

***KULDEEP SINGH vs. INCOME TAX OFFICER***

*IN THE ITAT CHANDIGARH BENCH 'A'*

*SATBEER SINGH GODARA, JM & ANNAPURNA GUPTA, AM.*

*ITA No. 1593/CHD/2019*

*Aug 4, 2021*

*(2021) 62 CCH 0382 ChdTrib*

Legislation Referred to

*Section 143(3), 54B*

Case pertains to

*Asst. Year 2007-08*

Decision in favour of:

*Assessee*

***Assessment—Condonation of delay— Assessee was owner of half of a piece of land which assessee and S had sold together vide a common sale deed — There was delay in filing of present appeal of 1491 days, as being an illiterate agriculturist he was unaware of intricacies of tax laws and had entrusted his case to a counsel and had not received any order passed by CIT(A) and it was only when tax recovery proceedings were initiated that he sought a copy of same from CIT(A) and promptly filed an appeal to ITAT, resulting in aforementioned delay — Held, entire facts in present appeal are identical to that in case of S — So much so that even delay in filing present appeal is in identical facts and circumstances as in case of S — ITAT in said case had, condoned delay, noting fact that assessee was an illiterate agriculturist, in all probability unaware of intricacies of tax laws and noting facts stated on oath by assessee that he had entrusted his appeal to a counsel and had not received any order of CIT(A), copy of which he had received on an application filed only when recovery proceedings were initiated on him by department — ITAT also took note of fact that service of order could not be established since on an RTI application filed by assessee to postal department regarding service of order, reply received stated that being an old issue records were not available — Considering all aforesaid facts ITAT had condoned delay — Since no distinguishing facts have been brought to notice, order in case of S will apply following which delay in present case is also condoned — Assessee's ground allowed.***

Held

*Entire facts in present appeal are identical to that in the case of S. So much so that even the delay in filing the present appeal is in identical facts and circumstances as in the case of S. The ITAT in the said case had, condoned the delay, noting the fact that the assessee was an illiterate agriculturist, in all probability unaware of the intricacies of tax laws and noting the facts stated on oath by the assessee that he had entrusted his appeal to a counsel and had not received any order of the CIT(A), copy of which he had received on an application filed only when recovery proceedings were initiated on him by the department. The ITAT also took note of the fact that the service of the order could not be established since on an RTI application filed by the assessee to the postal department regarding service of the order, the reply received stated that being an old issue records were not available. Considering all the aforesaid facts the ITAT had condoned the delay. Since no distinguishing facts have been brought to notice, the order in the case of S will apply following which the delay in the present case is also condoned.*

*Further on merits issue is restored to the AO with the direction to adjudicate the same in accordance with the directions of the ITAT.*

*(para 3)*

### Conclusion

*Illiterate agriculturist, in all probability unaware of the intricacies of tax laws and noting the facts stated on oath by the assessee that he had entrusted his appeal to a counsel and had not received any order of the CIT(A), is liable to condonation of delay.*

In favour of

*Assessee*

Counsel appeared:

*Rohit Goel, CA for the Assessee.: C. Chandrakanta, CIT for the Revenue*

### **ANNAPURNA GUPTA, AM.**

1. The present appeal has been filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), Panchkula [in short referred to as 'CIT(A)'] dated 14-09-2015 u/s 143(3) r.w.s. 147 of the Income Tax Act, 196 (hereinafter referred to as "Act").

The grounds of appeal raised by the assessee are as under:

1. The learned CIT (Appeals) has erred in law and facts in confirming an addition of Rs. 3,68,96,060/- made by AO as long term capital gain on sale of agriculture land measuring 109 kanal 7.5 marla for a consideration of Rs.3,75,97,656/- by holding the transfer of land in the year under consideration despite the fact that only 10% of the sale consideration was received during the year and balance 90% consideration was received on 14.08.2008 i.e. AY 2009-10.

(Tax Effect=Rs.2,22,35,320/-)

2. That learned CIT(Appeals) has erred in law and facts in not allowing the benefit of

investments in new agriculture land amounting Rs. 2,63,62,932/- u/s 54B & construction of house amounting Rs. 60,00,000/- u/s 54F invested subsequent to the receipt of money against sale of agriculture land.

3. That learned CIT (Appeals) has erred in law and fact in adopting cost of acquisition as on 01.04.1981 without considering the location/facts of land sold.

4. That learned CIT (Appeals) has erred in law and facts in confirming the AO action by not allowing the benefit of improvement cost of land.

5. That authorities below has erred in law and facts in reopening the assessment u/s 148.

6. That appellant craves leave to add, alter, amend or to substitute the above grounds of appeal either before or at the time of hearing of case."

2. Ld. Counsel for the assessee pointed out that the solitary issue involved related to taxability of capital gain on the land sold by the assessee, which the assessee claimed was taxable in the year when the final payment was received on the encashment of undated cheques issued by the purchaser , while the contention of the Revenue was that the transfer was completed on the date of registration of the sale deed itself which took place in the impugned year and hence the capital gain was taxable in the impugned year.

At the outset, itself Ld. Counsel for the assessee stated that the entire facts and circumstances in the present appeal were identical to that in the case of one Mr. Sheo Ram which stood adjudicated by the ITAT in ITA No. 364/CHD/2017 vide order dated 09.04.2018. Ld. Counsel for the assessee contended that Shri Sheo Ram was owner of half of a piece of land which the assessee and Shri Sheo Ram had sold together vide a common sale deed. This fact, he pointed out, finds mention in the findings of the Ld. CIT(A) at para 6 of his order. Drawing our attention to the same he pointed out the findings of the Ld. CIT(A) to the effect that:

*"The sale deed clearly shows the name of the appellant along with Shri Sheo Ram as seller of land. It also shows that appellant along with Shri Sheo Ram have half of the share each in the land which was sold by him".*

Ld. Counsel for the assessee contended that Sheo Ram being owner of half portion of the land, the issue in his case was identical and stood adjudicated by the ITAT vide its order above.

Ld. Counsel for the assessee further pointed out that there was delay in the filing of the present appeal of 1491 days, and the delay was in identical facts and circumstances as in the case of Sheo Ram wherein the assessee had not received the original order of the CIT(A) but only a copy of the same that too on his written request to the CIT(A) when tax recovery proceedings were initiated on him by issue of notice and he had received a call for depositing the outstanding demand. That being an illiterate agriculturist he was unaware of the intricacies of the tax laws and had entrusted his case to a counsel and had not received any order passed by the CIT(A) and it was only when the tax recovery proceedings were initiated that he sought a copy of the same from the Ld. CIT(A) and promptly filed an appeal to the ITAT, resulting in the aforementioned delay. He stated that in the case of Sheo Ram also the delay was for the same /identical reason, which had been condoned by the ITAT.

He therefore stated that the issues stood clearly covered in all respects by the order of the ITAT in the case of Sheo Ram (supra).

Ld. DR fairly agreed to the same and pointed out that in the case of Sheo Ram, the ITAT had restored the matter to the Assessing Officer.

3. We have heard both the parties. We have also gone through the order of the ITAT in the case of Sheo Ram (supra). Admittedly the entire facts in the present appeal are identical to that in the case of Sheo Ram. So much so that even the delay in filing the present appeal is in identical facts and circumstances as in the case of Sheo Ram (supra). The ITAT in the said case had, we have noted, condoned the delay, noting the fact that the assessee was an illiterate agriculturist, in all probability unaware of the intricacies of tax laws and noting the facts stated on oath by the assessee that he had entrusted his appeal to a counsel and had not received any order of the CIT(A), copy of which he had received on an application filed only when recovery proceedings were initiated on him by the department. The ITAT also took note of the fact that the service of the order could not be established since on an RTI application filed by the assessee to the postal department regarding service of the order, the reply received stated that being an old issue records were not available. Considering all the aforesaid facts the ITAT had condoned the delay. Since no distinguishing facts have been brought to our notice, the order in the case of Sheo Ram will apply following which the delay in the present case is also condoned.

Further on merits also, the decision of the ITAT in the case of Sheo Ram is applicable, since the LD.DR has been unable to distinguish the case with that in Sheo Ram .Following the said decision we restore the issues raised to the AO with the direction to adjudicate the same in accordance with the directions of the ITAT in the case of Sheo Ram in ITA No. 364/CHD/2017 dated 09.04.2018.

4. In effect, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 04.08.2021.

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**Customized Notes**

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