

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing though Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.74/Jodh/2019

(निर्धारणवर्ष / Assessment Year: 2010-11)

Sh. Yasin Khan Ward No.25 Churu Jaipur, Rajasthan-331 011.	बनाम/ Vs.	Income Tax Officer Ward-1 Churu, Rajasthan-331 001.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. CAKPK-2504-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Amit Kothari (CA)- Ld. AR
Revenue by	:	Shri K.C. Badhok - Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	06/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. In this appeal, the assessee is aggrieved by confirmation of certain additions in an assessment framed u/s 144 r.w.s 147 of the Act on 21/02/2016. The learned first appellate authority has dismissed the appeal of the assessee for want of condonation of delay of 715 days.

2.1 The relevant facts are that during assessment proceedings, it transpired that the assessee sold certain immovable property Khasra No. 814 & 1642/806 during the year. It was also noted that the sold piece of land was situated within municipal limits of Churu City and therefore, it was a capital assets and gains arising therefrom would be chargeable to tax under the head *capital gains*. The value as shown in the registry was Rs.2 Lacs but it was valued at Rs.39.44 Lacs by DIG, stamps.

2.2 The assessee submitted that it had no source of income and the land was not situated in notified area. Hence, no return of income was filed in response to reassessment notice which led Ld. AO to invoke the provisions of Sec.144 and frame the assessment on the basis of information on record. The matter of valuation of the land was referred to valuation officer who valued the land at Rs.63.83 Lacs. Adopting the same, capital gains were computed at Rs.63.20 Lacs. As stated earlier, the assessee's appeal before Ld. first appellate authority got dismissed for want of condonation of delay. Aggrieved, the assessee is in further appeal before us.

3. We have carefully heard the arguments advanced by both the representatives. Our adjudication to the appeal would be as given in succeeding paragraphs.

4. The material on record would show that the appeal was filed before Ld. CIT(A) manually in Form No.35 on 09/04/2016 which was apparently within prescribed time. However, the appeal, as per extant rules, was required to be filed electronically. The same has subsequently been e-filed on 07/03/2018. Counting from this date,

the appeal is time barred by 715 days. We find that that assessee was diligent in filing the appeal, though manually and there was no lapse, in this regard. The appeal filing fees was also deposited by that date. Therefore, merely because the appeal was not e-filed as per newly amended provisions, the same could not be a ground to deny the assessee to contest the issue on merits. The appeal has already been e-filed. Therefore, keeping in assessee's background as well as the facts of the case, we direct Ld. CIT(A) to condone the delay and adjudicate the issue on merits by way of speaking order. The assessee, in turn, is directed to substantiate his stand failing which Ld. CIT(A) shall be at liberty to proceed with adjudication as per material on record.

5. The appeal stands allowed for statistical purposes.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

ITA No.74/Jodh/2019
Sh. Yasin Khan
Assessment Year: 2010-11

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, जोधपुर / ITAT, Jodhpur.**