

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: "F" New Delhi

BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 4942/Del/2011  
AY: - 2004-05

Surinder Singh Sethi, Prop. M/s. M.D. Automotives, 1240/15, Bara Bazar, Kashmere Gate Delhi – 110 006 PAN ANDPS5101L (Appellant)	vs.	ITO Ward-2-(2) New Delhi.  (Respondent)
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Appellant by : Shri G.S. Kohli, CA  
Respondent by : Shri Sujit Kumar, Sr.DR

Date of Hearing : 10.09.2015  
Date of pronouncement : .11.2015

**ORDER**

PER SUDHANSHU SRIVASTAVA JUDICIAL MEMBER

This is assessee's appeal directed against order dated 20.9.2011 passed by the Ld. CIT (A)-XXII, New Delhi.

2. The brief facts of the case are that the assessee had filed his return of income for the year under consideration showing a taxable income of Rs. 77,510/- on 17.8.2004. The return was processed u/s 143(1) of the Income Tax Act, 1961. However, subsequently on receiving an information from Income Tax Officer, Lucknow that the assessee had not disclosed long term capital gains in his return of income for the year, proceedings u/s 148 of the Income Tax Act were initiated. It

was the contention of the AO that during the year the assessee, along with his brother Shri Kanwal Pal Singh had sold the property situated at Khasra No. 159 at Bargawan, VIP Road, Lucknow for Rs. 40 lacs (assessee's share being  $\frac{1}{2}$  in the property i.e. Rs. 20 lacs) and long term capital gain on the sale of the same was not disclosed by the assessee. The assessee contested the reassessment proceedings before the AO and submitted that the relevant information was already on record with the original return of income filed by him. It was also the assessee's contention that the property was purchased for Rs. 50,000/- by Shri Deva Singh Gurmukh Singh, HUF in 1992 and it was after the demise of the Karta of the said HUF namely Shri Gurmukh Singh that the assessee became the Karta of that HUF. The return of the HUF was being filed in Haldwani and at the time of purchase of property, the assessee himself also was residing in Haldwani. Later the assessee shifted to Delhi in AY 2000-01 and he has been filing his return of income in Delhi since then. It is also the assessee's contention that since the HUF was not deriving any income, no return of income was filed in the status of HUF. The assessee also contended before the AO that he has in fact not sold the property for his individual benefit but has acted for and on behalf of the HUF and the proceeds of the sale, as per the wishes of the elders expressed at the time of purchase of the property itself, have been distributed to the sister of the assessee Smt. Ravinder Kaur Sethi (Amount of Rs. 16 lacs) and the balance (Amount of Rs. 4 lacs) have been distributed between the children of the assessee. The assessee also submitted that the tax on the capital gains has been already met by Shri Kanwal Pal Singh and Smt. Ravinder Kaur Sethi and therefore taxing it again at the hands of the assessee was not justified.

However, the AO did not accept the submissions of the assessee and taxed his half share in the property and worked out the long term capital gain at Rs. 18,75,426/-.

3. The assessee went into appeal before the Ld. CIT (A). However the Ld. CIT (A) was of the opinion that the family settlement deed and the balance sheet of Deva Singh Gurmukh Singh HUF, which shows that the property was belonging to the HUF, was an afterthought. Ld. CIT (A) also noted that the other co-owner Shri Kanwar Pal Singh Sethi had already admitted his liability to the capital gain tax and has paid the tax thereon. As per the Ld. CIT (A), the other half should be taxed in the hands of the assessee on similar footing. He, therefore, categorically ruled that the property was held in individual capacity of the assessee and the same was sold by him. Accordingly, the assessee's appeal was dismissed.

4. In the present appeal before us the assessee has objected to the initiation of proceedings u/s 147 / 148 of the Act. The assessee has submitted that the relevant documents were already on record during the course of assessment proceedings and as such the initiation of reassessment proceedings was not justified. Ld. AR drew our attention to page 1 of the paper book which is a copy of computation sheet of the assessee's return of income for the year under consideration. He pointed out that in the said computation the assessee has already disclosed by way of a note that he has executed a sale deed in his name for one half share and has also disclosed that he has only lent his name for the purpose of registration of sale deed. Ld. AR placed reliance on the judgment of the Hon'ble High Court of Bombay in the case of Lok Housing and Construction Ltd. vs. DCIT 348 ITR 335 (Bom) on the evidentiary value of foot notes with regard to the disclosure of

primary facts. The Ld. AR also relied on the decision of the Hon'ble Gujarat High Court in the case of Mihir Textiles Ltd. vs. JCIT 247 ITR 546 (Guj). The Ld. AR submitted that the reassessment proceedings being bad in law should be quashed. On merits, the Ld. AR drew our attention to the copy of the balance sheet of Deva Singh Gurmukh Singh HUF placed at page 19 of the paper book in which the investment in said property has been duly reflected. He also drew our attention to copy of the family settlement deed executed on 25.4.1992 and placed at page 22 of the paper book and submitted that the assessee has only been acting on behalf of the HUF and not in his personal capacity and therefore he should not be assessed in his individual capacity.

5. Ld. DR on the other hand submitted that the return was processed u/s 143(1) of the Act initially and therefore it could not be presumed that the documents would have been seen. Ld. AR submitted that the facts regarding escapement of income came to light during the scrutiny assessment of the other co-owner of the property and hence the reason to believe was adequate. He also submitted that there is no third party confirmation of the transaction and hence the reopening of the assessment was valid. Ld. DR placed heavy reliance on the order of the Ld. CIT (A).

6. We have heard the rival submissions and have also perused the material on record. It is seen that the reassessment proceedings were initiated on the basis of a report received from ITO, Lucknow. However, it is also seen that the AO has entirely relied on the report of the ITO, Lucknow for initiating the reassessment proceedings. The AO has not referred to the return already filed by the assessee and/or the

documents/information filed along with the return. The AO has also not demonstrated any application of mind prior the recording of reasons and it is apparent that he has merely relied on the information received from ITO, Lucknow for the initiation of reassessment proceedings. This, in our considered opinion, is not permissible in law. Reference may be made to the judgment of the Hon'ble Delhi High Court in the case of CIT vs. SFIL Stock Broking Ltd. 325 ITR 285 (Del) wherein the Hon'ble Delhi High Court has opined that before an AO issues a notice u/s 148, thereby reopening the assessment u/s 147, he must have formed a belief that income has escaped assessment and that there must be some basis for forming such a belief. The belief should be discernible from the material on record which was available with the AO. In the present case, from the reasons, it is not at all discernible as to whether the AO has applied his mind to the information and independently arrived at a belief that on the basis of material which he had before him, income had escaped assessment. Consequently, on facts of the case and respectfully following the judgment of the Hon'ble Delhi High Court in CIT vs. SFIL Stock Broking Ltd. (supra), we hold the reassessment proceedings as bad in law and quash the same.

6. In the result the appeal of the assessee is allowed.

Pronounced in the open court On 30<sup>th</sup> November, 2015.

sd/-

sd/-

**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMEBR**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: the 30. 11. 2015

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Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By order  
Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	26.11.2015
2.	Draft placed before the Dictating Member	27.11. 2015
3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	