

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA  
(Before Shri S.S.Viswanethra Ravi, J.M. &Dr.A.L.Saini, A.M.)**

**ITA No. 1660/Kol/2013 : Asstt. Year : 2008-09**

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| Sri ManasSwaika<br>25B, Shakespeare Sarani,<br>Kolkata – 700 017<br>PAN: AKHPS 3743A<br><b>(APPELLANT)</b> | Vs | I.T.O., Ward-7(1),<br>P-7, Chowringhee Square,<br>Kolkata – 700 069<br><b>(RESPONDENT)</b> |
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**Appellant by: Shri Soumitra Choudhury, Advocate  
Respondent by: Shri Rajat Kumar Kureel, JCIT**

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| <b>Date of Hearing : 05.09.2016</b> | <b>Date of Pronouncement :-23/09/16</b> |
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**ORDER**

**Per Dr. A.L.Saini, A.M.:**

The captioned appeal filed by the assessee pertaining to assessment year 2008-09, is directed against the order passed by the Ld. Commissioner of Income-Tax (A) -VIII, Kolkata in appeal No.282/CIT(A)-VIII/Kol/2011-12 dated 22/03/2013, which in turn arises out of an order passed by the Assessing Officer under section 143(3)/147 of the Income Tax Act, 1961 (in short, 'the Act'), dated 23/12/ 2011.

2. The facts of the case are stated in brief. The assessee filed return of income on 30<sup>th</sup> July, 2008 for Rs.1,16,500/-.The return was processed under section 143(1) of the Act on 27.09.2008. Thereafter a notice under section 148 dated 24<sup>th</sup> June, 2010 was served on the assessee on 25.06.2010 after noting the reasons as under:

*“The return of assessee is perused. The schedule for exempt income, under column 5 shows claim of exempt income of Rs.54,52,634/- with a hand noted reasons for exempt income as sale of agricultural land’. It is seen that there is no income from agriculture shown by assessee in part. Therefore, claim of land being agriculture, prima facie, is not tenable. If that be so, claim of gains on sale of such land as exempt is without any basis.”*

3. The AO completed the assessment under section 147 of the Act and made the addition on account of sale of agricultural land observing the following:

*“In the instant case, although onus is on assessee to substantiate its claim, it abjectly failed to produce any proof that the land in question was agriculture at the time of sale. Therefore, it cannot be said that a benefit which the constitution gave a farmer, shall be given to a businessman who did not do anything on the said land. As such, I treat the said land at the time of sale as a land which is not agricultural land.*

#### 9. Conclusion

*1. Since the land is situated within 3 Kms from the local limit of Howrah Municipality, the said land is capital asset as defined u/s 2(14) of the I T Act.*

*2. Even otherwise the said land is not agricultural land in hand of assessee for reasons mentioned in above.”*

4. Aggrieved from the order of the Assessing Officer, the assessee preferred an appeal before the Id CIT (Appeals) –VIII-Kolkata, who has confirmed the action of the AO observing the following:

*“A statement showing the compliance of hearing notices and adjourned hearing dates of the A/R of the appellant from time to time is given below to observe the trend of willingness and seriousness of the appellant towards the disposal of the appeal.-*

| <i>Date of issue</i> | <i>Dt. of hearing</i> | <i>Mode of communication</i> | <i>Remarks</i>   |
|----------------------|-----------------------|------------------------------|--|
| 17.10.12             | 07.11.12              | Notice server                | A/R appeared but request for adjournment and considered hearing on 22.11.2012 .  |
|                      | 22.11.12              |                              | Further adjourned to 07.12.12 considering the request of the A/R   |
|                      | 07.12.12              |                              | Partly discussed with A/R and again adjourned to 19.12.12  |
|                      | 19.12.12              |                              | None appeared  |
| 23.01.13             | 13.02.13              | Speed Post                   | A/R is asked urgently to appear with all the documentary evidences in support of their appeal.No compliance in this regard is made except telephonic request for adjournment and considered.The hearing is adjourned to 28.02.13 . |
|                      | 28.02.13              |                              | Again telephonic request for further adjournment to 21.03.2013 and considered.   |
|                      | 21.03.13              |                              | Neither appeared nor this time any request comes from the A/R  |

*From the above-statement it is noted that active several attempts for disposal of the appeal were made but in vain. Under the circumstances, it is presumed that the appellant is not all serious to pursue the appeal as well as nothing to present before the appellate proceedings in favour of the appeal filed by the appellant.*

*In view of this the .appeal filed by the appellant is hereby rejected and dismissed.”*

5. Not being satisfied with the order of the Id. CIT(A)-VIII, Kolkata, the assessee is in further appeal before us. The assessee has taken the following grounds of appeal:

*“1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.*

*2. For that on the facts of the case, the order passed by the Ld.C.I.T.(A) without giving reasonable opportunity of hearing to*

*the assessee which is completely arbitrary, unjustified and illegal.*

*3. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.*

*4. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and not considering the facts that in reopening the assessment u/s. 148 which is mere change of opinion and against requirement of law, as such his finding is completely arbitrary, unjustified and illegal.*

*5. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the addition amounting to Rs.52,17,516/- as Long Term Capital Gain on sale of agricultural land which is exempt u/s. 2(14) of the I.T. Act which is completely arbitrary, unjustified and illegal.*

*6. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and not considering the facts that the land sold was Sali land which is Agricultural land and is exempt from Long Term Capital Gain amounting to Rs.52,17,516/- which is completely arbitrary, unjustified and illegal.*

*7. For that the interest u/s. 234B & 234D amounting to Rs.11,66,251/- and Rs.5,832/- respectively charged mechanically is wrong & illegal.*

*8. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”*

6. We first deal with ground No.2 raised by the assessee because there is an issue involved in respect of natural justice. Ground No.2 reads as under:

*“2. For that on the facts of the case, the order passed by the Ld.C.I.T.(A) without giving reasonable opportunity of hearing to the assessee which is completely arbitrary, unjustified and illegal.”*

6.1 The ld. AR for the assessee has submitted that he has requested to give more time to submit the relevant papers but the ld. CIT(A) has not heard him. This is clearly mentioned by the ld. CIT(A) in his order vide para 4 that the assessee has requested over phone also to adjourn the hearing and requested him to submit papers. Therefore, the order delivered by the ld. CIT(A) is against the natural justice and we feel it appropriate to send back the file to the ld. CIT(A) to decide the case afresh, after giving an opportunity of being heard to the assessee. Accordingly, we are of the view that this issue requires fresh examination at the end of the ld. CIT(A). Accordingly, we set aside the order of the ld. CIT(A) and restore this issue to the file of the ld. CIT(A) with the direction to ascertain the facts of the assessee, after giving reasonable opportunity of being heard to the assessee, as discussed above.

7. In the result, all grounds of appeal filed by the assessee are allowed for statistical purposes.

Order Pronounced in the Open Court on 23.09.2016

**Sd/-**  
**(S.S.Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(Dr. A.L.Saini)**  
**Accountant Member**

**Dated:23 /09/2016**

Talukdar (Sr.PS)

Copy of the order forwarded to:

1. Revenue
2. Assessee
3. The CIT-VIII-Kolkata,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Asst. Registrar, ITAT, Kolkata Benches