

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI**

BEFORE SH.BHAVNESH SAINI, JUDICIAL MEMBER

**ITA No.180/Del/2018
[Assessment Year: 2009-10]**

Shailendra, C/o-Vinod Kumar Goel, 282, Boundary Road, Civil Lines, Meerut, Uttar Pradesh. PAN-CAVPS9753D	vs	ITO, Ward-2(3), Meerut.
(Appellant)		(Respondent)
Appellant by	Sh. V.K.Goel, Adv.	
Respondent by	Sh. B.R.Mishra, Sr.DR	
Date of Hearing	13.06.2018	
Date of Pronouncement	19.06.2018	

ORDER

PER BHAVNESH SAINI, JUDICIAL MEMBER

This appeal by the assessee has been directed against the order of Ld.CIT(A), Meerut dated 17.10.2017 for AY 2009-10 on the following grounds:-

1. *"That no notice u/s 148/142(1) was served upon the assessee, therefore, assessment made by A.O u/s 144 is bad in law and Ld.CIT(A) has not decided this same.*
2. *That the A.O. is in error in taxing sale of agriculture land as long term capital gain, however the land was situated in village Chindori Khas, Rohta Road, Meerut which is approximate 12 KM away from the Meerut Municipal Limit. Therefore, it does not form part of capital asset as define in section 2(14) of I.T.Act.*
3. *That the A.O has not allowed the rebate u/s 54B purchase of agriculture land in the name of his mother, therefore, assessment made by A.O. is bad in law.*
4. *That the penalty proceeding u/s 271(1)(c) initiated by A.O. in routine and mechanical manner, which is not permitted in law. The Order of CIT(A) is silent."*

2. Briefly the facts of the case are that as per AIR information received by the AO, it revealed that the assessee has sold immovable property amounting to Rs.49,75,000/- during the assessment year under appeal on 27.11.2008. Therefore, to assess the Capital Gain arising on the sale of the property as per provisions of section 50C of the Income Tax Act, 1961 (in short "Act"), notice u/s 148 was issued to the assessee. The assessee, however, did not make any compliance. Further, statutory notices issued to the assessee for completion of the assessment, however, none have been complied with. The AO on the basis of the material available on record, passed ex-parte assessment order u/s 144/148 of the Act. The AO noted that sale consideration for computation of capital gain is taken at Rs.49,75,000/-. The assessee's share on this property is half, therefore, it comes to Rs.24,87,500/-. Since no details have been filed and no information is available as regards cost of acquisition, therefore, the total amount of Rs.24,87,500/- was assessed as long term capital gain.

3. The assessee raised several grounds of appeal before Ld.CIT(A). The assessee, however, claimed that impugned property is approximately 12 KM from the municipal limit and also gave alternate plea that as per sale deed, the share of the assessee is half and that while computing capital gains in the assessment, the AO has not given benefit of cost of acquisition which in a similar case of nearby property was taken by Ld.CIT(A), Aligarh Camp Office Meerut at Rs.50,000/- per bigha. The matter was remanded to the AO for filing Remand Report in which AO did not recommend for admission of additional evidences. Ld.CIT(A) noted that there is no dispute that the assessee has half shares in the property and further noted that he did not see any

reason why benefit of cost of acquisition will not be given to the assessee. Merely because no evidence with regard to cost of acquisition was submitted would not deny the fact that there is some cost of acquisition of every property. The assessee has placed reliance on the nearby property where cost of acquisition of Rs.50,000/- per bigha has been accepted by Ld.CIT(A), Aligarh Camp Office Meerut. Therefore, The AO was directed to examine the fact and allow the benefit of cost of acquisition at Rs.50,000/- per bigha. The appeal of the assessee was partly allowed.

4. I have heard Ld. Representatives of both the parties and pursued the findings of the authorities below.

5. Ld. Counsel for the assessee submitted that the AO has not given any finding whether the property in question was a capital asset. Therefore, finding on the same should have been given before determining the Capital Gain. Ld. DR, however, opposed the request of the assessee because no material was produced by the assessee before the authorities below in support of above arguments.

6. On consideration of the facts noted by the authorities below, I do not find any justification to interfere with the orders of the Ld.CIT(A). The assessee did not make any compliance before the AO. The AO on the basis of the sale deed has given benefit of half of the sale consideration in favour of the assessee because assessee was having half share in the property. The assessee raised several grounds before Ld.CIT(A). However, the assessee pleaded only two facts before Ld.CIT(A) that the impugned property is approximately 12 KM from the municipal limit and Ld.CIT(A), Aligarh for nearby properties has given a benefit

of cost of acquisition in a sum of Rs.50,000/- per bigha. Ld.CIT(A) directed the AO to examine the facts and allow benefit of cost of acquisition at Rs.50,000/- per bigha as is accepted by Ld.CIT(A), Aligarh Camp Office Meerut. Now, Ld. Counsel for the assessee has raised only one ground that authorities below have not given the finding whether impugned property was a capital asset. I may note that the assessee alleged that property in question is not a capital asset because it is approximately 12 KM away from municipal limit, therefore, the burden is upon the assessee to prove such fact before the authorities below. However, no attempt has been made by the assessee to prove such fact before the authorities below. The assessee has similarly did not file any evidence before the Tribunal in support of point raised above. Therefore, in the absence of any evidence or material on record, no interference should be made in the orders of the authorities below. No other ground has been argued or pressed. There is no merit in the appeal of the assessee, the same is, accordingly, dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court.

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Date:-19.06.2018

Amit Kumar

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(Appeals) concerned
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI