

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं

श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.381/Mds/2013**

**& C.O.No.81/Mds/2013**

(in ITA No.381/Mds/2013)

(निर्धारण वर्ष / Assessment Year : 2007-2008)

The Assistant Commissioner  
of Income Tax,  
Company Circle III(2),  
Chennai 600 034.

Vs

M/s. Twenty First Century  
Management Services Ltd,  
G3, No.67, Eldams Road,  
Chennai 600 018.

(अपीलार्थी/Appellant)

[PAN: AAAC 2397L]

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri. A.V. Sreekanth, IRS, JCIT.

प्रत्यर्थी की ओर से / Respondent by : Shri. R. Viswanathan, C.A.

सुनवाई की तारीख/Date of hearing : 19.05.2015

घोषणा की तारीख /Date of Pronouncement : 19.06.2015

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

The appeal by Revenue and Cross objection by assessee are directed against the order of Commissioner of Income Tax (Appeals), Trichy, dated 07.12.2012 for the assessment year 2007-2008.

2. The issue involved in this appeal is with regard to treating the gains arising from sale of shares as Short Term Capital Gains Head though the Assessing Officer assessed the same as business income.

3. The assessee has purchased 14,000 shares of M/s. Anent Raj Industries and 1,44,431 shares of M/s. KLG systems and sale on same, the assessee offered the gains as short term capital gains in its return of income. It is noted by the Assessing Officer that assessee had sold 74,000 shares of M/s. Anant Raj Industries and 3,75,980 shares of M/s. KLG Systems. The assessee pleaded before the Assessing Officer that it was held originally had stock in trade of 60,000 shares of M/s. Anant Raj Industries and 2,31,549 shares of M/s.KLG systems and converted the stock in trade as investment. The Assessing Officer not agreeing with the contention of the assessee treat the gain in share of sale as short term capital gains. Aggrieved, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

3.1 On appeal, the Commissioner of Income Tax (Appeals) agreed with the contention of the assessee by placing reliance on the judgment of High Court of Delhi in the case of *V. Jubilant Securities (P) Ltd vs. CIT reported in (2011) 11 Taxman.com 88* and other precedents. Against this, the Revenue is in appeal before us.

4. At the time of hearing, the Departmental Representative submitted that the assessee filed this appeal before the Commissioner of Income Tax (Appeals) on 11.05.2011, whereas the order u/s.143(3) was served to the assessee on 04.01.2010, hence the appeal should have been filed in February, 2010 before the Commissioner of Income Tax (Appeals). In the absence of any mention of condonation of delay in filing of appeal, the Commissioner of Income Tax (Appeals) ought to have dismissed the appeal in limine as belated.

5. The Id. Authorised Representative for assessee submitted that the assessee had filed condonation petition before the Commissioner of Income Tax (Appeals). If it was not discussed by the Commissioner of Income Tax (Appeals), the assessee cannot be found fault with in this primary issue.

6. Admittedly, there was a delay in filing of appeal before the Commissioner of Income Tax (Appeals). However, there is no discussion whatsoever by the Commissioner of Income Tax (Appeals) regarding delay in filing of appeal before him. The Commissioner of Income Tax (Appeals) without condoning the delay, adjudicated the appeal on merit which is not appropriate. Hence in the interest of

justice, we are of the opinion that it is appropriate to remit the case to the file of the Commissioner of Income Tax (Appeals) to give his findings with reference to delay in filing the appeal before him and thereafter, he shall proceed to decide the issue on merits.

7. At this stage, we refrain from going into other grounds raised by the Revenue in this appeal, since we are remitting the issue with regard to delay of filing of appeal before the Commissioner of Income Tax (Appeals) for his consideration. The Cross objection filed by the assessee has become infructuous and accordingly dismissed.

8. In the result, the appeal of the Revenue is partly allowed and the Cross objection by assessee is dismissed.

Order pronounced on Friday, the 19th day of June, 2015, at Chennai.

Sd/-

Sd/-

(वी. दुर्गा राव)

**V. DURGA RAO**

**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई/Chennai.

दिनांक/Dated:19.06.2015.

**KV**

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.

(चंद्र पूजारी )

**(CHANDRA POOJARI)**

**लेखा सदस्य/ ACCOUNTANT MEMBER**

