

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1222/DEL/2018
Assessment Years 2013-14

Shri Preet Singh, 516, Neb Sarai, New Delhi.	v.	Assistant Commissioner of Income Tax, Circle-32(1), New Delhi.
TAN/PAN: ANBPS6088A (Appellant)		(Respondent)

Appellant by:	Shri Satyen Sethi Adv Shri AT Panda Adv
Respondent by:	Shri Anil Kumar Sharma, Sr.DR
Date of hearing:	25 08 2022
Date of pronouncement:	22 09 2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commission of Income Tax (Appeals)-XI, New Delhi [‘CIT(A)’ in short] dated 02.01.2018 arising from the assessment order dated 23.03.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. Briefly stated the assessee is an individual. For the Assessment Year 2013-14, return declaring an income of Rs.21,40,350/- was filed by the assessee. In the return of income, the Long Term Capital Gain arising on sale of agricultural land at Village Biranvas, Tehsil Kotkasim (Khasra

No.126, 125, 338/122, 342/124, 136) was claimed as exempt. The return filed by the assessee was subjected to scrutiny assessment.

2.1 From the assessment order, it transpires that the land sold was purchased in the Year 2005-06 for a total consideration of Rs.26,82,510/-. The assessee had initially computed the indexed cost at Rs.41,32,217/-, which was subsequently revised to Rs.45,98,588/- and accordingly, capital gain of Rs.46,51,412/- was worked out. In the return, the assessee had claimed deduction u/s 54B of the Act and thus reported 'Nil' LTCG.

2.2 In terms of section 54B, the assessee is required to utilize the capital gain to acquire agricultural land. During the assessment proceedings, the assessee produced agreements dated 2.11.2013 and 15.1.2014 towards purchase of new asset (land) to corroborate the deduction claimed. Since the registered sale deeds were not produced, the Assessing Officer made independent enquiry under section 133(6) of the Act and found that the assessee had not purchased agricultural land. Rather, he has purchased commercial property in Sector 68, Gurgaon. Hence, exemption claimed under section 54B of the Act was denied.

2.3 Since the new asset purchased in Sector 68, Gurgaon was not a residential property, therefore, alternate claim made under Section 54F of the Act was also rejected by the Assessing Officer.

2.4 Accordingly, the assessment was made at total income of Rs.75,05,700/-, bringing to tax the capital gain of Rs.46,51,412/-.

3. Aggrieved, the assessee preferred appeal before CIT(A) seeking to challenge denial of deduction from Long Term Capital Gain under S. 54B/54F of the Act. However, the CIT(A) declined to interfere with the action of the AO.

4. Further aggrieved, the assessee preferred before the Tribunal.
5. As per the impugned grounds of appeal, the assessee has challenged the disallowance of Rs.46,51,412/- with reference to Section 54B of the Act. The assessee also filed 'additional ground' to the effect that the capital gains on sale of agricultural land at Village Biranvas, Tehsil Kotkasim was not taxable at the first instance owing to the fact that the land in question was situated beyond 8 kms of Municipal limits of Bhiwadi and as such, it did not fall within the definition of capital asset under Section 2(14) of the Act. In support of the additional ground, the assessee has also moved an application for admission of the 'additional evidences' under Rule 29 of the Income Tax Appellate Tribunal Rules 1963. As stated on the behalf of the assessee, the additional evidences are placed for admission by the Tribunal to demonstrate that the land at village Biranvas, Tehsil Kotkasim was an agricultural land, used for agricultural purposes and situated beyond the limits stipulated under Section 2(14)(b) and thus the agricultural land sold falls outside the ambit of expression 'capital asset' denied under Section 2(14) of the Act. Consequently, the capital gain arising on sale of such agricultural land is not taxable to capital gain taxed at the threshold.
6. At the time of hearing, the Id. counsel for the assessee made prayer for admission of 'additional ground' as well as 'additional evidences'. The Id. counsel further submitted that the assessee does not seek to press the main grounds of appeal filed along with appeal memo before the Tribunal but relies on 'additional grounds' for determination of disputes.
7. The Revenue has vehemently objected to the admission of additional ground as well as the additional evidences. The Ld. DR contended that the assessee has attempted to make out an altogether new case by seeking leave of the Tribunal to admit the additional grounds for which the relevant facts

are admittedly not available on record. The 'additional evidences' also are being filed by the assessee to support the additional ground without showing any reason for such belated reference. The Id. DR referred to the decision rendered by the Hon'ble Delhi High Court in *Shri Raghbir Singh and others vs. Government of Nct of Delhi and Ors. Judgment dated 01.02.2005* to emphasize that a party to the litigation must be vigilant and is not entitled to approach the Court after enormous delay without any satisfactory explanation. The failure of the person, who has the right to approach the authority, to so approach within a reasonable time amounts to a waiver of the right and is, thus not liable to be heard in the matter. The Id. DR further referred to the judgment rendered in the case of *The Kerala Minerals and Metals Ltd. vs. CIT judgment dated 10.12.2014 in ITA No.13 of 2013* and contended that the principles laid down by the Hon'ble Supreme Court in *National Thermal Power Company Ltd. vs. CIT as reported in 229 ITR 383 (SC)* and *Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688 (SC)* does not help the case of the assessee where the relevant facts are not available on record to adjudicate the additional ground of appeal. It was contended that the judgment rendered in NTPC case does not dispense with the vital requirements of availability of relevant facts on record. Further reference was made to the decision of the Co-ordinate Bench in *Garden Silk Limits Ltd. vs. ACIT (2005) 2 SOT 856 (Ahd)* to contend that where the basic facts relating to the additional ground were not available on record and the issue raised in the additional grounds were not placed before the lower authorities, the additional ground raised by the assessee could not be admitted. The Id. DR for the Revenue thus submitted that the Tribunal must not exercise its statutory discretion in favour of the assessee for admission of additional grounds in the absence of pertinent evidences before the Revenue authorities. As contended, the assessee in the

instant case, seeks to file both additional ground as well as evidences relating to the additional ground which should not be permitted.

8. We have carefully considered the rival submissions. The assessee in the instant case has *inter alia* sold certain agricultural land at Village Biranvas, Tehsil Kotkasim giving rise to capital gain of Rs.46,51,412/- thereon. The assessee claimed exemption under Section 54B. The Assessing Officer however found that the sale proceeds of the agricultural land have not been utilized for purchase of agricultural land but rather used in purchase of commercial property at Gurgaon. Thus, the exemption claimed under Section 54B as well as alternative claim made under Section 54F was rejected by the Assessing Officer on the premise that the conditions for claim of deduction are not fulfilled either under Section 54B or under Section 54F of the Act. As a sequel, the assessee was made liable to pay tax on capital gains of Rs.46,51,412/-.

9. The assessee before us took a new stand that the agricultural land giving rise to impugned capital gain is situated beyond 8 kms of municipal limits of Bhiwadi and thus does not fall within the definition of expression 'capital asset' under Section 2(14) of the Act. The asset sold (agricultural land) not being a capital asset under deeming fiction of Section 2(14) of the Act, the capital gain arising thereon is not liable for capital gains at all.

10. To support this new plea, the assessee has filed additional evidences and seeks admission of the additional grounds as well as the additional evidences.

11. In this background, the admission of additional grounds under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 and admission of additional ground under Rule 29 of the Income Tax (Appellate Tribunal)

Rules, 1963 is in issue.

12. Power of the Tribunal to admit additional grounds in respect of matter relating to which necessary information is on record, is now well established. However, it was also held in the case of *CIT vs. Stepwell Nature Limited (1997) 228 ITR 171 (SC)* that where a claim was not made either before the Assessing Officer or the first appellate authority and the relevant facts on the basis of which the claim could be adjudicated upon are not available in the records of either the Assessing Officer or the First Appellate Authority, the claim ought not to be entertained by the Tribunal. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. vs. CIT, 229 ITR 383 (SC)* also observed that the Tribunal has jurisdiction to examine a question of law which arises from facts available on the records of Revenue authorities. Hence as per the judicial precedents, the Tribunal cannot entertain a new ground unless such ground can be decided with reference to the material already on record. In the instant case, it is an admitted position that the evidences to support the additional ground were not available before the Revenue authorities and sought to be placed for admission by way of additional evidence before us.

13. Under the circumstances, in the absence of relevant facts available before revenue authorities, we are not inclined to admit the additional ground for adjudication. The additional grounds raised towards a new claim that the agricultural land sold is outside the purview of definition of capital assets is thus rejected as inadmissible.

14. As noted above, we do not find any compelling reason in the petition for admission of additional evidence in terms of Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. Rule 29 of the ITAT Rules provide for stringent stipulation for admission of additional evidence. The assessee has

not given any cogent reason for failing to adduce the additional evidence sought to be admitted on this belated stage. Therefore, we also decline to entertain the additional evidences.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 22.09.2022.

Sd/-

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **.09.2022**

Prabhat