

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2152/DEL/2013
[Assessment Year: 2008-09]**

Income-tax Officer, Ward-11(2), New Delhi.	<u>Vs</u>	Essjay Enterprises Pvt. Ltd., 8082, Sector-C, Pocket-8, Vasant Kunj, New Delhi. PAN-AAACE0385M
APPELLANT		RESPONDENT
Assessee represented by	Sh. Gaurav Jain & Sh. V.K. Garg Adv. & Sh. Praveen Kumar, CA	
Department represented by	Shri T James Singson, CIT(DR)	
Date of hearing	20.07.2023	
Date of pronouncement	26.07.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The Revenue has come in appeal against the order dated 20.01.2013 passed by the Commissioner of Income Tax (Appeals)-XIII, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. 128/2010-11, for the assessment year 2008-09, arising out of the assessment order dated 06.12.2010 u/s 144 of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward 11(2), New Delhi, (hereinafter referred in short as “Ld. AO”).

2. The facts in brief are that the assessment was completed u/s 144 of the Act whereby addition was made on account of profit on sale of shares; profit on sale of agricultural land; agricultural income; and professional and consultancy. The learned CIT(A) had deleted the additions for which Revenue is in appeal raising following grounds:

“1. The learned CIT(A) has erred on facts and circumstances of the case and in law, deleting the addition of Rs. 9,64,47,552/- treating capital gain on sale of stock of agriculture land, where as AO has rightly treated the numerous sale of agriculture land as business income. The sale of produce of Rs. 7,20,512/- on agriculture land being stock in trade is also business receipt.

2. The learned CIT(A) has erred on facts and circumstances of the case and in law in deleting the addition of Rs.76,84,287/- on sale of shares as long-short term capital gain where as AO has rightly treated the same as business income being bulk sale of shares along with speculative business.”

3. Heard and perused the record.

4. Learned DR relied on the findings of learned AO and submitted that assessee had not provided relevant information at the time of assessment.

5. Learned AR at the same time relied on the findings of learned CIT(Appeals) and further relied on the remand report given by the learned AO, made available at pages 63-64 of the paper book.

6. In regard to **ground no. 1** it can be appreciated that based upon the additional evidence allowed under rule 46A of the Income-tax Rules, 1962, remand

report was sought from the learned AO and learned CIT(Appeals) after taking into consideration the remand report has concluded that learned AO has not doubted the fact that based upon the parameters about situation of the land beyond 8 kms. of the municipal limits of the Municipality Tizara and the population of the villages in which land was situated was less than ten thousand as per last census the, land sold by assessee was agricultural land and the sale proceeds received from the said sale of land was income derived from agricultural land which is exempt. Thus there is no error in the findings of learned CIT(Appeals) as the sale of land has given rise to profit from sale of agricultural land.

6.1 Further learned AO's report also establish the fact that Revenue Officers of the concerned Revenue estae acknowledged the fact that assessee had grown crops during the agricultural year and the bills filed confirmed with the Agricultural Produce Market Committee of Khairthal. So the sale of produce of Rs. 7,20,512/- on agriculture land is also not business receipt.

7. In regard to **ground no. 2** it can be observed that again learned CIT(Appeals) has taken into consideration the report of learned AO which established that during the year appellant had sold shares of Jai Prakash Associates which he was holding over 10-15 years. Learned CIT(Appeals) has relied assessee's own case in ITA no. 383/Del/2007 for A.Y. 1996-97 and 1997-98 wherein the sale of shares was considered as 'capital gain' and not as 'business

income'. Learned CIT(A) has given directions to the learned AO to treat the sale of 2500 shares which were purchased during the year and sold in the same year as short term capital gain and tax accordingly, which is not disputed by the assessee. In the light of the above the ground no 2 is decided against the Revenue.

8. Consequently, The appeal of Revenue is dismissed.

Order pronounced in open court on 26.07.2023.

**Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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