

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 4526/DEL/2018  
[Assessment Year: 2009-10]

Shri Aman Mehra  
Flat No. A3/06, Tower -4  
Purvanchal Silver City  
Noida

Vs.

The I.T.O  
Ward 1(5)  
Ghaziabad

PAN: AGZPM 1982 G

[Appellant]

[Respondent]

Date of Hearing : 28.11.2018  
Date of Pronouncement : 29.11.2018

Assessee by : Shri K.R. Manjari Adv

Revenue by : Shri S.L. Anuragi, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Ghaziabad dated 21.03.2018 pertaining to assessment year 2009-10.

2. The sum and substance of the grievance of the assessee is that the assessment order framed u/s 144/147 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] is without jurisdiction and, therefore, bad in law.

3. Briefly stated the facts of the case of the case are that on the basis of AIR information, the Assessing Officer came to know that the assessee has sold immovable property for a sum of Rs. 44.40 lakhs. The Assessing Officer was of the opinion that the assessee has not returned any capital gain tax on the same. After taking approval from his superior, notice u/s 148 of the Act was issued. The assessee did not receive this notice and, therefore, could not comply with the direction given by the Assessing Officer. The Assessing Officer completed assessment u/s 144 of the Act and made addition of Rs. 44.40 lakhs.

4. The assessee carried the matter before the CIT(A) but without any success.

5. Before the CIT(A), the assessee strongly contended that the impugned property belonged to three persons and the assessee's share in the sale consideration was  $1/3^{\text{rd}}$  i.e., 14.80 lakhs. The first appellate authority admitted the additional evidence and called for a remand report dated 13.02.2018, which is reproduced as under:

"As per AIR information the assessee had sold an immovable property for a sum of Rs.44,40,000/- during the F.Y.2008-09. Since the assessee did not respond to the verification letters action u/s 147 was taken to ascertain the taxability of capital gain arisen on above transaction. During the assessment proceedings the assessee neither attended nor any explanation or document was filed about the taxability of capital gain arisen on such transaction. In absence of any explanation or document there was not alternative but to complete the assessment proceedings ex-parte u/s 147/144 of the Act. Therefore, the whole sale consideration of Rs.44,40,000/- was treated as Short Term Capital Gain and the assessment was completed accordingly.

Now the assessee has filed an appeal before your honor against the Assessment Order. I have perused the grounds of appeal, the documents filed by the assessee before your honor and the assessment records. The comments are as under:

a) As per copy of sale deed filed by the assessee during appellate proceedings the impugned property was sold by 3 persons jointly for Rs.44,40,000/-. Thus, assessee's share in the sale consideration comes to Rs. 14,80,000/-(44,40,000+3) instead of Rs.44,40,000/-.

b) The assessee has not filed the copy of purchase deed of the impugned property so that cost of acquisition could be ascertained. However, in computation of income, filed during appellate proceedings, the assessee has mentioned that the impugned property was purchased in F.Y. 1998-99 for Rs.26,250/-. Thus, the cost of acquisition comes to Rs.43,526/-(26250+352\*582). On perusal of the documents filed by the assessee during appellate proceedings the Long Term Capital Gain is worked out as under:

Sale consideration	:	Rs. 14,80,000/-
Less cost of acquisition	:	<u>Rs. 43,526/-</u>
Long term capital gain	:	Rs. 14,36,474/-

c) *The assessee has presented additional grounds and evidence during appellate proceedings which were never filed before the A.O. during assessment proceedings and he had to pass the order ex-parte. However, in my opinion the additional grounds are acceptable to the extent of above computation of Long Term Capital Gain. "*

6. The assessee was asked to submit his response to the remand report. The assessee filed a detailed reply which reads as under:

“करदाता का पैन नं०- AGZPM1982G है तथा वर्ष 2009-10 का आर्डर धारा -143(3) में दिनांक 31.03.2009 को श्रीमान आईटीओ वार्ड 29(3) नई दिल्ली द्वारा समस्थ प्रोपर्टी खरीद बिक्री व विवरण प्राप्त कर किया गया है, आर्डर की छायाप्रति संलग्न है।

करदाता द्वारा दिनांक 11.12.1996 व 20.07.1998 मुरादनगर गाजियाबाद में दो एग्रीकलचर जमीने खरीदी थी जिसमें करदाता का 49.75 प्रतिशत व 33.35 प्रतिशत का हिसा था जो दिनांक 17.05.08 व 17.05.08 को बेची थी तथा एक मकान नं० - आर - 90 राजनगर गाजियाबाद दिनांक 22.07.07 को खरीद था जिसमें 100 प्रतिशत स्वामी था, जो दिनांक 30.06.08 को बेचा था। उपरोक्त तीनों से जो पैसा प्राप्त हुआ था, उसे करदाता द्वारा दिनांक 30.12.08 को फ्लैट सं० - ए- 3/06 टावर - 4 सिलवर सिटी सेक्टर - 93, नोएडा की खरीद में लगाया था, जिस कारण उस पर जो कैपिटल गैन बना व धारा - 54एफ व धारा - 54 में कर मुक्त था। जिसकी खरीद बिक्री विवरण तथा खरीद बिक्री बैनामों की कोपियां संलग्न हैं तथा वर्ष 2009-10 के आदेश धारा 143(3) की भी कापी संलग्न है।”

7. After considering the facts and submissions, the CIT(A) was of the opinion that the capital gains of Rs. 14.36 lakhs as computed by the Assessing Officer in his remand report is liable to be taxed in the hands of the assessee. The addition of Rs. 14.36 lakhs was confirmed.

8. Before me, the ld. AR drew my attention to the assessment order dated 31.03.2009 framed u/s 143(3) of the Act. It is the say of the counsel that the assessee has disclosed the capital gain in his return of income and has claimed deduction u/s 54F of the Act, which has been allowed by the Assessing Officer. Therefore, reopening a completed assessment on false premise is bad in law.

9. Per contra, the ld. DR supported the findings of the CIT(A).

10. I have carefully considered the orders of the authorities below. There is no dispute that the assessment order dated NIL was framed u/s 143(3) of the Act. From the computation of total income, placed at page 224 of the paper book, I find that the assessee has returned capital gains on sale of Khasra No. 107, Yusufpur, Jalalabadm Manota. The sale consideration is shown at Rs. 14.80 lakhs and after deducting indexed cost of acquisition of Rs. 43526/-, capital gain was

shown at Rs. 14,36,474/-. Deduction was claimed u/s 54F and capital gain was shown at NIL.

11. On the basis of this computation of income, the Assessing Officer framed the assessment order. Completed assessment has been reopened on the basis of AIR information that the assessee has sold immovable property for a sum of Rs. 44.40 lakhs. It appears that the Assessing Officer has completely ignored the completed assessment framed u/s 143(3) of the Act. The Assessing Officer has proceeded on wrong premise that the assessee is the sole owner of the land whereas, as mentioned elsewhere, the assessee's share was only 1/3<sup>rd</sup>. With these facts, it can be safely concluded that the completed assessment has been reopened without any application of mind and deserves to be quashed.

12. Since the assessment order is quashed, I do not find it necessary to dwell into the merits of the case.

13. In the result, the appeal filed by the assessee in ITA No. 4526/DEL/2018 is treated as allowed.

The order is pronounced in the open court on 29.11.2018.

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 29<sup>th</sup> November, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	
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