

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.306/Ind/2018

Assessment Year 2013-14

Smt. Mamta Singh
EF-14, Scheme No.54,
Vijay Nagar, Indore

Vs ACIT-3(1)
Indore

(Appellant)

(Respondent)

PAN AHUPM4755D

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	S/Shri P.M. Choudhary Sr.Adv & Anand Prabhavalkar, Advocate
Date of Hearing	22.07.2019
Date of Pronouncement	13.09.2019

ORDER

PER SHRI MANISH BORAD, AM.

The above captioned appeal relating to Assessment Year 2013-14 is directed against the orders of Ld. Commissioner of Income Tax -I, Indore (in short 'CIT(A)'), dated 12.01.2018, which is arising out of order u/s 143(3) of the Income Tax Act (In short the 'Act') dated 18.03.2016 framed by ACIT-3(1), Indore.

2. Brief facts of the case as culled out from the records are that the assessee is an individual carrying business of retail trade of country liquor and foreign liquor. Original return of income for Assessment Year 2013-14 was electronically filed on 29.09.2014 declaring total income at Rs.5,58,62,460/-. The case was selected for scrutiny through CASS followed by issuance of notice u/s 143(2) on 28.08.2015. Subsequently notice u/s 142(1) dated 26.10.2015 with detailed questionnaire was issued. Income assessed u/s 143(3) at Rs.6,14,88,890/- after making various additions. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed. Now the assessee is in appeal before the Tribunal raising following grounds of appeal;

- 1) *The Learned CIT(A) has erred in law in confirming the order passed by AO and the additions made therein. The order of CIT(A) being cryptic and non speaking order passed without considering the submissions of the appellant along with the material placed on record contravenes the principles of natural justice and therefore liable to be set aside on that ground alone.*
- 2) *The Learned CIT(A) has erred in law in confirming the addition of Rs 70,14,902/- made by AO in respect of sale of lands at county walk (village Jhalaria) effected by appellant through M/s Aarone Developers Pvt. Ltd , by treating the Capital Gains offered by appellant as income from Business . He failed to see that since the lands in question were*

held by appellant as investment since inception , mere sale through developer for realization of better price could not be treated as adventure in nature of trade . The Learned AO as well as CIT(A) has erred in not applying the correct and proper tests for determination of nature of realizations from sale of such lands on the basis of well established judicial and legal principles . Both the authorities have also erred in law in merely relying upon the decision in case of Smt. Anita Singh .

- 3) That the Learned CIT(A) has erred in law in confirming the addition of Rs 30,66,309/- made by AO by invoking provisions of section 145 (3) of the Income Tax Act, 1961 and estimating the appellant's income in respect of Liquor business by applying net profit rate of 3.5 . He failed to see that in absence of any substantial defect & discrepancies in the books of accounts regularly maintained by appellant in course of her business, provisions of section 145(3) could not be invoked merely on the grounds of non maintenance of sale bills and non availability of petty expenses vouchers . The rejection of books of accounts on the said ground is contrary to the settled legal principles.*
- 4) The estimation of profits by applying NP rate of 3.5% to the appellant's turnover is arbitrary, excessive and unreasonable apart from being contrary to the decisions of ITAT in similar cases.*
- 5) That the Learned CIT(A) erred in law in confirming the order of AO rejecting the appellant's claim for exemption & non liability in respect of sale of agricultural lands situated at Balyakheda by treating said claim as fresh claim made for the first time . The impugned order of CIT(A) being cryptic and non speaking deserves to be set aside on that ground alone.*
- 6) The CIT(A) has also erred in confirming the order of the AO regarding treatment of the income Rs 4,92,99,250/-- arising on sale of the above*

agricultural lands as the income from business by treating the gain resulting from sale of said land earlier offered but withdrawn by appellant as Short Term Capital Gains to be income from business.

- 7) *That the Learned CIT(A) as also the AO failed to see that since the land in question was agricultural land situated in a village located beyond the specified limits of the Municipal area , the lands in question is excluded from the definition of the expression 'Capital Assets' as defined in section 2(14) of the IT Act , 1961 , as such , income arising on sale of such land is not liable to be taxed U/S 45 of the Act . Such claim of the appellant made during the assessment proceedings cannot be said to be a fresh claim hit by the decision of the Apex Court in the case of Goetze (India) Ltd v/s CIT (2006) 157 Taxmann 1, in view of the fact that the appellant had already offered income arising on sale of said lands as Short Term Capital Gains and it was the duty of AO to assess correct income liable to be taxed under the provisions of law. Determination of the nature of asset being part of computation of income , the claim of appellant that the lands in question not being capital assets, the gain resulting on sale of such lands is not includible in the computation does not amount to a fresh claim .*
- 8) *Without prejudice , the Learned CIT(A) is also erred in law in confirming the disallowance of Rs 8,97,000/- made by AO while computing income from sale of the above lands in respect of brokerage expenses incurred by appellant for sale of above lands.”*

3. **Ground No. 1 & 2.**

Apropos Ground No. 1 & 2 at the outset Ld. Counsel for the assessee requested for not pressing these grounds, therefore Ground No. 1& 2 are dismissed as not pressed.

4. **Ground No.3 & 4:**

Apropos Ground No. 3 & 4 relating to addition of Rs.30,66,309/- made by the Ld. A.O by invoking provisions of section 145(3) of the Act and applying net profit rate of 3.5%, Ld. Counsel for the assessee made following submissions.

Challenge to rejection of books of appellant in respect of Liquor business and addition of Rs 30,66,309/- .

1) The appellant is an individual and was awarded contract for retail sale of country and Indian made foreign liquor having shop at Vijay Nagar, Indore. The appellant has maintained regular books of accounts which have been duly audited and the prescribed audit report have been submitted as required by provisions of section 44AB of the IT Act. It is an admitted position that the books of accounts have been produced before AO, however, AO instead of assessing income on the basis of books of accounts has rejected the same mainly on the ground of non maintenance/issuance of sale bills. AO after rejection of books of accounts has estimated the assessee's income by applying NP rate @3.5 on turnover of Rs. 14,17,30,987/- as against the NP rate of 1.34 which worked out on the basis of book results. The appellant had shown NP as per P&L A/c at Rs 18,94,276/- . At this stage it may be relevant to mention that although the AO has rejected books on the ground of non maintenance / non issuance of the sale bills, but at the same time the AO has estimated income by applying NP rate to the appellant's turnover as per books, which is self contradictory. Obviously, such a course adopted by AO is nothing but a short cut method. Moreover, the AO has not been able to find out a single defect or discrepancy in the books

regularly maintained by appellant. The rejection of books of accounts is therefore, arbitrary and the impugned order deserves to be set aside on that ground alone. Such short cut method of assessment and rejection of duly audited accounts is consistently disapproved by the courts and various benches of ITAT . Reliance in this respect is placed on following decisions -

a) ACIT v/s Avinash Chalana & Co reported in (2016) 28 ITJ 295. (ITAT,IND)

Where the ITAT after considering the position of strict regulations and conditions over the country liquor contractors under the provisions of law and after considering the fact that regular books of accounts were maintained which is duly audited and in view of fact no discrepancy in any manner in the quantitative details maintained was found by AO, has held that there was no justification in rejection of books of accounts and application of provisions of section 145(3) . The ITAT also held that estimation of sales at higher figures are not justified and held that NP Rate of 1.77 was reasonable.

b) ACIT v/s Sure win Marketing Pvt Ltd reported in (2016) 28 ITJ 299 (ITAT, IND) .

In that case also the ITAT disapproved the rejection of books of accounts in absence of any discrepancy in quantitative details of sales and purchases. The ITAT upheld the view of CIT(A) that the purchase of liquor was on the basis of permit granted by Excise authorities and in absence of any adverse finding or in absence of any discrepancy in daily sales recorded and in particular in absence of any material to show that the assessee was indulged in effecting sales outside the books of accounts. The rejection of books are not held to be proper. Finally the ITAT directed for applying NP Rate of 1.5 as against 1.25 declared by the

assessee.

c) ACIT v/s Gulmohar Traders (2016) 28 IT) 302 .

In this matter the ITAT has disapproved the rejection of books of accounts only on the ground of non issuance of cash memos for sale and in view of the fact that no discrepancy is found in the accounts maintained by the assessee. The ITAT has accordingly upheld the order of CIT(A) whereby he had disapproved rejection of books of accounts of the assessee. The appellant therefore submits that in view of the above settled position, the rejection of books of accounts in the instant case only on the basis of absence of cash memos is contrary to the judicial opinion and hence deserves to be set aside.

d) Hemraj v/s ACIT (2016) 70 Taxmann.com 336(ITAT , Chandigarh) .

Where the ITAT considering the peculiar circumstances of the liquor business disapproved the action of AO of rejection of books of accounts on the ground of non maintenance of day to day stock register and sales record. The ITAT has come to the conclusion that since the daily sales recorded on day to day basis by employees attending the shop, which are duly recorded in the books of accounts and since it is impossible to issue sales bill to the customer for sale of liquor and that such practice of non issuance of sales bills is prevalent in all over the country in this trade the rejection of books of accounts is improper. The ITAT has noted that the AO has himself accepted the correctness of sale by admitting the sales declared by assessee which are substantiated by entries in books of accounts regularly maintained and that no discrepancy of any nature are found in quantitative details of purchases and sale the rejection of books of accounts are held to be improper. The appellant submits that even in the instant case the AO has not been able to point out any material discrepancy or irregularity in the books of accounts maintained

by assessee and on the contrary he had accepted the quantitative details furnished by assessee and has worked out the alleged suppressed sale on the basis of same details furnished by appellant.

e) DCIT v/s Rajaram & Party (2014) 7 Taxmann.com 285.

In the said case also, the rejection of books of accounts by AO was disapproved by ITAT taking into account the fact that the liquor was required to be procured by Excise Department and as such purchases were duly verified by the Excise Department and in absence of any material to show that there are any transactions of purchases or sales without recording in the books of accounts, rejection of accounts is held to be improper. The ITAT in the same judgment has held that even while making best judgment assessment, the AO should make an estimate honestly and fairly and should not act dishonestly, vindictively or capriciously

f) CIT v/s Saddrudin Hussain reported in 263 ITR 677 (Raj).

As to the rejection of books of accounts on the ground of non-maintenance of day to day stock register, it is now well established that the books of accounts cannot be rejected merely for non maintenance of day to day stock register

g) Jaytik Intermediates Pvt Ltd v/s ACIT (2016) 73

Taxmann.com 195 (Guj High Court) . following earlier decision in the case of CIT v/s Symphony Comforts ltd (2013) 35 Taxmann.com 533 , where their Lordships' took the judicial notice of the fact about maintenance of records on the computers even by Government and semi government organizations and insisted that the AO should verify the entries from computer records to find out defects in

accounts and in absence of any specific defect in computerized accounts, the rejection of books of accounts held to be improper.

h) In the e case of *Squar Concerns Vs. IT officer reported in 54 Taxmann.com 361 (Kol)* Rejection of audited books of accounts has also been disapproved in absence of any specific defect in computerised accounts. Reliance is placed on decision of Mumbai ITAT in the case of ACIT v/s ITD Cementation India Ltd reported in 36 taxmann.com 74, decision in the case of Dy. CIT v/s Subhash Chandra Agrawal reported in 35 Taxmann.com 279, decision in case of Drillcon (Raj (P) Ltd V/s Addl. Addl. CIT reported in 40 Taxmann.com 83 .Generally also the judicial opinion of the courts is consistent about the fact that the books of accounts regularly maintained by assessee cannot be rejected without pointing specific defect or irregularities therein. Reliance is placed on decision of Allahabad High Court in case of CIT v/s Das's Friends Builder Pvt Ltd. Reported in 38 taxmann.com 358 decision in case of CIT Vs. Symphony Comfort System Ltd. 35 Taxmann.com 533 (Guj.).

It is, therefore, most humbly submitted that AO be directed to accepts appellant's books of accounts and assess the income on that basis.

2. Without prejudice to above, even otherwise the estimation of income @3.5% of turnover is highly arbitrary and excessive particularly in view of the fact that the AO in appellant's own case for AY 2015-16 has himself assessed appellant's income by applying NP @2% over turnover by following the decision in the case of ACIT v/s Avinash Chalna & Co, Bhopal (supra) vide order dated 22.12.2017 passed by DCIT-3(1), Indore u/s 143(3) of the IT Act

(copy of order enclosed for ready reference as Annexure "A".) The appellant, therefore submits that if the same NP rate if applied for the present year under consideration also, the appellant's net profit would worked out to 28,34,620/- as against the income computed by AO at Rs 49,60,585/which would result in substantial relief to the appellant. The appellant also encloses a comparative chart (Annexure B) showing GP & NP rate for AY 2012-13 to 2015-16 which shows that GP & NP rate as per book is consistent over all the years. At this stage it would be relevant to take a note of the fact that the appellant is a lady who has ventured to take a liquor contract which is difficult line for woman entrepreneurs .Under the circumstances the AO should not have rejected books of accounts and applied arbitrary NP rate.

5. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of both the lower authorities.

6. We have heard rival contentions and perused the records placed before us. We observe that the assessee is carrying out the business of retail sale of country and Indian foreign liquor. Net profit rate for the year is disclosed by the assessee at 1.34%. Last year net profit rate was 2.28%. In the past net profit rate of 1.94% and 1.80% claimed by the assessee were accepted by the revenue authorities. During the course of assessment proceedings even

after being provided several opportunities, assessee was unable to file the details of day to day sale bills and day book. It was accepted by the assessee that no sale bills are prepared in this kind of business. It was also stated before the Ld. A.O that purchases are fully made from Excise Department and after taking gross profit rate of 4.07% and deducting the direct expenses the profit is disclosed. It remains an undisputed fact that sale bills of liquor are not issued and day to day sale figure is computed on the basis of decrease in stock. For these reasons Ld. A.O rejected the books results and in view of the judgment of Hon'ble M.P. High Court in the case of Gendalal Hazarilal 134 Taxman 384 (M.P) estimated the net profit @ 3.5% on the total turnover for the year. Ld. A.O also gave instances of other assessee's carrying similar type of business showing better rate of net profit.

8. When the matter came up before Ld. CIT(A) he also confirmed the view of Ld. A.O of having applied the net profit rate of 3.5%.

9. Ld. Senior Counsel for the assessee has mainly contended that except for non maintenance of day to day sale bills no mistake was found in the audited books of accounts which are duly audited and

lower rate of profit has been accepted in assessee's own case in the past and thus principle of *Res judicata* should apply .

10. We however find that in the case of Gurucharan Kaur & Jaswinder Singh ITA No.489 & 490/Ind/2017 order dated 14.05.2019, we have adjudicated similar set of facts. Proper supporting for sale were not maintained and details of purchases were not doubted. In that case we after referring to Hon'ble jurisdictional High Court's judgement in the case of ACIT V/s Gendalal Hazarilal and Co. 263 ITR 679 confirmed the view of Ld. CIT applying the net profit of 3.5% observing as follows;

“16. We observe that the assessee is consistently engaged in the business of liquor. Gross Profit rate of 8.48% and Net Profit Rate of 3.47% has been declared for the year under appeal on the total turnover of Rs.11,27,24,922/- as against the Gross Profit of 9.10% and 3.17% shown for the immediately preceding assessment year. Books of accounts are audited u/s 44AB of the Act. Assessee being the liquor contractor all the purchases are duly vouched with the support of Excise Department records and the same has not been challenged by the revenue authorities. Assessee has fairly accepted before Ld.A.O that no cash memos are issued for liquor sales because in this line of business the customer is always in hurry to purchase the goods and is hardly interested in taking the sales bills. However regular quantitative details are maintained for the opening stock, purchases, sales and closing stock. Ld. A.O has rejected the books of accounts merely on the observation that sale bills are

not prepared which makes it difficult to verify the actual sales and there is always the possibility that assessee sales goods at a higher price but records at lower price in the books. Ld. A.O made the addition for suppressed sales at Rs.3,09,95,390/- riding on these observations.

17. We observe that no specific instance has been pointed out by the Ld. A.O about any transaction which could prove that the assessee had suppressed the sales by way of receiving higher amount for sales but entered the figure on lower price in the books of accounts. The basis taken by the Ld. A.O is the MSP and MRP. No weightage has been given by the Ld. A.O that the goods are not always sold on MRP due to competition which forces to make sale at lower price. Gross Profit rate remains consistent. Books of accounts have been duly audited. Quantitative details of various qualities of goods have been maintained. We find that in the similar set of facts the Co-ordinate Bench in the case of ACIT Vs Avinash Chalana & Co (2016) 28 ITJ 295, after considering the position of strict regulation and condition over the country liquor contractor under the provisions of law and after considering the facts that regular books of accounts were maintained which is duly audited and in view of fact no discrepancy in any manner in the quantitative details maintained was found by the AO has held that there was no justification in rejection of books of accounts and application of provisions of Section 145(3) of the Act. The ITAT also held that estimation of sales at higher figures are not justified and held that Net Profit Rate of 1.77% was reasonable.

18. Hon'ble jurisdictional High court in the case of ACIT v/s Gendalal Hazarilal and Co 263 ITR 679 laid down the ratio that the doctrine of res judicata is not applicable but consistency has to be maintained unless there is a manifest distinguishable feature.

19. Applying this ratio on the facts of the instant case, we find that similar type of business has been carried out i.e. sale of liquor. Purchases are not doubted at any stage as they are through Excise Department controlled by the Government. Quantitative details have been filed for all

the purchases. Books of accounts are duly audited. Better Net profit rate has been declared i.e. 3.47% as against 3.17% in the immediately preceding financial year. In these given facts and circumstances of the case we find no inconsistency in the well reasoned finding of fact by Ld. CIT(A) applying net profit rate of 3.5%. We accordingly confirm the view of Ld. CIT(A) of deleting the addition of suppressed sales of Rs.3,09,63,442/- and dismiss revenue's Ground No. 1 & 2".

11. We therefore following our own decision in the similar set of facts find no merits in the contention of the assessee as the assessee has not issued the sale bills and have estimated the sales on the basis of decrease in stock and applying gross profit rate. There is no detail available on record to show that at what rate different type of liquor were sold and what was the margin of profit. Just because the purchases are not doubted cannot be the basis that sales turnover is correct. Day to day maintenance of accounts with proper supporting of sale bill, purchase bill and expenses vouchers are the basis for proper books of accounts. If any one limb is absent or is incomplete, the revenue authorities are justified to doubt the book results and therefore no interference is called for in the finding of Ld. CIT(A) confirming the action of the Ld. A.O of rejecting the books of accounts, invoking provisions of section 145(3) of the Act and applying net profit rate @ 3.5% on the

turnover disclosed by the assessee. In the result Ground No.3 & 4 of the assessee's appeal stands dismissed.

12. Now we take up Ground No.5,6,7&8 which arises out of the transaction of sale of agriculture land situated at Balykheda. In the return of income the assessee has shown the gain as Short Term Capital Gain but later on filed revised computation of income during assessment proceedings claiming it to be exempt income as the agriculture land in question was not covered under the definition of 'capital assets' as defined in section 2(14) of the Act. The gain of Rs.4,48,97,250/- was treated by the Ld. A.O as income from business rejecting the claim of the assessee that the alleged gain is exempt income. Ld. A.O also disallowed the claim of brokerage expenses of Rs.8,95,000/- and excess cost of purchase at Rs.15,05,000/- . The action of the Ld. A.O was confirmed by Ld. CIT(A) for the alleged business income of Rs.4,68,97,250/- and disallowance of transfer expenses of Rs.8,95,000/- against which the assessee is in appeal before the Tribunal.

13. Ld. Counsel for the assessee referring to the following written submissions prayed for setting aside the issue raised on merits in Ground No. 5 to 8 to the file of Ld. A.O for afresh adjudication:-

1. The appellant submits that while filing return of income, the appellant had disclosed Short Term Capital Gain of Rs 4,68,97,250/- in respect of sale of her agricultural land at Balyakheda. *However, subsequently having realised that the said land being situated beyond the prescribed distance (8 Km) from local limits of Municipality, appellant filed a revised computation on 29/09/2014 and claimed that the agricultural land in question not being capital asset u/s 2(14), there is no liability to capital gains (copy of revised computation found at Page 24 to 29 of the Paper Book Compilation). However the AO, relying upon the Apex Court's decision in case of **Goetz (India) Ltd v/s CIT (2006) 157 Taxman 1** refused to take cognizance of revised computation but at the same time on the other hand the AD went out to observe that the land in question is not an agricultural land and no material has been placed on record in support of claim that the land is situated at the distance beyond 8 KM from the limits of Municipality, without taking note of the documents and the evidence already submitted by appellant during the proceedings of assessment . Unfortunately, the CIT (A) has also confirmed the said order.*
2. At the outset the appellant desires to bring it to the notice of this Hon'ble ITAT that the identical issue in respect of the identical land at Balyakheda has been considered by CIT (A) -36 Mumbai in the case of sister concern of the appellant viz M/s Ganga Enterprises, in which appellant is also one of the partners, where the Learned CIT(A) has accepted revised computation and has further accepted the claim that the land in question is not a capital asset and has allowed the claim

regarding non liability to tax. A copy of the order of CIT (A) dated 30/08/2018 passed in case of M/s Ganga Enterprise is also enclosed for ready reference as **Annexure 'C'** .

3. The appellant submits that even otherwise, the decision of Apex Court in the case of Goetz (India) Ltd (supra) has been distinguished by courts and it has been held that the assessee is entitled to raise additional claim before appellate authorities and the appellate authority have jurisdiction to deal with such claims. Reliance is placed on following decisions ----- .

a) *CIT V/s Pruthvi Brokers & Share Holders Pvt Ltd (2012) 3491TR 336*
(Annexure D).

b) *Pr CIT v/s Western India Shipyard Ltd (2015)379 ITR 289{Del} (Annexure E) .*

c) *CIT Vis Jay Parabolic Springs Ltd (2008) 306 ITR 42{Del} (Annexure F) .*

d) *CIT v/s Sem Global Securities Ltd (2014) 360 ITR 682 (Del) (Annexure H).*

e) *CIT V/s BG Shirke Construction Technology Pvt Ltd (2017) 395 ITR 371 (Bom) (Annexure H)*

4. The appellant, therefore, submits that in view of the above legal position regarding admissibility of fresh claim before the appellate authorities, the order passed by CIT(A) by applying ratio in case of Goetz India (supra) deserves to be set aside with the direction to consider the claim afresh on merits. As to the observations of the AO on merits despite following the decision in case of Goetz (India) , the same are apparently without considering the documentary evidence placed on record by the appellant in course of proceedings *Attention* in this respect is invited to the documents at Page No 52 to 139 of the Paper book which

are in the nature of land documents, Khasra entries and even Google Map to show the distance of the land from Municipal *limits* along *with* the certificate of Sarpanch of Gram Panchayat. It seems that AD has not at all applied his mind to these documents. The matter, therefore, deserves to be remanded for fresh adjudication of the claim on merits.

14. Ld. Departmental Representative supported the orders of both the lower authorities.

15. We have heard rival contentions and perused the records placed before us. Ground No. 5 to 8 arises out of transaction of sale of agriculture land situated at Balykheda. In the return of income assessee disclosed income as short term capital gain at Rs.4,68,97,250/- after claiming expenditure of Rs.8,97,000/-. Before the completion of the assessment proceedings on 18.3.16 assessee submitted a revised computation of income on 9.3.2016 before the Ld. A.O withdrawing the short term capital gain at Rs.4,68,97,250/- stating that the alleged gain is exempt from tax as the agriculture land in question do not fall in the category of capital assets as provided in section 2(14) of the Act. Ld. A.O however rejected the claim on the basis that since the return of income was belated by one year and not filed u/s 139(1) of the Act, the claim of the assessee is not admissible. Ld. AO placed reliance on the

judgment of Apex Court in the case of Goetz (India) Ltd V/s CIT (2006) 157 Taxman 1 (SC).

16. During the course of the assessment Ld. Counsel for the assessee submitted that the agriculture land in question is beyond the prescribed distance of 8 Kms from local limits of municipality and is not a capital asset u/s 2(14) of the Act and therefore there is no liability to pay tax on the gain from sale of said land. Reference was also made to the decision of I.T.A.T., Mumbai Bench in the case of its sister concern M/s. Ganga Enterprises in which appellant is also one of the partner and the revised computation was accepted by Ld. CIT(A) and this decision of the Ld. CIT(A) was confirmed by the Tribunal.

17. In support of the land being capital asset, various documents have been placed on record along with placing reliance on various judgments referred in the written submissions filed by the assessee.

18. It is judicially settled position that an assessee should be subject to tax only on the income earned during the year which is chargeable to tax. If due to inadvertence assessee had offered the income for tax which is actually not liable to be taxed then the

assessee should get an opportunity to justify its claim. In the instant case firstly the assessee has shown the gain from sale of agriculture land as short term capital gain and paid taxes thereon, thereafter during the course of assessment proceedings itself assessee filed necessary information with evidence before the Ld. A.O that the agricultural land is not a capital asset and therefore she is not liable to pay tax on the gain thereof. Ld. A.O has brushed aside the assessee's claim merely for the reason that since the assessee has filed the original return belated by one year, the computation of income cannot be revised nor the assessee could file the revised return.

19. We however in the given facts and circumstances of the case and in the interest of justice and fair to both the parties are of the considered view that the issues raised in Ground No. 5 to 8 relating to gain of Rs.4,68,97,250/- as to whether it is to be taxed as a business income or capital gain or such gain is exempt from tax and also the assessee's claim of incurring transfer expenses of Rs.8,97,000/-, needs to be set aside to the file of the Ld. A.O for afresh adjudication. We direct the assessee to file necessary

documents in support of its claim of exempt income by sale of asset not covered under the definition of Capital Asset u/s 2(14) of the Act. Ld. A.O is also directed to examine the facts as per the provisions of law and if the assessee's claim is found to be correct then necessary decision to be taken after providing reasonable opportunity of being heard to the assessee. In the result Ground No. 5 to 8 of the assessee's appeal are allowed for statistical purposes.

20. In the result appeal of the assessee is partly allowed for statistical purposes.

The order pronounced in the open Court on 13.09.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 13 September, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order
Assistant Registrar, ITAT, Indore