IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

Before Sh. N. K. Saini, Hon'ble Vice President
and
Ms. Suchitra Kamble, Judicial Member

ITA No. 1747/Del/2015 : Asstt. Year : 2007-08

Jile Singh Satbir (HUF), C/o Dr. Ravi Gupta, Advocate, E-6A, Kailash Colony, New Delhi-110048	Vs	ACIT, Circle Rewari, Rewari
(APPELLANT)		**(RESPONDENT)**
PAN No. BJOPS7128F		

Assessee by : Sh. Saubhagya Agarwal, Adv.
Revenue by : Naina Soin Kabil, Sr. DR

Date of Hearing : 26.10.2018		**Date of Pronouncement : 12 .11.2018**

ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 16.12.2014 of ld. CIT(A), Rohtak.

2. The Registry has pointed out that the appeal is barred by limitation by 19 days. The assessee moved an application for condonation of delay by stating therein as under:

> *"Sir,*
> *It is humbly submitted that I was ill suffering from Jaundice and high fever etc. during the period 17.02.2015 on ward for a long time and I was taking treatment from my local doctor and was on bed rest for the period 20.02.2015 to 24.03.2015. Due to illness and bed rest I could not approach my Advocate Sh. Ravi Gupta in time and approached him on 25.03.2015 to file appeal. The doctor prescription and other reports are misplaced by me. An affidavit in the matter is also attached herewith.*

In view of the above circumstances it is prayed that the delay of 18 days may please be condoned."

Thanking you,

Yours faithfully
Sd/-
(Jile Singh)

In support of the above application, the assessee also filed an affidavit which is placed on record.

3. During the course of hearing, the ld. Counsel for the assessee reiterated the contents of the aforesaid application for condonation of delay and stated that since the assessee due to illness could not approach his Counsel, therefore, there was a reasonable cause in filing the appeal belated which was beyond the control of the assessee. He requested to condone the delay.

4. In his rival submissions, the ld. Sr. DR opposed the condonation of delay.

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the assessee due to illness could not file the appeal in time, so, there was a reasonable cause in filing the appeal belated. We, therefore, by taking a liberal view and considering the principles of natural justice, condone the delay and the appeal is admitted.

6. Following grounds have been raised in this appeal:

"1. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the property belonged to the HUF and consequently the capital gains

arising on the transfer of the property is taxable in the hands of the HUF.

2. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the assessment could not have been made upon the HUF as no HUF existed.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the agricultural land is situated in an urban area and is therefore a capital asset.

4. That the Commissioner Appeals erred in confirming the addition of Rs. 1,30,68,000 which represents the entire sale proceeds. No deduction whatsoever has been allowed towards the indexed cost of the asset.

5. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

6. That the Appellant craves leave to add/ alter any/all grounds of appeal before or at the time of hearing of the Appeal."

7. The main grievance of the assessee in this appeal relates to the sustenance of addition made by the AO on account of sale of agricultural land.

8. Facts of the case in brief are that the AO on the basis of AIR information issued the notice dated 21.03.2012 u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). In response to the said notice, the assessee did not file return and the notice remained uncomplied. The AO framed the assessment *ex-parte* and made the addition of Rs.1,30,68,000/- by observing that no proof regarding cost of land i.e. copy of purchase deed had been furnished and that the chargeability of capital gain had also not

been denied. Accordingly, the amount of Rs.1,30,68,000/- was considered as long term capital gain in the hands of the assessee.

9. Being aggrieved the assessee carried the matter to the ld. CIT(A) who sustained the addition by observing as under:

> *"The charging of Long Term Capital Gains (LTCG) has been done on an inherited land being ancestral in nature and devolving from the maternal grandfather. There is no evidence to prove that the shares were demarcated or handed over individually. Therefore, treating it as an HUF property was proper. Moreover, the specified land does lie in the limits as notified by the CBDT (F. No. 164/3/8 7-ITA-1 dated 6.1.1994). Hence, the treatment of the amount so transacted as the income of the HUF on which LTCG applied was correct."*

10. Now the assessee is in appeal. The ld. Counsel for the assessee at the very outset stated that the land did not belong to the HUF because it was not inherited as an ancestral property since it was neither received from the father or fatherôs father or fatherôs fatherôs father. The reliance was placed on the judgment of the Honôble Supreme Court dated 19.04.2018 in Civil Appeal No. 1933/2009 in the case of Mangammal and Ors. Vs T.B. Raju and Ors. (copy of the said judgment was furnished which is placed on record). It was stated that the ld. CIT(A) as well as the AO without appreciating the facts in right perspective made the impugned addition in the hands of the assessee.

11. In her rival submissions, the ld. Sr. DR strongly supported the orders of the authorities below.

12. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the purchase deed was not furnished before the AO who had passed the *ex-parte* order. It is also noticed that the judgment of the Honôble Supreme Court, relied by the ld. Counsel for the assessee was not before the authorities below. In the present case, it is not clear as to whether the land was ancestral in nature or not. However, the contention of the ld. Counsel for the assessee was that the land did not belong to the HUF but it belonged to the individual. The said contention requires a verification at the level of the AO. We, therefore, considering the totality of the facts, deem it appropriate to set aside this case back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 12/11/2018)

Sd/-	***Sd/-***
(Suchitra Kamble)	**(N. K. Saini)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated: 12 /11/2018

Subodh

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	01.11.2018		PS
2.	Draft placed before author	01.11.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			