

आयकर अपीलीय अधिकरण “F” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**

**BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND
SHRI RAMIT KOCHAR, AM**

श्री शैलेंद्र कुमार यादव, न्यायिक सदस्य एवं श्री श्री रमित कोचर, लेखाकार सदस्य के
समक्ष ।

आयकर अपील सं./I.T.A. No.4806/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2007-08

A.C.I.T. Cir. 3(3),
6th floor,
R. No. 609,
Aayakar Bhavan,
M.K. Road,
Mumbai – 400 020.

बनाम/ M/s Vijaya Silk House
Vs. Pvt. Ltd.,
7/23, Grants Building,
Arthur Bunder Road,
Colaba,
Mumbai – 400 005.

स्थायी लेखा सं./PAN : AAACV9295M

(अपीलार्थी /Appellant) .. (प्रत्यर्थी / Respondent)

Appellant by

Shri Rajesh Ranjan

Respondent by :

Shri Ishwar Prakash Rathi

सुनवाई की तारीख /Date of Hearing : 16-9-2015

घोषणा की तारीख /Date of Pronouncement : 30.09.2015

आदेश / O R D E R

PER SHAILENDRA KUMAR YADAV, J.M. :

शैलेंद्र कुमार यादव, न्यायिक सदस्य

This appeal has been filed by the Revenue on following grounds:-

“1. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in admitting the appeal by ignoring the delay of 433 days in filing of appeal without appreciating the fact that the assessee is not prevented from sufficient cause for presenting the appeal within the period. As the assessee is company, the MD is advised by counselors and CAs.”

2. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in allowing exemption to the Short Term Capital Gain of Rs. 53,98,220/- disclosed by the assessee in the return of income on the ground that subject matter of STCG was agricultural land as defined u/s. 2(14) of the Income Tax Act without appreciating the fact that the said claim was not made by the assessee either in the original return of income or revised return of income, which is in contravention to the judgment of Hon'ble Supreme Court in the case of M/s. Goetz (India) Ltd. Vs. CIT [284 ITR 323].

3. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in allowing exemption to the Short Term Capital Gain of Rs. 53,98,220/- disclosed by the assessee in the return of income on the ground that subject matter of STCG was agricultural land as defined u/s. 2(14) of the Income Tax Act without taking into consideration the remand report submitted by the AO during the course of appellate proceedings.”

4. The appellant prays that the order of CIT (A) on the above ground be set aside and that of the Assessing Officer be restored”.

2. As regards to this appeal, the assessee seeks condonation of delay by 433 days in filing this appeal before the CIT(A). As per Form No. 35 and memorandum of appeal, the impugned order was received by the assessee on 8-6-2009. Notice in ITNS was issued to the Assessing Officer. The assessee has delayed for 433 days in filing of this appeal before the CIT(A). The stand of the assessee before the CIT(A) has been

to condone the delay and filed a detailed written submission in support of its contention. The written submission is as under:-

“The appeal is late by 433 days, we had already submitted an application for condonation of delay explaining the circumstance for such delay.

The facts of the case are that the assessment u/s 143 (3) was completed on 08-06-2009 wherein the short term capital gain of Rs. 53,98,220/- (i.e. profit on transfer of agricultural land) was charged to tax on the basis of the income declared by assessee. But the land which was the subject matter of transfer was agricultural land and being an agricultural land the asset can not be termed as capital asset as defined section 2(14) and hence the profit on transfer of such land cannot be charged as capital gain.

Because of the wrong presumption about the chargeability of tax on this land (ignoring the fact that the land is agricultural land) the income was declared in the return of income and even during the course of assessment proceedings or till the time assessment completed, this mistake could not be rectified due to the ignorance of the facts and legal provisions.

It was during the course of appellate proceedings of one of the relative of director the portion of the profit on the aforesaid land was charged to tax by their assessing officer and during the course of appellate proceedings when the matter was referred to the another counsel, it was noticed by them that there should not be any tax on transfer of this land because the land was agricultural land.

On the 2nd issue in appeal in respect of disallowance U/s 14A and rule 8 D also the jurisdictional high court has now taken the view that rule 8 D is not applicable for the asst year 2007-08.

Since the time for filing of the appeal has expired but now we came to know correct position of law for exemption on profit on transfer of Agriculture land and disallowance under rule 8 D, we had filed this appeal and there is a delay of 433 days. The delay in filing of

this appeal is fully on account of incorrect conclusion drawn by assessee about the aforesaid short term capital gain. And under these circumstances, we should not be penalized for the same.

The issues involved is purely an legal issue and under the aforesaid circumstances, we pray to your honour to condone the genuine delay as otherwise it would lead to great hardship and un-repairable damage to the appellant by denying the justice only for technical defaults of the appellant, that too has occurred based on the legal advice. We further pray for a pragmatic approach for condonation of delay with a view to do even handed justice on merits in preference to approach which scuttles a decision on merits and no injustice being done because of a non-deliberate delay. Kindly condone the delay and oblige.”

The above submission has been supported by various case laws. Learned Authorized Representative requested to uphold the condonation of delay at the end of CIT(A) and to uphold the order on merit. On other hand Learned Departmental Representative supported the order of Assessing Officer.

3. After considering the aforesaid submission of the assessee on account of condonation of delay in filing of appeal as well as the additional evidences submitted by the assessee, the Assessing Officer was asked to submit remand report for the same. The CIT(A) found that the Assessing Officer vide letter dated 26.03.2012 submitted his report as under:-

“There is no error in the assessment order passed by the Assessing officer and there has been no addition under the head 'Capital Gains'. Hence the issue of charging tax on Rs.53,98,220/- as short term capital gain on transfer of agricultural land does not emanate from the assessment order and is therefore not open to appellate proceedings. In case the assessee had wrongly offered an income

to tax in its return of income it had the option of filing a revised return. The maxim "Ignorance Facti excusat, Ignorantia Juris non excusat" states that ignorance of law cannot be held as an excuse and in the present case there was no ignorance of fact.

Without prejudice to the above, it is contended that the assessee vide its letter dated 25. 05.2009 submitted details and computation of STCG while copies of sale agreement pertaining to the land at Amgaon (claimed sale value Rs.2 crore and Lonavala (claimed sale value Rs.14 lakhs) were already submitted before the A.O. on 16.03.2009. Clause 1(n) of the copy of the deed of sale/or the Amgaon land clearly mentions "That the purchaser will have to obtain necessary permission for any other purpose/use of the land than agricultural". The Deed of conveyance submitted for the Lonawala Plot on page 10 that the Vendor shall also get the share certificate issued by the Summer Hill Plot Owners Co-Operative Housing Society Ltd. in the name of Vijay Silk House bearing certificate No. 50 comprising of 5 shares being distinctive nos. 246 to 250 (both inclusive) in respect of plot No. 4, Survey No. 41/1 + 41/2 transferred to the name of the purchaser. The additional evidence that the assessee claims to submit is the certificate from Group Gram Panchayat, Ambhai-amgaon-Khutal dated 0510712010, which states that the land Gut No. 128, Hissa No.1 to 21 and Gut No. 130 Hissa No. 1 & 2 admeasuring 254 Hector, 35 Guntha 935.87 Acre is 30 kilometres away from Palghar Nagar Parishad and 45 kilometres away from Bhiwandi Nagar Parishad. It fails within the Rural area of Amgaon and does not fall within any city limit. The population of Amgaon village is 1350 which is less than 10,000. In view of the above remarks, the contention of the assessee that the documents submitted by it may be accepted deserves to be rejected under rule 46A of the IT Rules, 1962 and the case deserves to be decided strictly on merits based on the evidence already on record."

4. The copy of the remand report as referred above was given to the assessee for making counter comments for the same. The assessee in this regard has filed its submission, which is extracted as under.-

"The appeal was late by 433 days. The appellant has filed an application for condonation of delay along with the appeal documents. The cause of such delay and the judicial precedents were explained by our letter dt. 12-10-2011. Further there is no remarks in. the aforesaid remand report/or condonation of delay. And the apex court have constantly held that the expression "sufficient cause" should receive a liberal construction and the When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In view of the aforesaid facts and our submission dt. 12-10-2011, we hereby request your good self that the delay may please be condoned and oblige."

5. The CIT(A) has considered the submission of the assessee with regard to the condonation of delay in filing of appeal as well as additional evidences filed by the assessee in respect of agricultural land. He observed that the delay in filing of appeal was mainly on wrong presumption. The assessee was not aware about the chargeability of tax and resultant therewith the assessee could not claim the exemption of income as per the provisions of law. In view of the above, the CIT(A) observed that the assessee has a reasonable cause for delay in filing of appeal and considering the factual position of the case and also taking note of judicial pronouncements, the CIT(A) condoned the delay in filing of appeal by the assessee.
6. This reasoned finding of CIT(A) on point of condonation needs no interference from our side. We uphold the same.
7. On merits, the issue is with regard to allowability of exemption to the short term capital gain of Rs. 53,98,220/-. In appeal, CIT(A) after having considered the submission as well as the case laws cited by the

assessee, granted relief to the assessee and the same has been opposed by the Revenue in its further appeal. The ld. D.R. submitted that the CIT(A) erred in allowing capital exemption to the short term capital gain of Rs. 53,98,220/- disclosed by the assessee in the return of income and prayed that the order of the CIT(A) be set aside and that of the order of Assessing Officer be restored. On the other hand, the ld. Authorised Representative supported the order of the CIT(A).

8. We have considered the rival submission and perused the material available on record, we find that the assessee was not aware of this fact that the sale proceeds arised out of sale of an agricultural land is exempt from tax u/s 10 of the Act hence the assessee inadvertently could not adduce the said fact before the Assessing Officer as well as while filing the return of income. The assessee's claim is in accordance with' the provisions of law and gets support from the CBDT circular No. 14 (XL-35) dated 11/04/1955, wherein it has been clearly stated that the officers of department must not take advantage of ignorance of an assessee as to his rights. It is duty of the department to assist a tax payer in every reasonable way, particularly in matter of claiming and securing reliefs. Due to non-awareness, the assessee could not file certificate from the "Group Gram Panchayat, Ambhai-Amgaon, Khutal" for justification of its claim. It is settled legal position that assessee can raise its legal claim at any stage. The course of appellate proceedings, the ld. Authorised Representative of the assessee filed a copy of certificate from "Group Gram Panchayat, Ambhai-Amgaon certified by Gram Sevak and Sarpanch, which suggested that the land is not situated in area, which is comprised within the jurisdiction of a

municipality or a cantonment board and which has a population of not less than ten thousand or in any area within such distance, not being more than eight kilometer from the local limits of any municipality or cantonment board. This fact has not been disputed before us on behalf of Revenue. Taking note of all the facts available on record, the CIT(A) found the assessee's claim proper and appropriate in accordance with the provisions of law and accordingly allowed the same. There is nothing brought on record by the Revenue against this factual finding of the CIT(A). Under these circumstances, we are not inclined to interfere with the findings of CIT(A) by allowing the exemption to the short term capital gain of Rs. 53,98,220/- disclosed by the assessee in the return of income on the ground that subject matter of STCG was agricultural land as defined u/s 2(14) of the Act. We uphold the same.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 30th September, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: को की गई ।

Sd/-
 (RAMIT KOCHAR)
 ACCOUNTANT MEMBER

Sd/-
 (SHAILAENDRA KUMAR YADAV)
 JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated **30/09/2015**

व.नि.स./ R.K., Ex Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- 7
Mumbai
4. आयकर आयुक्त / CIT- 3, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai F Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai