

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DLEHI
BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No.5249/Del/2016
I.T.A. No.1743/Del/2018
Assessment Year: 2010-11

Mr. Deepak Gupta,
KH-88, Kavi Nagar, Ghaziabad.
(PAN:ACZPG8460B))

vs.

Income-tax Officer,
Ward -1 (2), Ghaziabad.

(Appellant)

(Respondent)

Appellant by: Shri Santosh K. Aggarwal, Advpcate
Respondent by: Ms Ashima Neb, Sr. DR

Date of hearing: 31.10.2018
Date of Pronouncement: 05 .11.2018

ORDER

PER BENCH

Challenging the orders dated 19.2.2015 and 4.12.2015 in Appeal No.87/2013-14 & Appeal No.447007361140916 by learned Commissioner of Income-tax (Appeals), Muzaffarnagar {for short "Id.CIT(A)"} for Asstt. Year 2010-11, assessee preferred these two appeals.

2. Assessee is an individual. He purchased a piece of agricultural land on 30.4.2007 In Village Morti, Pargana- Jalalbad, Tehsil & District Ghaziabad for Rs.25 lakhs. He sold the same on 1.12.2009 for Rs.50 lacs. However, in view of the

circle rate of said land at Rs.1,32,61,500/- stamp duty was paid on such amount though the sale consideration remained Rs.50 lakhs only. The assessee filed return of income for the Asstt. Year 2010-11 on 31.12.2010 disclosing an income of Rs.8,91,250/- but the AO did not accept the property as agricultural land and referred the matter to the District Valuation officer (DVO), Meerut for determining the fair market value of the land for assessment of capital gains. The DVO determined the value at Rs.83,74,000/-, basing on which the AO determined the short term capital gains of Rs.56,19,000/- and added it to the income of the assessee. Learned AO proceeded u/s 271(1)(c) of the Act and levied penalty of Rs.7,36,271/- by order dated 31.3.2016. Learned CIT(A) rejected the claim of the assessee in appeal by order dated 4.12.2017 and confirmed the penalty.

3. Aggrieved by the said order, assessee preferred appeal against the quantum addition before the learned CIT(A), Muzaffarnagar and by order dated 19.2.2015, the learned CIT(A) confirmed the addition with the following observations:

The facts of the case as well as oral submissions made by the appellant have been carefully considered. It is observed that the AO had made an addition of Rs. 56, 19, 000/-being short term capital gain on sale of plot of land on the ground that DVO had estimated the value of impugned property at Rs. 83, 74, 000/-.

On the other hand the appellant has contended that the AO was not justified to make addition of Rs. 56, 19, 000/-.

During the course of hearing the appellant submitted that he was expecting one report from Patwari to the effect that the impugned plot of land was not a corner plot as mentioned in the valuation report where the cast has been increased by 15% by the DVO.

However, till date of passing of this order, no such report has been furnished. Onus was squarely on the appellant to substantiate his claim by furnishing the requisite details and evidences which has not been discharged by the appellant.

The AO has based the addition on the basis of valuation report of the DVO and accordingly worked out short-term capital gain and addition made. The AO is duty bound to follow the report of the DVO which was referred by her. Once the matter was referred to the DVO and valuation report received, the AO was under obligation to follow the report of the DVO and adopt the figures of valuation as made in the valuation report.

That is in the light of the above facts, it is held that the AO was justified to make addition of Rs. 56, 19, 000/-. The same is hereby confirmed. Grounds of appeal numbers (i) 2 (iii) are dismissed.

4. Challenging the same, the assessee is in appeal before us stating that no reasonable or adequate opportunity was granted to him before passing the order and there is a factual error in the impugned order to the effect that the assessee made oral submissions and argued the case.

5. It is the argument of the learned AR that though the learned CIT(A) recorded that the assessee made oral submissions and argued the case but as a matter of fact, no such event had taken place and on 19.2.2015 i.e. the date of hearing Mr. B.K. Kapoor, CA, representing the assessee was running fever and could not enter appearance on behalf of the assessee. Learned AR submitted that there was no effective representation of the assessee before the learned CIT(A) and as a matter of fact, there is a strong case for the assessee to put forth before the CIT(A) basing on the reports dated 1.11.2012 and 14.2.2013 besides the copies of the khasra and khatau Vivekananda Phullewala methodology will acquire either Bhullar ni and other connected records.

6. Basing on these documents and the description of the property mentioned in the purchase deed and sale deed dated 1.12.2009, learned AR submitted that all these documents overwhelming proof that the nature of the property is an agricultural land and no capital gains arise out of it. He further submitted even the report of the DVO not properly appreciated by the learned AO and the first appellate authority.

7. Per contra, learned DR placed reliance on the recitals of the impugned order and submitted that the order speaks that there was representation on behalf of the assessee on the date of hearing and since the assessee failed to furnish the report from the patwari to the effect that the impugned plot of land was not a corner plot, as is mentioned in the valuation report whereby the cost of the property was increased by 15% by the DVO was not furnished by the assessee till the date of the passing of the impugned order, the learned CIT(A) is justified in passing the impugned order on merits.

8. We have gone through the record. There is no denial of the fact that the assessee produced the sale deed dated 30.4.2007 under which the assessee purchased the property and the sale deed dated 1.12.2009 through which he sold the same. Further, the reports dated 1.11.2012 and 14.2.2013 were before the learned AO besides the copies of the khasra and khatauni. In his submissions dated 5.11.2002 before the AO and 14.12.2012 before the Valuation Officer, the assessee raised so many objections with reference to these documents. However, no reference to these documents made by the learned CIT(A) for proper appreciation of the facts. The assessee produced the letter dated 12.2.2015 filed before the learned CIT(A) on 19.2.2015 to show that Mr. B.K. Kapoor, CA

representing the case of the assessee was suffering from fever and an adjournment was sought. However, the impugned order speaks that one Sanjay Aggarwal was present at the time of hearing and advanced the oral submissions.

9. Be that as it may, the date of hearing was 19.2.2015 and the date of order is also 19.2.2015. This clearly shows that on the date of hearing itself the impugned order was passed. However, the impugned order at para 3 says that during the course of hearing the assessee submitted that they were expecting one report from the patwari in respect of the location of the plot, but till the date of the passing of the order, no such report was furnished. We are unable to understand this inconsistency. When the order was passed on the date of hearing itself and at the time of hearing the assessee requested for time, then there is no rationale in the first appellate authority recording that till the date of passing of the order, no such report was furnished. Perhaps, it should have been till the time of passing of the order.

10. Having regard to these factual position, we are of the considered opinion, that there is some strength in the grievance of the assessee that some reasonable opportunity should have been granted to him to conduct the case effectively before the learned CIT(A).

11. Learned AR submitted that the matter may be remanded to the file of the AO so that a thorough enquiry made into all these factors. Learned DR, however, vehemently resisted this submission and prayed that, if for any reason the Tribunal comes to the conclusion that the impugned order has to be set aside and the issue has to be restored back for fresh decision, let it be restored to the file of the learned CIT(A).

12. Having regard to the facts and circumstances of the case, we deem it just and proper to set aside the impugned orders and to restore them to the file of the learned CIT(A) for fresh disposal after giving reasonable opportunity of being heard and also take a fresh view on the aspect of penalty.

13. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 5th November, 2018.

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated: 5th November, 2018.

'VJ'

Copy forwarded to:

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

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

By order

Asstt. Registrar, ITAT

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| Draft dictated on | 2.11.2018 |
| Draft placed before author | 2.11.2018 |
| Draft proposed & placed before the second member | |
| Draft discussed/approved by Second Member. | |
| Approved Draft comes to the Sr.PS/PS | |
| Kept for pronouncement on | |
| Date of uploading order on the website | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |