

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA No. 726/JP/2013  
निर्धारण वर्ष/Assessment Year : 2007-08

Sita Ram Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHKPS 7928 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 66/JP/2014  
निर्धारण वर्ष/Assessment Year : 2007-08

Sita Ram Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHKPS 7928 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 725/JP/2013  
निर्धारण वर्ष/Assessment Year : 2007-08

Madan Lal Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BISPS 9998 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 64/JP/2014  
निर्धारण वर्ष/Assessment Year : 2007-08

Madan Lal Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BISPS 9998 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 724/JP/2013  
निर्धारण वर्ष/Assessment Year : 2007-08

Rameshwar Sharma 164 Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHKPS 7922 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 67/JP/2014  
निर्धारण वर्ष/Assessment Year : 2007-08

Rameshwar Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHKPS 7922 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 723/JP/2013  
निर्धारण वर्ष/Assessment Year : 2007-08

Hanuman Sahai Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BITPS 7514 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 65/JP/2014  
निर्धारण वर्ष/Assessment Year : 2007-08

Hanuman Sahai Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BITPS 7514 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 722/JP/2013  
निर्धारण वर्ष/Assessment Year : 2007-08

Bansi Lal Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHSPS 3742 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 68/JP/2014  
निर्धारण वर्ष/Assessment Year : 2007-08

Bansi Lal Sharma Seemavato Ki Dhani, Village Sanjharia, Post- Thikariya, Tehsil- Sanganer, district- Jaipur.	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BHSPS 3742 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mukesh Khandelwal (CA)  
राजस्व की ओर से/ Revenue by : Mrs. Neena Jeph (JCIT)

सुनवाई की तारीख/ Date of Hearing : 27/04/2015  
घोषणा की तारीख/ Date of Pronouncement : 01/05/2015

आदेश/ ORDER

PER: BENCH

All the appeals filed by the different assessees against the orders dated 14/12/2010 and 21/11/2013 passed by the learned CIT (A)-III, Jaipur for A.Y. 2007-08. The common effective grounds of all the appeals are as under:-

Common grounds of ITA of the year 2013

"1 That the Id. CIT(A) has erred seriously in sustaining addition on account of long term capital gain on sale of land at Rs. 81,75,583/- without appreciating that the land sold by the appellant was an agricultural

*land in terms of section 2(14) of the Income Tax Act, 1961.*

2. *That the Id CIT(A) erred in allowing relief to the appellant U/s 54B and 54F of the Income Tax Act, 1961 to the tune of Rs. 12,94,999/- only."*

*Grounds of ITA of the year 2014*

*"1 Under the facts and circumstances of the case the Id CIT(A) has erred seriously in sustaining the penalty against all the assesseees of all the appeals of Rs. 18,45,465/-, Rs. 18,25,623/-, Rs. 18,45,887/-, Rs. 18,35,687/- and Rs. 18,28,290/- levied by the Id. A.O. U/s 271(1)(c) of the Income Tax Act, 1961."*

2. Assesseees are different in each case. In all the cases, the assesseees' appeals are against sustaining addition on account of long term capital gain on sale of land at Rs. 81,75,583/- without appreciating the land sold by the appellant was an agricultural land in terms of Section 2(14) of the Income Tax Act, 1961 (in short the Act). The Id Assessing Officer observed that the department had received information from bank that the assesseees had sold his land to M/s Vatika Ltd. on 31/5/2006 for sale consideration of Rs. 5,72,48,520/-. The notice U/s 142(1) of the Act was issued to all the assesseees to file their returns of income for A.Y. 2007-08 by 20/09/2007 but no compliance was made by the assesseees. Assesseees namely in case of Sita Ram Sharma and Madan Lal Sharma filed their return of income with ITO Ward 7(2), Jaipur on 03/2/2009 declaring NIL income and the

assesseees namely Rameshwar Sharma, Hanuman Sahay Sharma and Bansi Lal Sharma filed their return of income with ITO Ward 7(2), Jaipur on 04/10/2007 declaring different incomes. The factum of the case is that the assessee alongwith five of his brothers sold their ancestral land for Rs. 5,72,48,520/-, in which a share was Rs. 95,41,420/- being 1/6<sup>th</sup> of the total sale consideration. It was submitted by the assessee before the Assessing Officer that this land was situated beyond 8 km from the municipal limit of Jaipur Nagar Nigam and thus it was not a capital asset and further there is no liability on his part to add the same in his income. He has further submitted a certificate from Sarpanch, gram panchayat- Thikaria, Jaipur in his support. He has further given a chart showing therein that this long term capital gain liability as long term capital loss. The Id Assessing Officer further observed that on receipt of information as a scaled map of its municipal limits the land in dispute is within 8 km of the municipal limit of Jaipur Nagar Nigam. This land also is within 8 km from the Bagru a town having population of more than 10,000/- as per census of year 2001. The assessee was allowed to reasonable opportunity of being heard but no reply was filed by the assesseees. It was further found by the Assessing Officer that this land was sold to M/s Vatika Ltd. was treated as a capital assets U/s 2(14) of

the Act by the then A.O. where detail field inquiry were also got conducted by him in this regard. The appellant repeated the same reply as discussed above, no evidence has been filed for the claim that the land was outside 8 km from the municipal limits. Accordingly, he held that land sold by the assessee is a capital assets as envisaged U/s 2(14) of the Act. The assessee had acquired the said land in inheritance in the year 1992 as claimed by him but he had not adduced any documentary evidence in support of his contention. Therefore, he applied cost of acquisition of land as on 01/4/1981 on the basis of case decided by the Id CIT(A) in cases of Shri Ram Niwas, Shri Jagdish Prasad Sharma and Shri Rameshwar Sharma @ 4312.56 per bigha. This rate also proposed to assessee and asked to comment on it but no reply has been filed by the assessee before the Assessing Officer. Therefore, he took the cost of acquisition @ 4312.56 per bigha. Finally long term capital gain was calculated at Rs. 94,70,582/-. The assessee also claimed deduction U/s 54B and 54F of the Act, which was considered by the Assessing Officer on page 5 of the assessment order. The Id Assessing Officer further held that deduction claimed by the assessee U/s 54B at Rs. 9,41,733/- for purchase of land measuring 20 bighas and 18 biswa with all his brothers at village Kankrala, Tehsil- Mojamadabad, district- Jaipur on

simple agreement without any registered deed and also no evidence of payment of amount to the seller were found to the Assessing Officer without any basis. The Assessing Officer also has not considered these agreements to sale on the basis of discrepancy pointed out in paragraphs 6.3 to 6.6 on page 7 of the assessment order. Similar findings were given by the Assessing Officer on not allowing deduction U/s 54F of the Act. Thus, he allowed exemption U/s 54B and 54F of the Act on Rs. 12,94,999/- in each case. Net long term capital gain was assessed at Rs. 81,75,583/- in each case.

3. Being aggrieved by the orders of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had allowed the appeal partly by observing in all cases that on the basis of scaled map of Jaipur Nagar Nigam, this land is within 8 km of the municipal limit. Therefore, impugned land comes under capital assets as envisaged in Section 2(14) of the Act. Further land sold was within 8 km of Bagru town, it has population in 2001 more than 10,000/-. It is clarified by the Id CIT(A) that these facts were brought to notice of the assessee but no evidence to disprove these facts had been produced by him. Accordingly he confirmed the Assessing Officer's finding on long term capital gain. He further held that cost of acquisition as on

01/4/1981 also taken by the Id Assessing Officer on the basis of Shri Ram Niwas Sharma and Shri Jagdish Prasad Sharma, which has been confirmed by him in another case @ 4312.56 per bigha. The assessee also furnished the additional evidence that his father died on 18/2/1991 and also furnished the copy of death certificate to him. The assessee also claimed that in case of Nangi Devi, W/o- Prakash Narayan, R/o- Ramrajpura, Sodala, Jaipur, who sold agricultural land in village Sanjharia and as per this sale deed, the sale price in 1991 had been taken at Rs. 29614/- per bigha. Therefore, he accepted these evidences under Rule 46A of the Income Tax Rules, 1962 (in short the Rules) on which he also called for remand report from the Assessing Officer but the assessee had not cooperated with the Assessing Officer at the time of remand proceedings, therefore, no cognizance has been taken by the Id CIT(A). Accordingly, he confirmed the order of the Assessing Officer.

4. Now the assessee are in appeals before us but the appeals filed are belated by 921 days for which he filed condonation application alongwith affidavit of the assessee as well as affidavit of the advocate and claimed that appellants being illiterate agriculturists were under bonafide belief and they were not liable to pay the tax on the agricultural land sole by them. These facts were also submitted before

the Id CIT(A) that they are not liable to pay any long term capital gain on agricultural land. The Id CIT(A)-III, Jaipur held in case of Kamla Devi Sharma, who had also sold land in village Sanjharia to M/s Vatika Limited not liable to pay tax on capital gain. In penalty proceeding also initiated and imposed by the Assessing Officer they claimed the same that no tax was liable to pay as long term capital gain on agricultural land. The agricultural land situated at village Sanjharia jointly owned by all six brothers, which was sold to M/s Vatika Limited. The Hon'ble Bench in case of Smt. Kamla Devi Sharma in ITA No. 526/JP/2011 vide order dated 28/08/2014 and in case of Dr. Shubha Tripathi in ITA No. 1129/JP/2011 order dated 24/05/2013 decided the appeal in favour of the assessee. The Id CIT(A)'s order was not communicated by the then advocate and repercussion of not filing appeal against the order of CIT(A)'s order dated 24/12/2010 could not be realized being illiterate agriculturists. It is fact that this land is not capital assets as envisages in Section 2(14) of the Act being beyond 8 km of the municipal limits. The Id AR further relied upon the following decisions on condonation of delay:

(i) Collector, Land Acquisition Vs. Mst. Katji (167 ITR 471):

(ii) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh & Others (1979) 118 ITR 326:

(iii) N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123:

Therefore, he prayed to condone the delay and appeal filed by the assesseees are allowed to be heard on merit.

5. At the outset, the Ld. DR vehemently opposed the submission filed by the assesseees and argued that every day of delay is to be explained by the appellants as held by the various courts. She relied on the decision of this Hon'ble Bench in the case of M/s KGNMMW Educational research & Analysis Society Vs. ITO in ITA Nos. 402 & 403/JP/2012 order dated 13/02/2015. The case laws cited by the assessee are not squarely applicable on condonation of delay on facts of the assesseees' case.

6. We have heard the rival contentions of both the parties and perused the material available on the record. All the six brothers are illiterate agriculturalists. They are ignorant with the IT law. The affidavit filed by the advocate support the claim of the assessee that he had not informed and impressed upon the assessee about repercussion of the legal proceedings under the IT Act and also forget the matter to remind these assesseees as file of these assesseees were mixed in the other files

of his office. Further the adjacent land has been treated agricultural assets as envisaged in Section 2(14) of the Act in the case of Kamla Devi Sharma vide order dated 23/3/2011 for A.Y. 2007-08 and order dated 28/08/2014 by the ITAT of this bench but confirmed that the land situated in Sanjharia village is not a capital asset as envisaged in Section 2(14) of the Act. When in case of others, the ITAT has decided the capital assets outside the 8 km from the municipal limits and non condoning the delay by the Bench will tantamount to miscarriage of justice. The legal position on this issue is as under:-

- (i) Collector, Land Acquisition Vs. Mst. Katji (167 ITR 471):  
Held that *"When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred"*.
- (ii) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh & Others (1979) 118 ITR 326: held that *" it is impossible to know all the statutory provisions of law and hence the principle that everyone is presumed to know the law is not applicable universally since it is of a very different scope and application."*
- (iii) N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123:  
Held that *"words "sufficient cause" under Section 5 of the*

*Limitation Act should received a liberal construction so as to advance substantial justice."*

The Hon'ble Supreme Court has held in the case of Collector, Land Acquisition Vs. Mst. Katiji (supra) that substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. In this case also, it is a fact that appeal filed by the appellants belated for years if this Bench has not condoned the delay of the assesseees then the assesseees would not get justice and which is against the technical objections to file the appeal belatedly. In the interest of substantial justice, we feel that delay should be condoned and the assessee is allowed to be heard on merit.

7. Now coming on merit of the case, the impugned land sold by these assesseees bearing khasra No. 500/1239, 532, 432/1166, 533, 542, 543, 545, 546 and 548 in joint name of all these brothers in village Sanjharia, post Thikariya, Tehsil Sanganer being agricultural land to M/s Vatika Ltd. for Rs. 5,72,48,520/- on 21/5/2006. The assesseees have 1/6<sup>th</sup> share of total consideration of Rs. 5,72,48,520/- at Rs.95,41,420/-. The AR of the assesseees submitted that land sold is outside the municipal limit and is more than 8 km. It is argued that in case of Smt. Kamla Devi Sharma, who also sold her land of Sanjharia village to M/s

Vatika Ltd. on 16/05/2006, it has been held by the Hon'ble ITAT that these lands situated beyond 8 km from the municipal limits and is not capital assets as envisaged U/s 2(14) of the Act. The Id AR further argued that in case of Dr. Subha Tripathy Vs. DCIT, Circle-6, Jaipur ITA No. 1129/JP/2011 vide order dated 24/5/2013, it has been held that distance of agricultural land is to be measured as it was as on 06/1/1994 i.e. the date of notification of CBDT circular No. 9447 and not as on date of sale. Since in the present case, the distance of land is more than 8 km from municipal limits during 2011 then during 2006-07 it was definitely many more kms away from municipal limit as the organization has increased the area rapidly during the period from year 1994 to 2011. It is further argued that in case of assessee, one of the assessee's brother Shri Ram Sahay Sharma who also sold his land alongwith his brothers where case was reopened U/s 147 wherein Id Assessing Officer himself had accepted the same part of land as not a capital assets envisaged U/s 2(14) of the Act. He further drawn our attention on letter dated 15/2/2011 addressed to ITO Ward 7(2), Jaipur that village Sanjharia, Tehsil Sanganer, Khasra No. 319 and 320 are beyond 9 kms from the municipal limits. The Id AR also argued that municipality notified whole village to be included in the municipal area

not part and partial of the land of particular khasra number. Therefore, he argued that all the khasra numbers of village Sanjharia, Tehsil-Sanganer are beyond 8 kms from the municipal limits. Accordingly, he prayed to allow the appeals of the assessees.

8. The Id DR vehemently supported the order of the Id CIT(A) and argued that the assessees had not submitted any evidence before the lower authority to prove that the impugned land sold by all the brothers beyond 8 km from the municipal limits. Therefore, order of the Id CIT(A) may please be confirmed.

9. We have heard the rival contentions of both the parties and perused the material available on the record. The land sold by all the brothers situated in village- Sanjhaia, Tehsil- Sanganer, district- Jaipur. In case of assessee's brother namely Shri Ram Sahay Sharma in A.Y. 2007-08 by the ITO ward 7(2), Jaipur order dated 25/03/2013 had not made any addition on account of long term capital gain. Further the Id CIT(A) as well as this Bench also allowed the appeal in case of Smt. Kamla Devi Sharma (supra), who also sold her land at Sanjharia village to M/s Vatika Ltd. on 16/05/2006 and held that the agricultural land sold by the assessee is not capital assets as envisaged U/s 2(14) of the Act as same was sold to Vatika Ltd. within a short span of time. The

other case laws relied by the assessee is also squarely applicable. Therefore, we hold that the land sold by all the assessees are agricultural land and beyond 8 KMs from the municipal limits. Accordingly, we allow this ground of all the appeals.

10. Ground No. 2 of the all the appeals are against not allowing the relief U/s 54B and 54F of the Act on different amounts. As we have decided the land sold by these assessees as not capital assets as envisaged in Section 2(14) of the Act, we need not to express our views on these deductions as these deductions is based on capital assets envisaged in Section 2(14) of the Act.

11. Now we are deciding the penalty orders passed U/s 271(1)(c) of the Act. The Id. Assessing Officer imposed penalty U/s 271(1)(c) of the Act, which has been confirmed by the Id CIT(A) in all the cases but as decided above, the land sold is not capital assets as envisaged in Section 2(14) of the Act and held agricultural land, which is not come under the purview of taxable income. No concealment of particulars of income or furnished inaccurate particulars of income is there. Therefore, we delete the penalty in all the cases. Thus, we allow the appeals in all the cases.

12. In the result, all the assessee's appeals are allowed.

Order pronounced in the open court on 01/05/2015.

Sd/-  
(आर.पी.तोलानी)  
(R.P.Tolani)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(टी.आर.मीना)  
(T.R. Meena)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01<sup>st</sup> May, 2015

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellants- Sita Ram Sharma, Madan Lal Sharma, Rameshwar Sharma, Hanuman Sahai Sharma, Bansilal Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 726, 725, 724, 723, 722 /JP/2013 & ITA No. 66,64,67,65,68/JP/2014 )

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar