

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 963/H/2013 Assessment Year: 2009-10		
Gurijala Srinivas Goud, Hyderabad. PAN - AKEPG 1515 C (Appellant)	Vs. `	Asst. Commissioner of Income-tax, Central Circle - 1, Hyderabad. (Respondent)
Assessee by:		Shri S. Rama Rao
Revenue by:		Shri Sunil Kumar Pandey
Date of hearing:		28/01/2021
Date of pronouncement:		02/02/2021

ORDER

PER BENCH:

This assessee's appeal for AY 2009-10 is directed against the CIT(A) - I, Hyderabad's order dated 31/10/2012 passed in case No. 0292/10-11/CC-1, Hyd/CIT(A) - I, Hyd, involving proceedings u/s 143(3) rws 153C of the Income Tax Act, 1961 ; in short "the Act".

We have heard both the parties. Case file perused.

2. We notice at the outset that assessee's instant appeal suffers from 136 days delay in filing. He has affirmed reasons thereof to his deteriorating medical condition as per the medical certificate issued by his physician dated 10/02/2018. He has declared that assessee underwent treatment between 20/04/2013 to 30/05/2013, which caused the impugned delay resulting in filing of the instant appeal on 22/08/2013. The Revenue has also filed its details submissions disputing assessee's medical condition . Be that as it may, the fact remains that assessee has filed a medical certificate showing sufficient cause that he could not file the main appeal on account of circumstances beyond his control. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of 136 days is neither intentional nor deliberate

but due to beyond his control. Case is now taken up for adjudication on merits.

3. Coming to assessee's main appeal his sole substantive grievance challenging correctness of both the lower authorities action making long term capital gains addition of Rs. 1,89,69,356/- in section 143(3) assessment dated 30/11/2010 as upheld in the CIT(A)'s order. The Assessee's contention is that he had sold only his agricultural land which was not a capital asset u/s 2(24) of the Act. Mr. Rao took us to page 33 of the paper book that the land is situated beyond the specified distance of 8 kilometers from the nearest municipality so as to be treated as a capital asset u/s 2(14) of the Act. He therefore vehemently contended that both the lower authorities have erred in law and on facts in treating assessee's agricultural land sold in the relevant previous year as inviting long term capital gains addition.

4. Mr. Pandey on the other hand supported both the lower authorities orders. He has buttressed CIT(A)'s detailed discussion in para 6.1 of his order that the assessee had entered into plotting

arrangement(s) on the land resulting in large amounts of sale consideration.

5. We have given our thoughtful consideration to rival submissions against and in support of the impugned addition. Suffice to say, we find that the clinching aspect of assessee's land's distance from the nearest municipality appears to have escaped the lower authorities consideration both in assessment as well as in CIT(A)'s order. The issue therefore deserves to be restored back to the Assessing Officer for his necessary verification as per section 2(14)(iii)(a)&(b) of the act. . The fact also remains that as rightly pointed out at Revenue's behest, the assessee has also plotted on the land sold in the nature of adventure in real estate business. We thus direct the Assessing Officer to finalize his consequential verification keeping in mind the foregoing facts forthcoming from the case records as per law within 3 effective opportunities. The assessee or his authorized representative shall appear before the Assessing Officer on or before 30th June, 2021 with a copy of instant remand directions for consequential proceedings

failing which these directions shall be deemed to have been vacated.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Pronounced in the open court on 2nd February, 2021.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: 2nd February, 2021

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copy to :

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2	<i>ACIT, Central Circle - 1, 3rd Floor Annexe, Aayakar Bhavan, Basheerbagh, Hyd - 500 001.</i>
3	<i>CIT(A) - I, Hyderabad.</i>
4	<i>CIT (Central), Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>