

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA No. 238/Hyd/2014 - A.Y. 2008-09

M/s. Kanchenjunga Greenlands Pvt. Ltd. Hyderabad PAN: AABCK5813H Appellant	vs.	The Deputy CIT Central Circle-9 Hyderabad Respondent
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ITA No. 239/Hyd/2014 – A.Y. 2008-09

M/s. Gomati Agro Farms Pvt. Ltd., Hyderabad PAN: AABCG3988R Appellant	vs.	The Deputy CIT Central Circle-9 Hyderabad Respondent
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ITA No. 240/Hyd/2014 – A.Y. 2008-09

M/s. Nallamala Agro Farms Pvt. Ltd., Hyderabad PAN: AABCN2520Q Appellant	vs.	The Deputy CIT Central Circle-9 Hyderabad Respondent
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ITA No. 241/Hyd/2014 – A.Y. 2008-09

M/s. Parabati Agro Farms Pvt. Ltd., Hyderabad PAN: AACCP1719L Appellant	vs.	The Deputy CIT Central Circle-9 Hyderabad Respondent
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Appellant by: Sri K.C. Devdas
Respondent by: Sri P. Soma Sekhar Reddy

Date of hearing: 17.09.2014
Date of pronouncement: 29.10.2014

ORDER

PER ASHA VIJAYARAGHAVAN, J.M.:

All the above appeals by different assesseees are directed against the separate orders of the CIT(A)-VII, Hyderabad dated 29.11.2013 for A.Y. 2008-09. Since the issues involved in these

appeals are identical, these are clubbed and heard together and are disposed of by this common order of the sake of convenience.

2. Since facts in all these appeals are identical, we narrate the facts as in ITA No. 240/Hyd/2014 in the case of Nallamala Agro Farms Pvt. Ltd. Assessment u/s. 143(3) of Income-tax Act, 1961 was completed on 02.12.2010 assessing income at Rs. 20,46,77,320 as per normal provisions of the Act. Tax liability was worked out at Rs. 6,53,95,668. As the tax liability under normal computation was greater than tax liability under MAT, income-tax demand was raised as per normal computation. The income arose on account of sale of land and the assessee had offered income under capital gains in its return but in the assessment made, the Assessing Officer computed the income under the head "Income from business/profession". The assessee, however, had not paid the self-assessment tax. Aggrieved by the above assessment and the change of head of computation, the assessee filed the appeal before the CIT(A).

3. The CIT(A) observed that the assessee had not paid the self assessment tax even till the date of filing of appeal before him or by the date he finalised the assessee's appeal. He observed that in terms of provisions of section 249(4), the appeal filed is inadmissible. The CIT(A) quoted Section 249(4)(a) which reads as under:

Section 249:

(1) ...

(2) ...

(3) ...

(4) *No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—*

(a) *where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

4. The CIT(A) relied on decision of Hon'ble Madras High Court in the case of S. Alagarsamy vs. ITO (296 ITR 43) wherein their Lordships held that payment of tax due on the income returned by the assessee before filing of appeal against the assessment order is a condition precedent and non-compliance of the same renders appeal non-maintainable. He also relied on the decision in the case of CIT vs. G.A. Samantha Kamini CIT vs. Smt. G.A. Samantha Kamini (259 ITR 215) (Mad). Relying on the above judicial decisions, the CIT(A) dismissed the appeal of the assessee.

5. Aggrieved, the assessee is in appeal before us with the following grounds of appeal:

- (1) The order of the CIT(A) in rejecting the appeal filed by the appellant is not maintainable u/s 294(4) of the IT Act, 1961 is totally unsustainable both on facts and in law.
- (2) The Learned CIT(A) failed to note that the appellant's income under normal provisions of Income Tax Act, 1961 other than book profit was "NIL" and the appellant having been assessed under the normal provisions Act the question of paying any admitted tax does not arise as the income returned was "NIL" and, therefore, the CIT(A) erred in rejecting the appeal as not maintainable.
- (3) The Learned CIT(A) was not right in upholding the order of the Assessing Officer in holding that the transfer of capital asset, being agricultural land to a subsidiary company which was exempt u/s 47(iv) of

the IT Act, 1961 was not a capital asset and, therefore, erred in holding that the gain arising there from was assessable under the head "Income from Business".

6. The learned counsel for the assessee filed a Paper Book and relied on the following decisions:

- (a) M/s. Nagavalli Green Lands Pvt. Ltd. & Others, ITA Nos. 521 to 532/Hyd/2012 order dated 8.6.2012.
- (b) Shri T. Kishan vs. ACIT, ITA(SS)A Nos. 23 & 25/Hyd/2011 order dated 18.5.2012.
- (c) DCIT vs. D. Komalakshi, Karnataka High Court order dated 11.8.2006.
- (d) CIT vs. Manoj Kumar Beriwal (217 CTR 407) (Bom).
- (e) ITO vs. Ankush Finstock Ltd., ITA No. 1989/Ahd/2003 and 2688/Ahd/2005 (21 taxmann. com 119 (Ahd) (ITAT).

7. The learned DR relied on the order of the CIT(A).

8. We have heard both the parties. We find in the case of T. Kishan vs. ACIT in IT(SS)A Nos. 23 & 25/Hyd/2011 the facts are as follows. The assessee filed an appeal on 10.4.2001 against block assessment dated 27.2.2004 passed u/s. 158BC(c) of the Act. The same was dismissed by the CIT(A) in limine as the admitted tax was not paid. The assessee vide letter dated 14.3.2011 requested the CIT(A) to restore the appeal as the admitted tax has been paid by that time. However, the CIT(A) refused the same by holding that there is no provision under the Act to restore the appeal which is dismissed for violation of provisions of section 249(4) of the Act. Against this the assessee came in appeal before this Tribunal. The Tribunal held at paras 19-20 as follows:

"19. We have duly considered the rival contentions. From the perusal of record and on consideration of respective arguments, following points have emerged out for our adjudication:

(1) Whether the Tribunal has powers under Section 254(1) to give a finding that, an appeal filed in violation of Section 249(4) would be termed as defective one and the moment the defect is cured by making payment of agreed tax, the appeal can be decided on merit subject to limitation provided in Section 249(2) and its condonation thereof as per Section 249(3).

(2) Whether non-availability of funds for making payment of agreed taxes with the assessee could be considered as a reasonable cause for filing defective appeals in violation of Section 249(4) of the Act.

(3) Whether sufficient reason exists for curing this defect after expiry of limitation provided in Section 249(2) of the Act.

20. It is undisputed proposition of law that appeal is a continuation of the original proceedings and right of appeal is not an inherent right but it is a statutory right. It is open to the legislature to give or not to give a right of appeal against decisions made by authorities. The right of appeal wherever conferred by statute has to be exercised strictly in conformity with the statutory provisions, which create it. If the statute put any restrictions then, such right would be available along with such restrictions. It is also not disputed before us that assessee had made the payment of agreed tax during the pendency of these appeals. Before embarking upon the jurisdiction of the Tribunal whether these appeals can be restored back to the CIT(A) or not, it is salutary to take note of Sub-sections (3) and (4) of Section 249 and Sub-section (1) of Section 254 because these provisions have direct bearing on the controversy:

Section 249(3) : "The CIT(A) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period."

Section 249(4) : "No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,

(a) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that, in a case filling under Clause (b) and on an application made by the appellant in this behalf, the CIT(A) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause."

Section 254(1).: "The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit."

9. In the above case the Tribunal restored the matter to the file of the CIT(A).

10. This Tribunal in the case of Nagavalli Green Lands Pvt. Ltd. vs. DCIT in ITA No. 521/Hyd/2012 in its consolidated order dated 08/06/2012. The relevant portion is extracted below:

"5. As seen from the above table, the admitted taxes payable by the assessee have been paid on the respective dates mentioned at the column 'date of payment of admitted tax' and the same has been confirmed by the learned counsel for the

assessee at the time of hearing before us. We are, therefore, of the opinion that it is fair to admit all these appeals now as the assessee discharged their duties in paying the admitted taxes. In this connection, we refer to the decision of the coordinate Bench of ITAT, Hyderabad in the case of Banu Begum in ITA No. 2075/Hyd/2011 for A.Y. 2008-09 order dated 30/04/2012:

17. Now that the assessee has paid the admitted taxes on the returned income, we set aside the impugned order of the CIT(A), and restore the matter to the file of the CIT(A) to adjudicate the appeal before him on merits. He shall give reasonable opportunity of hearing to the assessee, and decide the appeal afresh in accordance with law.

6. *Since the issue under consideration is identical to the one decided by the co-ordinate Bench in the case of Banu Begum (supra) and the assessee have paid the admitted taxes on the returned income, respectfully following the said decision, we set aside the impugned orders of the CIT(A), and restore the matter to the file of the CIT(A) to adjudicate the appeals before him on merits after giving reasonable opportunity of bearing to the assessee and decide the same afresh in accordance with law."*

11. The chart extracted below shows the date of payment of admitted tax and interest by the assessee.

S. No.	Name of the company	Income under normal provisions	115JB profits (Rs. in crores)	140-A tax payable & paid on book profits on 29.5.2014 including interest u/s. 234B & C shown separately (Rs.)	140-A tax paid (Rs.)
1.	Kanchenjunga Green lands Pvt. Ltd.	Nil	6.74	76,37,652 paid on 30.3.11	84,84,610
2.	Nallamala Agro Farms Pvt. Ltd.	Nil	20.46	2,31,89,827 paid on 30.3.11 25,62,500 Interest paid on 23.5.14	2,57,52,327
3.	Pārbati Agro Farms Pvt. Ltd.	Nil	20.48	2,31,49,521 25,58,016 interest both paid on 23.5.14	2,57,07,537
4.	Gomati Agro Farms Pvt. Ltd.	Nil	15.30	2,76,65,275 30,56,559 interest both paid on 23.5.14	3,07,17,834

12. In these circumstances, we find the only requirement of section 249(4) is payment of tax due on returned income and

there is no time limit prescribed for payment of such taxes. Therefore, if an appeal is filed after making of payment, it cannot be said that the requirement of section 249(4) has not been complied with. The CIT(A) can use his discretionary power and admit the appeal if he is satisfied about the liquidity crunch or any other reasonable cause for non payment of taxes. Section 249(3) prescribes the CIT(A) may admit the appeal after the expiration of the said period if he is satisfied that the assessee had sufficient cause for non-presenting the appeal within the prescribed period. While sub section (3) of section 249 pertains to those assesseees who have filed return and paid the tax but belatedly filed an appeal. On the other hand, sub-section (4) of section 249 pertains to those assesseees who have defaulted in payment of tax or did not file the return.

13. Hence as per section 249(4) of the Act no appeal before CIT(A) should be admitted unless at the time of filing of the appeal, where a return has been filed by the assessee, tax due on the income returned has been paid. In this sub-section, there is a clause (b) which is in respect of a condition where no return at all has been filed by the assessee. A Proviso underneath the section also prescribes that the cases falling under the said clause (b), the CIT(A) can grant exemption from the operation of the said clause. An inference can be drawn on combined reading of both the sub-clauses of sub-section (4) of section 249 that in case of default of non-payment of tax an appeal is not to be admitted, but on removal of the defect of non-payment of tax an appeal deserves to be admitted and in one of the condition the assessee can be granted exemption by the CIT(A).

14. Therefore, we set aside the impugned order of the CIT(A) and the matter is remanded back to the file of the CIT(A) with a direction to admit the appeal and adjudicate on the issue afresh.

Appeal of the assessee is allowed. Since the facts in the other three appeals in ITA Nos. 138/Hyd/2014, 139/Hyd/2014 and 141/Hyd/2014 are identical, these appeals are also remanded back to the file of the CIT(A) with the direction as given above.

15. In the result, all the appeals of the assesseees' are allowed.

Pronounced in the open court on 29th October, 2014

Sd/-	Sd/-
(P.M. JAGTAP)	(ASHA VIJAYARAGHAVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Hyderabad, dated the 29th October, 2014
Tprao

Copy to:

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2. M/s. Gomati Agro Farms Pvt. Ltd., Plot No. 80, Road No. 9, Jubilee Hills, Hyderabad.
3. M/s. Nallamala Agro Farms Pvt. Ltd., Plot No. 80, Road No. 9, Jubilee Hills, Hyderabad.
4. M/s. Pārbati Agro Farms Pvt. Ltd., Plot No. 80, Road No. 9, Jubilee Hills, Hyderabad.
5. The Deputy CIT, Central Circle-9, Hyderabad.
6. The CIT(A)-VII, Hyderabad.
7. The CIT (Central), Hyderabad.
8. The DR, A-Bench, ITAT, Hyderabad.