

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad
श्री विजय पाल राव, उपाध्यक्ष एवं श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.1293/Hyd/2024

(निर्धारण वर्ष/Asst. Year: 2011-12)

Shaik Afsar Hussain, Kurnool. PAN: ACJPH1042C (Appellant)	Vs.	Income Tax Officer, Ward-1, Kurnool. (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Mohd. Afzal, Advocate	
राजस्व द्वारा/Revenue by::	Dr. Sachin Kumar, Sr. AR	
सुनवाई की तारीख/Date of hearing:	05/02/2026	
घोषणा की तारीख/Pronouncement:	11/02/2026	

आदेश/ORDER

Per Madhusudan Sawdia, A.M.:

This appeal is filed by Shri Shaik Afsar Hussain, ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)") dated 29/06/2024 for the A.Y.2011-12.

2. At the outset, it is noticed that there is a delay of 106 days in filing the appeal before this Tribunal. In support of the prayer for condonation of delay, the assessee has filed a petition along with an affidavit explaining the reasons for such delay. In this regard, the Learned Authorised Representative ("Ld. AR") submitted that the assessee is a senior citizen aged about 71 years, an elderly

person with no specialised knowledge of the provisions of the Income Tax Act, 1961 (“the Act”). It was submitted that due to lack of proper guidance and legal assistance, the assessee was unable to file the appeal within the prescribed time. During the relevant period, the assessee was making efforts to engage a suitable counsel, met several counsels, and ultimately succeeded in engaging one, whereafter the present appeal came to be filed. It was submitted that the delay was thus occasioned due to bona fide reasons and circumstances beyond the control of the assessee, and there was neither any deliberate lapse nor any intention to delay the filing of the appeal. Accordingly, it was prayed that the delay may be condoned in the interest of justice and the appeal be admitted for adjudication on merits.

3. Per contra, the Learned Departmental Representative (“Ld. DR”) objected to the condonation of delay and submitted that no sufficient cause has been shown by the assessee for the delay of 106 days and, therefore, the delay should not be condoned.

4. We have carefully considered the rival submissions and perused the materials available on record. We find that the assessee is an elderly senior citizen and the explanation furnished indicates that the delay occurred due to difficulties in obtaining appropriate legal assistance and lack of technical knowledge of tax laws. We are of the considered view that the explanation offered constitutes a reasonable and bona fide cause, and the delay cannot be said to be intentional or deliberate. It is a settled principle of law that while dealing with an application for condonation of delay, a liberal and justice-oriented approach is required to be adopted. Further, we find that the Hon’ble Supreme Court, in the case of Vidya Shankar Jaiswal v. CIT (174 taxmann.com 21), has held that a justice-oriented and liberal approach should be adopted while considering applications for condonation of delay. Respectfully following the said principle, we condone the delay of 106 days and admit the appeal for adjudication on merits.

5. The assessee has raised the following Grounds of appeal:

- “1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.
2. The learned Commissioner erred in treating the subject land as non-agricultural land, therefore, further erred in assuming the land as capital asset and not exempt from taxation from capital gains, as the land is situated beyond 8km from the limits of nearest Municipality, therefore, erred in confirming the order of the Assessing Officer wherein an amount of Rs.53,97,288/-is treated as long term capital gains.
3. The learned Commissioner ought to have appreciated that the subject land sold by the assessee along with three others is in the nature of Inaam land, therefore, not liable for capital gains as the computation section fails, therefore, the learned CIT erred in confirming the order of the Assessing Officer wherein an amount of Rs.53,97,288/- is treated as long term capital gains.
4. The learned Appellate Commissioner erred in confirming the order of the Assessing Officer, wherein, an amount of Rs.53,97,288/-is determined as capital gains, whereas, the assessee received only Rs.8,25,000/- towards sale of land.
5. The learned Appellate Commissioner erred in confirming the order of the Assessing Officer, wherein, an amount of Rs.53,97,288/- is determined as capital gain, considering the value adopted for the purpose of stamp duty as full value of consideration.
6. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, an amount of Rs.53,98,288/-is 6 determined as capital gains, assuming that the assessee sold the land in square yards, whereas, the assessee sold the land in Acres.
7. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

6. The brief facts of the case are that the assessee is an individual who did not file any return of income for the assessment year 2011–12 under section 139 of the Income Tax Act, 1961 (“the Act”). Subsequently, the case of the assessee was reopened under section 147 of the Act and notice under section 148 of the Act was issued by the Learned Assessing Officer (“Ld. AO”). However, the assessee again did not file any return of income in response to the notice issued under section 148 of the Act. The assessee also did not respond to the other notices issued by the Ld. AO during the course of reassessment proceedings. On the basis of available record, the Ld. AO noticed that the assessee along with three other individuals had sold 5.68 acres of land

situated at Joharapuram Village, Kurnool, vide registered sale deed dated 10.11.2010 for a stated consideration of Rs.33 lakhs, whereas the Sub-Registrar Office ("SRO") guideline value of the said land was Rs.2,19,93,000/-. The Ld. AO further observed that the assessee along with the other three individuals had inherited the said land from their grandparents as legal heirs. The grandparents of the assessee had originally acquired the land on 24.09.1954, i.e., prior to 01.04.1981. The Ld. AO obtained the SRO value of the land as on 01.04.1981 from the Sub-Registrar, Kurnool, which was reported at Rs.10,000/- per acre. Accordingly, the Ld. AO computed the fair market value of the land as on 01.04.1981 at Rs.56,800/- and the indexed cost of acquisition for the year under consideration at Rs.4,03,848/-. The Ld. AO adopted the sale consideration of the land under section 50C of the Act at Rs.2,19,93,000/- being the SRO value as on the date of sale and computed the total long-term capital gain at Rs.2,15,89,152/-. The assessee's share being one-fourth, the long-term capital gain attributable to the assessee was worked out at Rs.53,97,288/-. Accordingly, the assessment was completed by the Ld. AO under section 144 read with section 147 of the Act vide order dated 07.12.2018, computing long-term capital gain of Rs.53,97,288/- in the hands of the assessee.

7. Aggrieved with the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee filed certain additional evidence. The Ld. CIT(A) called for a remand report from the Ld. AO and, after considering the submissions of the assessee as well as the remand report, dismissed the appeal and confirmed the addition made by the Ld. AO.

8. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal. At the outset, the Ld. AR submitted that the solitary issue arising out of the grounds of appeal of the assessee is the addition of Rs.53,97,288/- on account of long-term capital gain in the hands of the assessee. The Ld. AR submitted that the land in question was agricultural land, and therefore, any gain arising on sale of such land is not chargeable to tax. It

was submitted that the assessee had placed on record a letter dated 12.11.2018 issued by the Joint Sub-Registrar, Kurnool, wherein the land was described as agricultural land. However, the Ld. CIT(A) rejected the claim without properly appreciating the nature of the land. The Ld. AR further invited our attention to G.O.MS. No.144 dated 29.03.2018, issued by the Revenue (DA&LR) Department, Government of Andhra Pradesh, placed at page nos. 58 to 60 of the paper book, and submitted that Joharapuram Village was included in Kurnool (Urban) Mandal only with effect from 29.03.2018. Thus, prior to that date, Joharapuram Village was not part of any urban area. Since the land was sold during the financial year 2010–11, the land was situated in a rural area during the relevant period. It was contended that the agricultural land situated at Joharapuram Village during the year under consideration does not fall within the definition of “capital asset” as provided under section 2(14) of the Act and, therefore, no capital gains tax is leviable. The Ld. AR finally prayed that the addition made by the Ld. AO be deleted.

9. Per contra, the Ld. DR relied upon the orders of the lower authorities. The Ld. DR submitted that the assessee was non-responsive before the Ld. AO and also before Ld. CIT(A) failed to produce sufficient evidence to substantiate the claim that the land was agricultural land. The Ld. DR further objected to the claim of the assessee and submitted that even assuming that the land is agricultural land, the same is not rural agricultural land but urban agricultural land, which does not fall under the exception provided under section 2(14) of the Act and hence constitutes a capital asset liable to capital gains tax. In support of this contention, the Ld. DR relied upon notifications dated 18.08.1994 and 07.04.2012 issued by the Municipal Administration and Urban Development Department, Government of Andhra Pradesh and also invited our attention to page no. 54 of the CAG Report for the period ended 31.03.2022 (Report No.4 of 2024) to contend that Joharapuram Village falls within the municipal jurisdiction of Kurnool Municipal Corporation. Accordingly, the Ld. DR submitted that even if the land is agricultural in nature, it falls within an urban area and is

therefore a capital asset. The Ld. DR prayed for upholding the orders of the lower authorities.

10. We have carefully considered the rival submissions and perused the material available on record. At the outset, we note that the core issue requiring adjudication is whether the land sold by the assessee during the financial year 2010–11 constitutes a capital asset within the meaning of section 2(14) of the Act or whether it falls within the exception carved out for rural agricultural land. We have gone through para no. 7.2 of the order of the Ld. CIT(A), which is to the following effect:

“7.2 Vide Ground Nos. 2 to 5 the appellant has claimed that the A.O. was incorrect in making additions as per provision of section 50C. The appellant claimed that impugned land is in nature of agricultural land situated in rural area having population less than 10,000/- as per 2001 census and hence, it is outside purview of capital asset as defined u/s 2(14) of the Act. The appellant in support of his claim that land is a agricultural land relied on sale deed and a letter of Joint Sub Registrar which mentioned the land as agricultural land. The A.O. in the remand report has submitted that the appellant had failed to provide evidence as the impugned land is agricultural land. The remand report of the A.O. was forwarded to the appellant for rebuttal. However, no rejoinder was provided by the appellant. The appellant has provided a letter issued by District Registrar, Kurnool in Proceedings No. G1/1435/2010 dated 08.11.2010. On perusal of the letter, it is found that it was a communication to Jt. Sub-Registrar-I, RO Kurnool to admit the registration of property which was sold by the appellant of Shri S. C Mohan Reddy. The property is mentioned as "land" and not "agricultural land" which was claimed by the appellant. The appellant submitted a letter issued by Jt Sub Registrar Kurnool dated 12/11/2018, wherein "classified as agricultural land" was handwritten removing the full-stop symbol annexing to the sentence which has no relevance to the land being agricultural land. This handwritten correction was not signed either. Therefore, in absence of other documentary evidence this document cannot be solely relied upon. No other government document was found available in the record which points to the fact that as per government record the impugned land is classified as agricultural land. The appellant has not filed relevant extract from the state land revenue authority which certifies the nature of land and the agricultural activity undertaken in the land. The second argument was that the land is mentioned as agricultural land in the sale deed. The appellant has not mentioned in which page of the sale deed mentioned the land as agricultural land. On perusal of the copies available it was found that it was mentioned as "land sale deed" on multiple instance, but the appellant's claim of mention of "agricultural land" could not be found. Therefore, there is no documentary evidence which would point out to the fact that the impugned land is in nature of agricultural land. Hence the property is in nature of capital asset and the appellant is not exempt from taxation on transfer of such asset.

Another contention of the appellant was adoption of rate by the A.O. at Rs. 800 per sq yard for determination of fair market value for provision of section 50C. It was gathered by the A.O. as per the SRO, Kurnool the guidance value of property is Rs. 2,19,93,000/- at rate of Rs. 800/- per sq yard whereas the consideration value shown in the registered sale deed is Rs. 33,00,000/-. Accordingly, the A.O. determined capital gain under provision of section 50C taking sale consideration of the property at Rs. 2,19,93,000/-. The appellant claimed that valuation of the A.O. was without any basis and the appellant has not paid any conversion charges. It was found that in sale deed the figure Rs. 2,19,93,000/- was written. The appellant had not submitted any documents which would show the stamp duty valuation of the property or how much stamp duty was paid by the purchaser and at what rate. Therefore, it is not correct on the part of the appellant to agitate that the A.O. has taken an arbitrary figure. Another contention is that stamp duty valuation is not applicable in certain cases. If the appellant is not accepting the stamp duty valuation, he should have filed objection before the stamp value authority and he should have filed before the A.O. to refer the matter to DVO. On perusal of the documents filed it is found that no such letter or objection was filed by the appellant. Therefore, in view of this fact, I find that the computation of capital gain invoking provision of section 50C of the Act by the A.O. does not suffer from any infirmity. The addition made by the A.O. of Rs. 53,97,288/- on account of long-term capital gain is upheld.

The Ground Nos. 2 to 5 are hereby dismissed.”

11. On perusal of above, we find that the Ld. CIT(A) rejected the assessee's claim that the land is agricultural land, primarily on the basis of certain manual corrections noticed on the letter dated 12.11.2018 issued by the Joint Sub-Registrar, Kurnool. However, we find that the Ld. CIT(A) did not carry out any independent verification with regard to the applicability of section 2(14) of the Act. On perusal of the assessment order as well as the order of the Ld. CIT(A), we find that neither of the lower authorities has undertaken a proper factual examination as to whether the land in question falls within the exception clause of section 2(14), i.e., whether it is situated beyond the prescribed distance from the limits of a municipality or cantonment board having regard to the population criteria as on the date of transfer. The assessee's claim that Joharapuram Village was included in Kurnool (Urban) Mandal only with effect from 29.03.2018 on the basis of G.O.MS. No.144 dated 29.03.2018, and the Revenue's contention that the land falls within the municipal limits based on notifications issued by the Municipal Administration and Urban Development Department, Government of Andhra Pradesh, clearly require detailed factual

verification. In our considered view, determination of whether the impugned land is a capital asset or not within the meaning of section 2(14) of the Act involves verification of the exact location of the land, the distance of the land from the nearest municipal limits as on the date of sale, the applicability of the relevant notifications in force during the year under consideration and the nature and use of the land at the relevant point of time. Since these aspects have not been properly examined by the lower authorities, we are of the considered view that the issue requires fresh adjudication. Accordingly, in the interest of justice, we set aside the orders of the Ld. CIT(A) and the Ld. AO on this issue and restore the matter to the file of the Ld. AO for de novo examination. The Ld. AO shall verify, in accordance with law, whether the land in question constitutes a capital asset under section 2(14) of the Act and thereafter decide the issue afresh after affording adequate opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 11th February, 2026.

Sd/- (VIJAY PAL RAO) VICE PRESIDENT	Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated : 11th February, 2026

Okk, Sr. PS

Copy to:

S.No	Addresses
1	Shaik Afsar Hussain, 3-209, Kallur Darwaza, Peeli Masjid, Osmania College Road, Kurnool, Andhra Pradesh-518001.
2	Income Tax Officer, Ward-1, Aayakar Bhavan, Near Children's Park, NR Peta, Kurnool, Andhra Pradesh-518001.
3	Pr. CIT, Kurnool.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order