

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.27/Hyd/2020
(Assessment Year : 2012-13)**

M/s. 3F Oil Palm Agrotech Pvt. Ltd.,
Hyderabad.
PAN AAACZ 4451HAppellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 2(2), Hyderabad.Respondent.

Appellant By : Shri P. Murali Mohana Rao.
Respondent By : Shri Waseem Ur Rehman. (D.R.)

Date of Hearing : 3.6.2021.
Date of Pronouncement : 19.07.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2012-13 arises from the Commissioner of Income Tax (Appeals)-2, Hyderabad's order dt.27.07.2016 passed in case No.0272/2015-16 in proceedings under Section 154 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. We notice at the outset that assessee's instant appeal suffers from 117 days delay in filing. Learned counsel submitted that due to the outbreak of pandemic covid 19 unable to get the documents from the department which caused the impugned delay in filing of the instant appeal. 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 17th Dec., 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 117 days neither intention nor deliberate but due to the circumstances beyond its control. Case is now taken up for adjudication on merits.

2. We notice that the instant appeal involves section 154 rectification taken recourse to by the Assessing Officer and upheld by the CIT(A). The Assessing Officer had admittedly framed 143(3) assessment on 31.3.2015 for Assessment Year 2012-13 in issue. He observes in his rectification order dt.16.09.2015 to have noticed from Annexure-IX of

item 17(1) of 3CD report an amount of Rs.2,92,05,885 shown as unadmissible expenditure in relation to exempt income, had not been added back while assessing this taxpayer taxable income. He thus treated the same as an instance of an apparent error and issued 154 notice dt.31.8.2015 followed by the final order in issue disallowing the said so called inadmissible expenditure in issue. The CIT(A) has confirmed the Assessing Officer's action to this effect.

3. We have given our thoughtful consideration against and in support of the impugned assessment 154 rectification. The issue admittedly herein is that of admissibility of the expenditure amount of Rs.2,92,05,885. The Revenue's case seeks to disallow/add the same going by the 3CD report of the assessee. We notice in this backdrop that the assessee had itself declared agriculture income of Rs.3,32,07,731 against corresponding expenditure claim of Rs.2,92,05,885 resulting in net agriculture income of Rs.40,01,846 exempt u/s. 10(1) of the Act. We fail to understand in this crucial factual backdrop

as to how the expenditure which has been incurred for the purpose of deriving agriculture income could be treated as an instance of an apparent error inviting rectification u/s.154 of the Act. Coupled with this, Revenue's case does not stand even on legality in light of (1971) 82 ITR 50 T.S. Balram Vs. Volkart Brothers (SC) that a debatable roving issue cannot form subject matter of rectification proceedings. We thus see no substance in Revenue's stand on factual as well as legal aspects so far as the correctness of the impugned 154 rectification is concerned. The assessee's grounds to this effect stand accepted.

4. This assessee's appeal is allowed.
Order pronounced in the open court on 19th July, 2021.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt.19.07.2021.

* Reddy gp

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| 1. | M/s. 3F Oil Palm Agrotech Private Limited, 6-3-569/2, First Floor, Rockdale, Somajiguda, Hyderabad-500 082 |
| 2. | ACIT, Circle 2(2), Hyderabad. |
| 3. | Pr. C I T-2, Hyderabad. |
| 4. | CIT(Appeals)-2, Hyderabad. |
| 5. | DR, ITAT, Hyderabad. |
| 6. | Guard File. |

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.