road side. I observed that the borders of the said land are fenced. The assessee's employee stated that the land is about 6.50 acres. There is no water sources like river, lake, tank, canal, well or bore-well either in the land or anywhere in the vicinity. I also observed that the entire stretch of land looked barren and no irrigation facilities are available whatsoever."

10. It is the case of the appellant that the land was purchased for cultivation process. However, the Department concluded that there was no agricultural activities, as there was no water source



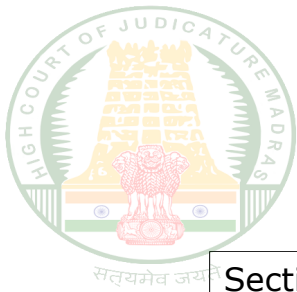
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and that the land was purchased only with the intent of selling it for profit. The Appellate Commissioner also has confirmed the decision of the Deputy Commissioner of Income Tax dated 28.11.2011, which decision stands confirmed by the Appellate Tribunal vide the impugned order.

11. The point for consideration in this appeal is whether the appellant was justified in treating the income from the sale of the land as an **"Agricultural Income"**.

12. If the proceeds from the sale of the land is treated as an **"Agricultural Income"**, the appellant will not be liable to be taxed in terms of Section 10(1) of the Income Tax Act, 1961. Section 10(1) falls under Chapter III of the Income Tax Act, 1961. Section 10(1) of the Income Tax Act, 1961 deals with **"Incomes which do not form part of total income"**. The expression **"total income"** has been defined under Section 2(45) of the Income Tax Act, 1961. Section 2(45) and Section 10(1) of the Income Tax Act, 1961 are reproduced hereunder:-



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Section 2(45) of the Income Tax Act, 1961	Section 10(1) of the Income Tax Act, 1961
" total income " means the total amount of income referred to in Section 5, computed in the manner laid down in this Act.	<i>In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -</i> (1) agricultural income;

13. Thus, the endeavour of the appellant is that the income from the sale of the land was an "**Agricultural Income**", as the land in question was an "**agricultural land**" according to the appellant/assessee within the meaning of Section 2(14)(iii) of the Income Tax Act, 1961.

14. To answer the question raised before us, it will be also useful to refer to the definition of "**Agricultural Income**" in Section 2(1A) of the Income Tax Act, 1961 and the definition of "**Agricultural Land**" in Section 2(14)(iii) of the Income Tax Act, 1961. These definitions are extracted hereunder:-

Section 2(1A)	Section 2(14)(iii)
"Agricultural Income"	"Agricultural Land"
Agricultural Income means- (a) any rent or revenue derived from land which is situated in India and is	2(14) (iii) agricultural land in India, not being land situate- (a) in any area which is comprised



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Section 2(1A)	Section 2(14)(iii)
used for agricultural purposes (b) any income derived from such land by- i. agriculture; or ii. The performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or iii. The sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause; (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on: Provided that- i. the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other outbuilding, and ii. the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local	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. Explanation.- For the purposes of this sub-clause, population means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.



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Section 2(1A)	Section 2(14)(iii)
rate, it is not situated ☐ (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 aially, ☐ (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. Explanation 1. ☐ For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section. Explanation 2. ☐ For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for	



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Section 2(1A)	Section 2(14)(iii)
the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income. Explanation 3. For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Explanation 4. For the purposes of clause (ii) of the proviso to sub-clause (c), population means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.	

15.1. There are three parts to the definition of "**Agricultural Income**" in Section 2(1A) of the Income Tax Act, 1961. Sub-Clause (a) and (b) to Section 2(1A) of the Income Tax Act, 1961 deal with **rent** or **revenue** derived from the land or income derived from such land.

15.2. The common denominator in sub-clause (a) and (b) to Section 2(1A) of the Act, 1961 is either **rent** or **revenue** derived from land or income derived from land used for "**Agricultural Purposes**". In the present case, admittedly, the income is not derived from land used for "**Agricultural Purposes**".



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15.3. Sub-clause (c) to Section 2(1A) of the Income Tax Act, 1961 deals with income from building situated on ☐ ~~such~~ land ☐ and/or ☐ any land ☐ Only these categories of income are "☐ ~~agricultural~~ **Income** ☐ Within the meaning of Section 2(1A) of the Income Tax Act, 1961. Admittedly, in the present case, income is also not from building situated on ☐ ~~such~~ **"Agricultural Land"**.

15.4. For the purpose of our discussion and for the sake of clarity, Section 2(1A) of the Income Tax Act, 1961 can be dissected and simplified in the following Table:-

Section 2(1A) of the Act, 1961		
(a)	(b)	(c)
Any rent or revenue derived from " ☐ land "	Income from ☐ such "Land" By:-	Any Income derived from " ☐ Buildings " under any of the following, instances:-
(i) which is situated in India; and	(i) agriculture;	(i) Any income derived from any building owned and occupied by the receiver of the rent of any such land; or
(ii) which is used for agricultural purposes.	(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market;	(ii) Any income derived from any building owned and occupied by the receiver of revenue of any such land; or



Section 2(1A) of the Act, 1961

	(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause.	(iii) Any income derived from any building occupied by the cultivator of any land; or (iv) Any income derived from any Building occupied by the receiver of rent in kind of any land.
		with respect to which, or the produce of which any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) are/were carried on.

15.5. We make it clear that what is contemplated in sub-clause (a) and (b) to Section 2(1A) of the Act, 1961 is income from the use of land for **“Agricultural Purpose”** which is used for any of the three mentioned categories in sub-clause (b) to Section 2(1A) of the Act. Admittedly, the income is not from the use of land for **“Agricultural Purpose”** which was used for any of the three mentioned categories in sub-clause (b) to Section 2(1A) of the Act.



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15.6. There is a subtle difference between the income contemplated in sub-clause (a) and (b) to Section 2(1A) of the Act, 1961. Sub-clause (a) to Section 2(1A) of the Act, 1961 would cover with any income from **rent or revenue** derived from land which is/are used for "**Agricultural Purpose**". The bottom line is such land should be situated in India and such land is used for **"Agricultural Purposes"**

15.7. Although not illustrated, sub-clause (a) to Section 2(1A) of the Act, 1961 could cover the situation where there is a tenancy of land used for **"Agricultural Purposes"** or where direct revenue is derived from the land used for **"Agricultural Purposes"** *Sine qua non* for that Income to qualify as an **"Agricultural Income"** is that such income should be derived from land used for **"Agricultural Purposes"**

15.8. The expression **"Agricultural Purpose"** is not defined in the Act, 1961 although the expression **"Charitable Purpose"** has been specifically defined in Section 2(15) of the Act, 1961. We are not concerned with the definition of **"Charitable Purpose"** in these cases, therefore, we do not wish to expatiate on the same.



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15.9. Suffice to state that the case of the appellant assessee does not fall within the purview of Sub Clause (a), as the income is not from the use of the land. The facts of the case makes it clear that income of the appellant assessee does not comes within the purview sub-clause (a) to Section 2(1A) of the Act, 1961, as admittedly, the income of the appellant assessee is not from the land used for **"Agricultural Purpose"**

15.10. Sub-clause (b) to Section 2(1A) of the Act, 1961 is another species of **"Agricultural Income"** from **such land** Use of the expression, **such land** implies **"Agricultural Land"** used for **"Agricultural Purpose"**

15.11. Sub-clause (b) to Section 2(1A) of the Act treats the income derived from **such land** as **"Agricultural Income"** if such income is derived, by:-

(i)	(ii)	(iii)
Agriculture; or	the performance of any process ordinarily employed:-	the sale
	1. by a cultivator of the produce raised ; or	1. by a cultivator of the produce raised ; or



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(i)	(ii)	(iii)
	2. receiver of rent-in-kind received,	2. receiver of rent-in-kind received,
	to render such produce raised or received fit to be taken to market.	in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause.

15.12. The first situation that is contemplated in sub-clause (b)(i) to Section 2(1A) of the Act, 1961 is relatable to direct income from "**agriculture**" simpliciter from "**such land**". The second situation that is contemplated in sub-clause (b)(ii) to Section 2(1A) of the Act is relatable again to "**agricultural Income**" from "**such land**" where there is performance of any process ordinarily employed either by:-

1. a "**cultivator**" to render the produce raised fit to be taken to the market; or
2. By "**receiver of rent-in-kind**" to render the produce received fit to be taken to market.

15.13. The third such category as mentioned in sub-clause (b) to Section 2(1A) of the Act is confined to "**income from sale**" of the produce raised or received by such "**cultivator**" or "**receiver of rent-**



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in-kind in respect of which the process is carried out by the above named persons to make the agricultural produce marketable. It should be from the produce from land used for **"Agricultural Purpose"**

15.14. There was no activity carried out by the appellant assessee. The activity of the appellant does not answer to any of the three situations contemplated in sub-clause (b) to Section 2(1A) of the Act. That apart, what is contemplated in the second and third situation, as mentioned above, are performance of actions to render the agricultural produce marketable and/or sale coupled with performance by a cultivator (other than the land owner) or income received by the owner in the form of rent-in-kind from the cultivator. In the facts of the present case, the Appellant/Assessee has not derived any income from such land.

15.15. As far as the third specie of **"Agricultural Income"** contemplated in sub-clause (c) to Section 2(1A) of the Act, 1961 is concerned, it would cover the situation where the income is received from any **"Building"**, which is either owned and/or occupied by the **"Receiver of the rent"** or **"Receiver of the revenue"** of **"any land"**



15.16. Sub-clause (c) to Section 2(1A) of the Act can be understood in the following manner:-

Any income derived from any building owned and occupied by the			
Receiver of the rent of any such land	Receiver of revenue of any such land	Cultivator of any land	Receiver of rent in kind of any land
With respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub clause (b) is carried on:			
(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market.		(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause.	

15.17. The first sub-category in sub-clause (c) to Section 2(1A) of the Act, 1961 would relate to income derived from "**any building**" either by the owner of the building i.e., receiver of rent or from revenue from any such land. Such buildings should be situated in the land meant for "**agricultural Purpose**" to qualify as income from agriculture.



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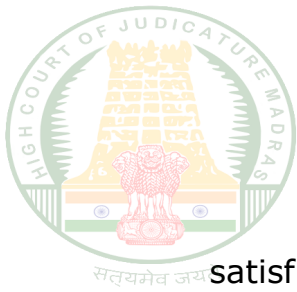
15.18. Therefore, the first situation contemplated under sub-clause (c) to Section 2(1A) of the Act is not satisfied. That apart, such income from the building has to be from such activity mentioned in paragraphs (ii) and (iii) of sub-clause (b) to Section 2(1A) of the Act.

15.19. As far as the second and third situation in sub-clause (c) to Section 2(1A) of the Act are concerned, it would relate to any income derived from any building of ~~any~~ land. The second situation relates to buildings occupied by a ~~cultivator~~, while the third category relates to buildings occupied by the ~~receiver~~ of rent-in-kind.

15.20. Under both these circumstances also, the performance/sale contemplated in sub-clause (ii) and (iii) to clause (b) to Section 2(1A) of the Act has to be satisfied.

15.21. The present case does not fall under any of the three situations that are contemplated in sub-clause (c) to Section 2(1A) of the Act.

15.22. None of the situations specified above has been



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satisfied claim the benefit of Section 10(1) of the Act i.e., "□
Agricultural Income□"

15.23. Therefore, income from sale of □ and will not come within the purview of the definition of □**Agricultural Income**□ within the meaning of Section 2(1A) of the Act for the purpose of Section 10(1) of the Act.

16. In view of the above discussion, we are of the view that the impugned decision of the Appellate Tribunal does not merit any interference. Therefore, the present appeal of the Appellant deserves to be dismissed and is accordingly dismissed.

(R.S.K., J.)

(C.S.N, J)

03.09.2024

Neutral Citation:Yes/No

drm/jen

To:

1. The Deputy Commissioner of Income Tax
Income Tax, Circle I, Vellore.
2. The Income Tax Appellate Tribunal
"C" Bench, Chennai.



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