

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य, के समक्ष।  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

**आयकर अपील सं./ ITA No.2957/PUN/2016**

**निर्धारण वर्ष / Assessment Year : 2011-12**

Shri Sandeep Premchand Agarwal,  
Plot No. 7, Prem Deep,  
Shantinath Society,  
Telegaon, Dabhade, Maval,  
Pune-410 507  
PAN : AEDPA1580J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 8(1),  
Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Harikrishan

Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / <b>Date of Hearing : 14.05.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement : 16.05.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM**

This appeal filed by assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 02.09.2016 for assessment year 2011-12.

2. The assessee has raised following grounds in appeal:

*“1.0) In the facts and circumstances of the case and in law, the learned C.I.T. [A] has erred in holding that the net receipts of Rs.39,69,220/- on sale of agricultural land received by the appellant as taxable income under LTCG of the appellant.*

*1.1) In the facts and circumstances of the case and in law, the finding of the learned C.I.T.[A] that the net receipts of Rs.39,69,220/- on sale of agricultural land received by the appellant constitute taxable income under LTCG of the appellant being arbitrary, perverse and based on surmises and conjectures and therefore the same may please be vacated. The reasons given by the learned C.I.T.[A] in support of his said conclusion being devoid of merits and legally unsustainable and the same may please be deleted and the addition may please be deleted.*

*2) The appellant denies his liability to pay any interest u/s. 234B and 234C of the I.T. Act 1961 and hence the same may please be deleted.*

*3) The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

3. The Ld. Counsel for the assessee referred to condonation application filed by assessee and submitted that there is delay of 1 day in filing this appeal. The delay is occurred inadvertently in filing appeal before Hon'ble Income Tax Appellate Tribunal. Therefore, the Ld. Counsel of assessee prayed for admitting the appeal for adjudication condoning the minor delay in filing the appeal.

4. After hearing both the sides and considering the contents of condonation application filed by the assessee, I am of the opinion that the minor delay of 1 day in filing appeal is required to be condoned and taken up the appeal for adjudication.

5. Briefly stated relevant facts of the case are that the assessee is carrying on the business of transport and is also running a bar and restaurant. The core issue raised in the ground No. 1 pertains to the

manner of measuring the distance of 8 kms from the 'municipal limits'. There is no dispute on the fact that the said distance is beyond 8kms if the same is measured by road. However, the distance is beyond 8kms, if the same is measured 'aerially/ crow's flight. The assessment year under consideration is A.Y. 2011-12 and pre-amended provision of section 2(14)(iii) of the Act apply. Despite the same, the Assessing Officer and CIT(A) proceeded to apply the amended provisions of section 2(14)(iii) of the Act and arrived at an illegal conclusion of the distance of land in question from municipal limited. In the process, the CIT(A) ignored the judgment of Hon'ble Jurisdictional High Court in the case of **Commissioner of Income Tax Vs. Nitish Rameshchandra Chordia reported as 374 ITR 531**.

6. Before me, the Ld. Counsel for the assessee explained the above issue and submitted the issue stands covered by the ratio laid down by the Hon'ble Jurisdictional High Court in the case of **Commissioner of Income Tax Vs. Nitish Rameshchandra Chordia (supra)**. He further stated that the amended provision of section 2(14)(iii) is only applicable for assessment year 2014-15 onwards prospectively and the same has no application in the assessment year under consideration. Thereby, the measurement of the distance of land from municipal limits needs to be done by road distance only and not aerially. In this regard, he brought our attention to ratio laid down by the Hon'ble Jurisdictional High Court as well as contents of relevant Para 11 and 12 of the judgment.

7. On the other hand, the Ld. DR for the Revenue relied heavily on the order of Assessing Officer and CIT(A). He further submitted that the distance given by the Town Planning Authority has been considered by Assessing Officer while denying the fact the land in question cannot be considered as agricultural land.

8. On hearing both the parties, I am of the opinion that the only issue for adjudication relates to agricultural land in question is located within 8 Kms from municipal limits or otherwise. Another related question is if the amended provisions of section 2(14)(iii) of the Act apply to the assessment year 2011-12. In the ratio laid down by the Hon'ble Jurisdictional High Court, I find the conclusion of the said judgment helps the assessee and the same is extracted as under:

*“Where agricultural land sold by assessee was situated beyond 8 Kms from municipal limits when measured through road distance, profit from sale of said land was not taxable.”*

I also perused the contents of Para 12 of the said judgement and find the said judgment is relevant for prospective application of the amended provision only. The contents of Para 12 is extracted as under:

*“12. We have carefully considered and applied our mind to the rival submissions and the rulings cited at the bar. We agree with the submission that the amendments in the taxing statute, unless a different legislative intention is **clearly expressed, shall operate prospectively**. In our view, if the assessee has earned business income and not the agricultural income, Section 11 of the General Clauses Act will prevail unless a different intention appears to the contrary.....”*

Therefore, it is settled legal proposition that for the assessment year prior to amendment, the measurement of distance is required not to be done aerially and in alternative that would be done by road. Therefore, I am of considered view that decisions taken by Assessing Officer and CIT(A) are not in tune with the settled legal proposition. There are numbers of decisions favouring the assessee in this issue. Then, the Assessing Officer is directed to follow the ratio laid down by the Hon'ble Jurisdictional High Court in the case **Commissioner of Income Tax Vs. Nitish Rameshchandra Chordia (supra)**.

9. Considering the judgment cited above, ground No.1 raised by assessee is allowed. Since the ground No. 1 is allowed, the adjudication of other grounds on merit becomes academic exercise. Accordingly, other grounds raised by assessee on merit are dismissed as academic.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced on 16<sup>th</sup> day of May, 2018.

Sd/-

(डी.करुणाकरा राव/D. Karunakara Rao)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16<sup>th</sup> May, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.