

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 34/RPR/2016 (A.Y 2011-12)**

Santoshi Ware Block No. 10-C, Street No.9 Sector-4, Bhilai Bhilai(CG) ACBPW4234D <b>(APPELLANT)</b>	Vs	Income Tax Officer-2 Central Revenue Building, Aayakar Bhawan, Civil Lines, Raipur Raipur (CG) <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. S. R. Rao, Adv</b>
<b>Respondent by</b>	<b>Sh. Rituparan Namdeo, DR</b>

<b>Date of Hearing</b>	<b>14.08.2018</b>
<b>Date of Pronouncement</b>	<b>25.10.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

The present appeal is filed by the assessee against the order dated 29/01/2016 passed by CIT(A)-II, Raipur (CG) for Assessment Year 2011-12.

2. The grounds of appeal are as under:

*“1. In the facts and circumstances of the case, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the amount of long term capital gain worked out by ld. Assessing Officer at Rs.40,09,162/- and assessing the entire amount in the hands of the appellant.*

*2. In the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) has erred in upholding assessment of entire amount of long term Capital Gain in the hands of the appellant overlooking the fact that the property was jointly inherited by the appellant along with her brothers*

*and sisters and she was owner of only 1/6 share in the property.*

*3. In the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) has erred in not addressing the assessee's submission that as per section- 8 of Hindu Succession Act, 1956, the appellant has devolved 1/6<sup>th</sup> share of her father's property and erred in subjecting the entire amount of tax in the hands of only one legal heir.*

*4. That the Ld. Commissioner of Income-tax (Appeals) has erred in upholding action of the ld. Assessing Officer denying deduction u/s 54B of the Income-tax Act, 1961 in respect of amount invested in purchase of agricultural land.*

*5. That the Ld. Commissioner of Income-tax (Appeals) has erred in upholding the action of charging of interest u/s 234B of the Income-tax Act, 1961.*

*6. The order of the Ld. Commissioner of Income-tax (Appeals) is bad in law and on facts.”*

3. The case was selected for scrutiny on the basis of AIR information relating to cash deposit of Rs. 32,50,000/- made in the savings bank account of the assessee maintained in the State Bank of India. It was explained that the deposit was made out of sale consideration of agricultural land sold during the year for Rs. 40,75,000/-. It was further explained that the said land was jointly owned by the assessee with her brothers and sisters and as decided by all the family members a bank account in the name of the assessee was opened where in the aforesaid amount was deposited. During the scrutiny proceedings the assessee was asked by the Assessing Officer to file confirmation of other co-owners (sellers) of land regarding receipt of sale proceeds, deposit of amount in bank account, withdrawal of amount and utilization of amount by them. The assessee filed confirmations from two persons only. The Assessing Officer further observed that none of the persons were produced despite specifically asking them to appear before her. In the statement recorded on 24.04.2014 the assessee was specifically asked to produce the other co-owners before the

Assessing Officer which the assessee could not produce for confirmation. The Assessing Officer therefore, made addition of Rs. 40,75,000/- in the hands of the assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the sale deed reflecting the names of the co-owners were produced before the Assessing Officer along with the bank details of the assessee. The arrangement was orally explained by the assessee along with the confirmations given by the two co-owners. All these relevant evidences were ignored by the Assessing Officer as well as by the CIT(A). Therefore, both the revenue authorities ignored the actual fact that the assessee is owner of only 1/6<sup>th</sup> of the share in the property sold and hence the entire addition cannot be made in the hands of the assessee. Thus, the addition made by the Assessing Officer is not just and proper and denial of deduction u/s 54B of the Income Tax Act, 1961 is also not correct.

6. The Ld. DR relied upon the Assessment Order and order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. From the records it can be seen that the land sold is not exclusively and solely owned by the assessee. The assessee has only 1/6<sup>th</sup> of the share. The Revenue has not taken proper cognizance of the actual fact that the property is owned by 6 person who are family members of the assessee. The Assessing Officer has not taken into account all the relevant material produced before him during the assessment proceedings. Therefore, it will be appropriate to remand back all the issues to the file of the Assessing Officer and decide the matter a fresh after taking cognizance of all the relevant material produced by the assessee. Needless to say, the assessee be given the opportunity of hearing by following principles of natural justice.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 25<sup>th</sup> OCTOBER, 2018.**

Sd/-

**(R. K. PANDA)  
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 25/10/2018

*\*R.N*

Copy forwarded to:

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

Private Secretary.....

Raipur Bench, Raipur.....

Date of dictation	22.10.2018
Date on which the typed draft is placed before the dictating Member	22.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	