आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन,न्यायिक सदस्य **एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष**
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.3092/Chny/2016**
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri R. Selvaraj, 251-B, Mylswamy Gounder Thottam, Palakkad Main Road, Kuniamuthur, Coimbatore – 641 008.	Vs	The Income Tax Officer, Non-Corporate Ward 4(2), Coimbatore
PAN: BCKPS5689E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of hearing	:	06.11.2019
घोषणा की तारीख /Date of Pronouncement	:	30.01.2020

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals)–3, Coimbatore dated 30.08.2016 and pertains to the assessment year 2013-14.

2. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the only issue arises for consideration is whether the land in Survey Nos.49/2D, 49/3C & 49/4B in Patta No.272 at Kuniamuthur Village, Coimbatore District is an agriculture land or not? In order to support the claim of the assessee that the land in question is agriculture land, the assessee has filed adangal extract from the Village Administrative Officer (VAO) as well as from the Head Quarters Deputy Tahsildar of Perur Taluk. However, the Assessing Officer appears to have obtained another adangal extract from Head Quarters, DeputyTahsildar, Perur Taluk which states that there was no agricultural activity carried on in the land in question. Therefore, the Assessing Officer came to the conclusion it is not an agriculture land. According to the Ld. Counsel, the Head Quarters Deputy Tahsildar issued an adangal extract on 28.02.2017 indicating that the land in question was cultivated by the assessee with 'cholam' (Millet). Therefore, the assessee on investment of the sale proceeds of the land in another agriculture land is eligible for exemption U/s.54B of the Income Tax Act, 1961 (in short 'the Act'). Since, the assessee sold the agricultural land, the CIT(A) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Shri M. Srinivasa Rao, the Ld. Departmental Representative submitted that the Assessing Officer doubted the so called certified adangal extract filed by the assessee from the VAO as well as Head Quarters Deputy Tahsildar of Perur Taluk. He called for a separate report from the Tahsildar, Perur Taluk. The Tahsildar has filed an adangal extract certified by the Head Quarters Deputy Tahsildar which indicates that the land in question was not cultivated at all. Therefore, the Assessing Officer found that the land in question is not an agricultural land. Hence, the assessee is not eligible for exemption U/s.54B of the Act. Referring to Section 54B of the Act, the Ld.DR submitted that unless the assessee establishes that the land in question was used by the assessee for agriculture purpose two years immediately preceding the date on which it was sold, the assessee is not eligible for exemption U/s.54B of the Act. The Ld.DR has also produced the copy of the adangal extract issued by the Head Quarters Deputy Tahsildar which indicates that there was no cultivation.

4. After hearing the Ld.Counsel for the assessee and the Ld.DR, this Tribunal finds that there are two certificates issued by the Head Quarters Deputy Tahsildar of Perur Taluk, Coimbatore District. One

certified extract of the adangal register indicates that there was no cultivation of the land in the relevant Fasli years. However, the Xerox copy of the certificate issued by the Head Quarters Deputy Tahsilder to the assessee indicates that the very same land was subject matter of cultivation by the assessee in the relevant Fasli year. In view of this two conflicting adangal extract issued by the very same Head Quarters Deputy Tahsildar, this Tribunal issued a summon to the Tahsildar, Perur Taluk, Coimbatore U/s.131 of the Act for his personal appearance and explain why the very same Taluk office issued two conflicting adangal extracts, one to the assessee and another to the Department. The Tahsildar Shri K. Radha Krishnan appeared before this Tribunal on 03.06.2019 in person. The Tahsildar who appeared before the Tribunal verified both the copies of the adangal extracts issued by the Head Quarters Deputy Tahsildar and submitted that the adangal extract issued by the Head Quarters Deputy Tahsildar in the year 2017, the column at 9 with regard to cultivation was strike down and kept blank. There was a overwriting on the column which was kept blank with marking (-). After hearing the Tahsildar Shri K. Radha Krishnan, this Tribunal *prima facie* found that false documents were produced before the Assessing Officer in the course of assessment proceedings. Therefore, this Tribunal directed the Tahsildar to make a thorough enquiry and file a report.

4.1 Accordingly Shri K. Radha Krishnan, the Tahsildar, Perur Taluk made an enquiry and filed a report before this Tribunal. For the purpose of convenience, the report filed by the Tahsildar, Perur Taluk is reproduced hereunder:-

> *"1) I am serving as Tahsildar, Perur Taluk of Coimbatore District since 05.05.2018. I am filing this report as per the order of the Hon'ble Tribunal on 03.06.2019 with respect to the case of R.Selvaraj in ITA 3092/CHNY /2016.*
>
> *2) I submit to state that one Thiru.Selvaraj, S/ o. Ramalingam had applied for true extract of the Adangal applicant on 28.02.2017.*
> *Register of Kuniyamuthur village in respect of the S.F.No. 49/2D, 49/3C and 49/4D vide CA No.111/2017 on 23.02.2017 in this office. On receipt of the copy application, the requested entries in respect the said S.F. Nos were copied from the original Adangal Registers of the Fasli years 1420, 1421 & 1422 and the same were signed by the then Head Quarters Deputy Tahsildar, Perur Taluk and issued to the applicant on 28.02.2017.*
>
> *3) I am to state that after receipt of the letter from the Tribunal regarding the above case, the original Adangal Registers were perused. It reveals that the survey no. 49 of Kuniyamuthur village had been subdivided into various subdivisions. During the Fasli year 1422, the lands in S.F.No. 49/2D and 49 /4 B were transferred in the name of Thiru.R.Selvaraj instead of P.Subbaian and others vide RTR No.12/3438. It also reveals from the original Adangal Register that during the Fasli years 1420, 1421 and 1422 both the fields had not been cultivated with any crops, as there were no crops recorded in the Adangal Registers with respect to the said S.F. Nos. The facts have been submitted before*

the Hon'ble Tribunal on 03.06.2019. By perusing the records and hearing the arguments of both side, the Hon'ble Tribunal instructed the Tahsildar, Perur to enquire on the controversies between the entries in original record and the one submitted at Income Tax office by Thiru.R.Selvaraj and submit a detailed report.

4) I submit to state that as per the Orders of the Hon'ble Tribunal, enquiry notice vide this office ref.no.1152/2019/A1, dated: 10.06.2019 had been served on the then Head Quarters Deputy Tahsildar, Perur Taluk, who approved the true extract of Adangal Register to the applicant on receipt of Copy Application, the Record Clerk, who copied the entries from original register and prepared the true extract and the applicant Thiru R. Selvaraj, instructing all of them to appear before the Tahsildar, Perur. In response to that all of them were appeared on 14.06.2019 and hence the · enquiry conducted. During the said enquiry they have filed their submissions and statements as follows:

STATEMENT FILED BY THE THEN RECORD CLERK:

I was working as Record Clerk in the office of Tahsildar, Perur from 24.08.2015 to 30.06.2017. In view of copy application given by one Thiru.Selvaraj, s/o. Ramalingam, I had registered the application in C.A.No.111 120 17 and copied the entries as mentioned against the S.F.No. 49/2D, 49/3C and 491 4B in the original Adangal Register of Kuniyamuthur village for the fasli years 1420, 1421 and 1422. While doing so I have put (-) at column no. 9, 10, 11 and 12 in the true extract, stating that there were no crops raised in the said fields during that fasli years and submitted the same to the Head Quarters Deputy Tahsildar. I submit that the entries at column no. 9, 10, 11 and 12 in the extract in question now, were not recorded by me.

STATEMENT FILED BY THE THEN HEAD QUARTERS

DEPUTY TAHSILDAR:

I was working as Head Quarters Deputy Tahsildar in the office of Tahsildar, Perur from 01.07.2014 to 30.04.2017. On 21.02.2017 Thiru.Selvaraj, s/o. Ramalingam gave an 111/2017, in question now is *recorded with (-) mark at application to issue the true extract of Adangal Register of the years 2010, 2011, 2012 and 2013 for the S.F.No. 49/2D, 49/3C and 49/4B of Kuniyamuthur village. By receiving the copy application, the then Record Clerk prepared the true extract in C.A No. 111/2017, dt: 28.02.2017 by copying the entries in the Adangal Registers of Kuniyamuthur village and the same was approved me on 28.02.2017. We prepared and issued the true extract illustrating that the lands in S.F.No. 49/ 2D, 49/ 3C and 49/4 B of Kuniyamuthur village had been cultivated with no crops (-) during the Fasli years 1420, 1421 and 1422. But the extract of Adangal Register in C.A No. column no. 7 to 18. Further it is recorded as overwriting with the entries as Cholam and Area details on the (-) mark at column no. 9, 10, 11 and 12 in the true extract. I submit that the entries at column no. 9, 10, 11 and 12 of the extract was not recorded by either the then Record Clerk or by me and we issued the true extract by recording (-) mark only in those columns.*

STATEMENT FILED BY THE APPLICANT THIRU.R.SELVARAJ:

I am running a plastic company in Kuniyamuthur village and purchased the lands in S.F.No. 49/2D, 49/3C and 49/4B of Kuniyamuthur village vide registered document no. 706/2010, dated: 29.01.2010. Since the purchase, those lands were maintained by one Thiru.Chinnaraj, one of its previous owners and he cultivated it with Cholam. As per the instructions from the Income Tax office, I have applied for true extract of Adangal Register of 2010 to 2013 in respect of the said lands on 23.02.2017 in Taluk Office, Perur. In order to get the certified true extract of Adangal Register, I with my friend namely Thiru.Ravibaskar came to taluk office. My friend received the true extract from the Record Room of taluk office and gave it to me after half an hour from receiving it. By receiving the same I submitted it in the Income Tax Office through my auditor Thiru.Krishnan. Since I am migrated from Pudhukkottai district to Coimbatore in 1990s and working in the field of plastic business, I have no knowledge about the Adangal and hence I did not check the entries in the true extract. I have also submitted the income details got from cultivation in the lands to the Income Tax office.

5) At the result of the enquiry of all those people and perusing the documents, I submit my findings and report as hereunder. Perusal of the *original Adangal Registers of the Fasli years 1420, 1421 and 1422, from which the true extracts being questioned now had been copied, reveals that there were no crops cultivated in the said lands, as there are no entries recorded against the S.F.Nos 49/2D, 49/3C and 49/4B of Kuniyamuthur village. It is also cross checked with the entries in that Village Account No.1, which contains the S.F. No wise and month wise cultivation details of - Kuniyamuthur village. Since there is no entries of crop details recorded against the requested survey fields in the original Adangal Register, as well as in the original Village Account No.1, there is no vital possibility of issuing such true extract with crop details recorded in it to the applicant from this office. Moreover there is a system of hierarchy consisting of such officials at various level to copy and prepare the requested extracts from the original record, to verify and then to approve the extracts.*

6) I further submit that In this case, it was already issued the true extract of Adangal Register for the same fasli years with respect of the same S.F.Nos of Kuniyamuthur village vide this office C.A.No.546/2015 to the applicant on 25.09.2015. It is also to note down that the true extract was also copied and prepared by the same Record Clerk and approved by the same Head Quarters Deputy Tahsildar. The certified true extract has no entries of crop details against those survey fields during that fasli years. Later in response to the letter from the Income Tax Officer, Coimbatore dated:03.08.20 16, which requested some clarification in respect of Adangal extract issued by VAO, Kuniyamuthur and Head Quarters Deputy Tahsildar Perur, the then Tahsildar, Perur sent a letter to the Income Tax Officer, Coimbatore stating that the contents of the Adangal extract issued by the VAO is not correct and only the certified extract issued by the Head Quarters Deputy Tahsildar, Perur is correct. So it is clear to know that both of the officials being enquired now, were very well known about the disputes / controversies regarding the Adangal entries in respect of the said fields while issuing the true extract to the applicant In C.A.No.lll/2017. So they had copied and issued the true extract with no crops recorded against the survey fields, by putting (-) mark at column no. 8 to 18 in the Adangal Extracts. After receiving the true extract from this office, crop details were recorded as overwriting at column no. 9 to 12 against the S.F.Nos and submitted to the Income Tax

> *office. It is also to note down that if those officials thought to issue such true extract with crop details, there is no need to put (-) mark first in the respective columns and then to overwrite on it. Hence I conclude to humbly submit my report, by enquiring the persons concerned and perusing the connected records that the true extract of Adangal Registers for the fasli years 1420, 1421 and 1422 with respect to the S.F.Nos 49/2D, 49/3C and 49/4B of Kuniyamuthur village had been prepared by copying the entries as mentioned in the original Adangal Registers, being maintained at this office and issued to the applicant with no crops recorded in it and no overwriting was done in this office. I submit herewith the true extract of the Adangal Registers for the Fasli years 1420, 1421 and 1422 in respect of the survey no. 49 of Kuniyamuthur village, Perur Taluk, Coimbatore District and other documents for kind perusal.*
>
> *7) It is therefore prayed that this Hon 'ble Tribunal may be pleased to accept this report and pass orders on merits as this Hon'ble Tribunal may deem fit and proper in the circumstances of this case."*

4.2 From the above report of the Tahsildar, more particularly at Para 6, it is obvious that after issuing the certificate to the assessee in the year 2017, by putting [-] at Column 8 to 12 in the adangal extract, there was an overwriting as claimed by Tahsildar. Prima facie it appears that there was overwriting by the very same handwriting and ink. Therefore, it gives an impression that the overwriting might have been done at the Taluk office before issue of the certified copy. It is well settled that handwriting / overwriting cannot be decided and may not be visible to the naked eye. Therefore, it needs to be examined by the handwriting expert at the forensic laboratory.

5. We had carefully gone through the provisions of Section 136 of the Act, which reads as follows:

> *"136. Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."*

In view of the above provisions of the Act, the proceeding before the Assessing Officer and other Income Tax Authorities are judicial proceeding and the Assessing Officer is deemed to be a civil court. Therefore production of a false and fabricated document in the course of the assessment proceeding would amount to production of a false and fabricated document in the judicial proceeding before the regular civil court. There is a doubt with regard to the genuineness of the certified copy of the adangal register produced by the assessee before the Assessing Officer. The column 8 to 10 in the certified copy of the adangal extract produced by the assessee was initially marked as [-] , subsequently there was an overwriting above [-] as cholam in column No.9. This indicates that somebody has made an attempt to mislead the Assessing Officer and other appellate Authorities in the assessment proceedings / judicial proceedings. Since same ink appears to be used for overwriting on the [-] with word 'cholam' in tamil with the same / similar handwriting, somebody in the Taluk office might have written either before or after getting the signature of the Head Quarters Deputy Tahsildar. This is only a presumption, it needs to be established. Leaving the matter as such without any further action may not be good for the administration of the State Revenue Department. Moreover encouraging this kind of attitude in a proceeding before the Assessing Officer may not be good for the tax administration of this country also. Therefore, a thorough enquiry has to be made. If anybody indulged in making a false document by overwriting the certificate, copy issued by the Head Quarters Deputy Tahsildar, they have to be prosecuted before the competent court of law. To meet the ends of justice, this Tribunal is of the considered opinion that the matter needs to be remanded back to the file of the Assessing Officer. Accordingly the orders of both the authorities below are set aside and the entire issue raised by the assessee is remanded back to the file of the Assessing Officer. The Assessing Officer shall obtain the originals of both certified adangal extract issued by the Head Quarters Deputy Tahsildar and the VAO to the assessee and obtain the specimen signature of the person who has prepared the adangal extract and the other persons who involved in preparation of the adangal extract in Taluk office and also obtain the specimen signature of the assessee or the person who received the adangal extract from Taluk office on behalf of the assessee and thereafter refer the matter for examination of the handwriting expert in anyone of the Forensic Science Laboratory. After getting a report from the Forensic Science Laboratory, if the Assessing Officer is able to identify the individual who indulged in overwriting the certificate copy issued by the Head Quarters Deputy Tahsildar with a word 'cholam' on the [-], a complaint shall be filed U/s.200 of the code of criminal procedure before the competent Judicial Magistrate Court. In case, the handwriting expert finds that there was an overwriting by any officer / officials of the Taluk office, the Assessing Officer shall report the matter to the District Collector for initiating necessary departmental action. Simultaneously the Assessing Officer shall also re-examine the matter find out whether the land in question is agricultural land or not and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee. With the above observation, the appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal filed by the assessee stands allowed for statistical purpose.

Order pronounced in the court on 30th January, 2020 at Chennai.

Sd/-	Sd/-
(इंटूरी रामा राव)	(एन.आर.एस. गणेशन)
(Inturi Rama Rao)	(N.R.S. Ganesan)
लेखा सदस्य /Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 30th January, 2020.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF