

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.03/Bang./2024**  
**(Assessment Year : 2012-13)**

M/s. Jain Farms Pvt. Ltd  
No.59/1, Nakoda Arcade,  
3<sup>rd</sup> Floor, DVG Road,  
Basavanagudi,  
Bangalore - 560004  
PAN- AAACJ4238L.

..... Appellant

v/s

Income Tax Officer  
Ward-4(1)(1), Bengaluru-560095

..... Respondent

**ITA no.04/Bang./2024**  
**(Assessment Year : 2012-13)**

M/s. Jain Farms & Resorts Ltd  
No.59/1, Nakoda Arcade,  
3<sup>rd</sup> Floor, DVG Road,  
Basavanagudi,  
Bangalore - 560004  
PAN- AABCJ6726E

.....Appellant)

v/s

Income Tax Officer  
Ward-4(1)(1), Bengaluru-560095

..... Respondent

Assessee by : Smt Sheetal Borkar  
Revenue by : Sri V Parithivel

Date of Hearing - 05/03/2024

Date of Order - 05/03/2024

**ORDER**

The present appeals have been filed by the separate assessee challenging the separate orders of even date 28/02/2017 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of

Income Tax (Appeals)-4, Bangalore, [*learned CIT(A)*], for the assessment year 2012-13.

2. At the outset, we noticed that both appeals have been filed after a delay of 2251 days. Along with the present appeals, the assessee has filed an affidavit of Managing Director of the assessee, Mr. K. Mangal Chand, seeking condonation of delay in filing the present appeals. In the aforesaid affidavit, it has been submitted that impugned order dated 28/02/2017 was received by the assessee on 31/10/2017. In 2017, the employee of the assessee, who was responsible for managing the Income Tax related matters of the assessee, omitted to apprise anyone in the company of the receipt of the order passed by the learned CIT(A). It is further submitted that the said employee concluded her tenure with the assessee on 30/06/2019. It is submitted that during the year 2022, the Managing Director faced several health adversaries and therefore could not complete track various correspondences. It is further submitted that upon becoming cognizant of the demand notice in the year under consideration, necessary directions were issued for immediate filing of the appeals before the Tribunal. Along with the aforesaid affidavit, the assessee has also filed the affidavit of the employee, who has accepted that due to inadvertence she failed to communicate the receipt of the order passed by the learned CIT(A) to anyone in the company. The assessee also furnished the resignation letter of the employee as Accounts Assistant. Further, the assessee has furnished the medical certificate and prescription of its treatment in Cardiology Department of Fortis Hospital Ltd, Bangalore. For reference, the

affidavit filed by the Managing Director of the assessee is reproduced as under:-

*"AFFIDAVIT*

*I, K. Mangal Chand, aged about 61 years, currently occupying the position of Managing Director at M/s. JAIN FARMS AND RESORT LTD, hereinafter referred to as "JFRL," do solemnly affirm and depose as follows:*

*It is hereby affirmed that JFRL received the CIT(A) order on 31/10/2017.*

*In 2017, it is confirmed that Padmashree, who held the responsibility for managing income tax-related matters as my employee, concluded her tenure with JFRL on 30/06/2019. Regrettably, she omitted to apprise any one of the receipt of the CIT(A) order during her cessation of employment.*

*It is deposed that during the year 2022, I, in my capacity as the Managing Director of JFRL, faced health adversities.*

*However, the following delay from 15/03/2020 to 28/02/2022 is to be excluded with the decision of the Hon'ble Supreme Court in miscellaneous petition no. 21 of 2022 in the case WP. No.03 of 2021*

*Thus, the delay has to be commuted as follows:*

- 1. Pre-COVID delay from 29/04/2017 to 14/03/2020 (1050 calendar days)*
- 2. COVID period delay from 15/03/2020 to 28/02/2022 (715 calendar days)*
- 3. Post- COVID delay from 29/02/2022 to 01/01/2024 (699 calendar days)*

*JFRL has, over the course of its operations, received various notices and demand orders. Regrettably, due to the voluminous nature of correspondence, the company encountered challenges in promptly tracking the specific demand order in question.*

*Upon becoming cognizant of the aforementioned demand order, JFRL under my direction, expeditiously instituted requisite measures to address the matter.*

*I solemnly affirm that the foregoing declarations are true and correct to the best of my knowledge, information, and belief, and that no material fact has been withheld therein.*

*This affidavit is executed for submission before the Income Tax Appellate Tribunal (ITAT), seeking condonation of delay for the timely filing of Form 36, in strict adherence to the legal requisites governing the subject matter herein.*

*(K. Mangal Chand)"*

3. In the aforesaid affidavit, it is submitted that part of the delay is covered by the COVID period excluded by the order of the Hon'ble Supreme Court. Accordingly, the assessee has prayed for condonation of delay in filing the present appeals. On the other hand, the learned Departmental Representative vehemently objected to the huge delay in filing the present appeals.

4. We have considered the submissions of both sides and perused the material available on record. We find that even if the delay covered by the COVID period from 15/03/2022 to 28/02/2022 is excluded, still the present appeal is delayed by 1749 days. In order to prove the sufficient cause for not filing the present appeals within the limitation period, the assessee submitted that the employee, who was responsible for managing Income Tax related matters of the company, did not inform anyone in the company about the receipt of the order passed by the learned CIT(A) and concluded her tenure on 30/06/2019. We find that in support of the aforesaid contention, the assessee has placed on record affidavit as well as the resignation letter of the said employee. Subsequently, we find from the various medical certificates and prescriptions placed on record by the assessee that the Managing Director faced cardiac related health problem for which he was treated in Cardiology Department of Fortis Hospital Ltd, Bangalore. During the hearing, the learned AR submitted that the notice for recovery of the demand was issued for the first time on 30/10/2023 and only thereafter the Managing Director came to know of the impugned orders passed by the learned CIT(A).

5. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the

Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the facts and circumstances of the present case, as noted in subsequent paragraphs, it is evident that the assessee did not stand to benefit from the late filing of the appeals. In view of the above and having perused the application duly supported by an affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeals within the limitation period and therefore, we condone the delay in filing the appeals by the assessee.

6. The solitary issue raised by the assessee, in the present appeals, pertains to addition on account of basic amenities collected.

7. Since the solitary issue arising in both appeals is same, which arises out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the facts in ITA no.3/Bang./2024, are considered for ready reference.

8. The brief facts of the case are that the assessee is engaged in the business of farmland development and sales. For the year under consideration the assessee filed its return of income on 30/09/2012 declaring a total income of Rs.37,59,400. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act

were issued and served on the assessee. During the assessment proceedings, upon verification of financial statement, it was observed that the assessee has shown a liability of Rs.1,30,83,883 in the balance sheet as "*Basic Amenities Collected*" under the head "*Long-Term Provisions*". The assessee has made this provision out of sales consideration and no expenditure is incurred. It was also noticed that the same is not an ascertained and crystallised liability and therefore the same cannot be allowed as per the provisions of section 37 of the Act. Accordingly, the assessee was asked to explain as to why the same should not be disallowed and brought to tax. The Assessing Officer ("AO") did not agree with the submissions of the assessee and found that the assessee has been debiting every year all the expenses relating to amenities under the head "*Land Development Expenses*" and therefore there is no necessity to create any provision for such expenses. It was also noted that even after creating the provision, the said fund has not been utilised for any such purpose immediately and it has been carried forward indefinitely in the books and land development expenses are debited to the profit and loss account every year. Accordingly, the AO held that the provision made by the assessee under the head "*Business Amenities Collected*" is not an ascertained and crystallised liability and it is only a device used by the assessee to postpone the tax incidence on the Revenue. Hence, the AO disallowed an amount of Rs.1,30,83,883 under section 37(1) of the Act.

9. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and held that the assessee's rate of provisioning average year to year utilisation, and method of computing the same, is not

based on any consistent scientific principles. The learned CIT(A) further held that the assessee is not following any specific Revenue recognition model and therefore percentage-based provision has been made only on an ad hoc basis, where there is no specific necessity for the same, as same expenditure is separately claimed under the head "*Development Charges/Maintenance Charges*" on a regular basis. Being aggrieved, the assessee is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. The assessee company is engaged in the business of farmland development and sales. The assessee has been purchasing agricultural land every year on incurring expenditure every year for development of said land into farmland and debiting the expenses under the head "land development expenses" and selling pieces of farmland in the form of sites. The assessee company has been following the system of recognising the Revenue as and when the sale deeds are registered and expenses debited as and when the expenditures are incurred. The assessee company does not have any fixed project and every year fresh agriculture lands are being added to the project. As per the assessee, it has made the provision at a certain percentage of receipts on account of plot sale, which the assessee claims will be spent in parts over a period of time in certain infrastructural facilities.

11. During the hearing, the learned AR by placing reliance upon the assessment order for the preceding assessment year, i.e. 2011-12, submitted that similar additions on account of "*Basic Amenities Collected*" was made in the preceding assessment year and the assessee has already paid taxes

thereon in the last year. From the perusal of the assessment order dated 31/10/2013 for the assessment year 2011-12, placed on record by the assessee, we find that after considering the following details of provision made, land development expenses incurred and expenses debited against the provision year after year, the AO made an addition of Rs.14,50,161 on account of provision made by the assessee company under the head "Basic Amenities Collected":-

Asst. Year	Provision B/F	Provision made during the year	Expenses debited to provision A/c during the year	Balance of provision at the end of the year	Land development expenses debited to P & L A/c	Country club development expenses debited to P & L A/c
2008-09	--	7844650	--	7844650	3015989	2465039
2009-10	7844650	4306586	--	12151236	2384807	1627237
2010-11	12151236	3970280	--	16121517	12,80,693	2174814
2011-12	16121517	1450161	1783216	15788462	761852	2936760

12. During the hearing, the learned AR furnished following details of the impugned provision as per the financial statements and submitted that the addition of Rs.1,30,83,883, in ITA No. 3/Bang./2024, is nothing but the closing balance of the year under consideration and the opening balance of the provision has been added to the total income in the previous year:-

"Actual Status as per and Financials

Financials	Opening	Sales	Percentage	Amount	Reversal	Total	Spent	Closing Balance
2006-07								7844650
2007-08	0	52297670	15%	7844650		7844650	0	12151236
2008-09	7844650	28710575	15%	4306586		12151236	0	16121517
2009-10	12151236	20498252	19%	3970281		16121517	0	15788462
2010-11	16121517	16115839	9%	1460161		17571678	1783216	13083883
2011-12	15788462	12709870	0%	0		15788462	2704579	18568800
2012-13	13083883	25152490	22%	5484917	0	12786447	0	19023885
2013-14	118568800	15594174	10%	1559417	562691	12786447	541641	19023885

13. Similarly, in ITA No. 4/Bang./2024, we find that the addition of Rs.80,08,428, in the assessment year 2011-12, was the opening balance of the year under consideration and the AO made an addition of Rs.64,94,576 in the year under consideration, i.e. the closing balance of the provision.

14. In view of the facts and circumstances as noted in the foregoing paragraphs, we deem it appropriate to restore this issue, in both appeals, to the file of the AO for *de novo* adjudication, as per law, after necessary verification of the submission made by the assessee and delete the addition to the extent of the double addition made on account of provision of "*Basic Amenities Collected*". As a result, the impugned orders passed by the learned CIT(A) on this issue are set aside in both appeals and grounds no.2 and 3 raised in both appeals are allowed for statistical purposes. Grounds no.1 and 4 are general in nature, and therefore, need no separate adjudication.

15. In the result, both appeals are allowed for statistical purposes.

Order pronounced on 05/03/2024 through virtual hearing.

**Sd/-**  
**LAXMI PRASAD SAHU**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**Bangalore, DATED: 05/03/2024**  
Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Bangalore; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar  
ITAT, Bangalore

