

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 1635/Del/2015
Assessment Year: 2011-12

VINOD TYAGI,
S/o Late Sh. Gangavasi Tyagi
VILLAGE-NOOR NAGAR,
SIHANI,
GHAZIABAD
(PAN: AGIPT1325P)
(ASSESSEE)

vs. ITO, Ward 2(1),
CGO Complex-2
Hapur Chungi,
Ghaziabad UP-201002

(RESPONDENT)

Assessee by: None

Revenue by: Sh. Sridhar Dora, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal is filed by assessee against the Order dated 5.12.2014 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2011-12 on the following grounds:-

1. That the Ld. CIT(A) erred both in law and on facts in disallowing the legitimate claim of exemption u/s. 54B of I.T. Act, in an abrupt, arbitrary and cursory manner without considering at all the clinching evidence relied upon by the appellant.
2. That in doing so, the Ld. CIT(A) further erred both in law and on facts in placing reliance exclusively on the recital of land as residential in the sale deed, which is nothing

but a typographical error and lack of vigilance and legal knowledge on the part of deed writer.

3. That even otherwise too the Ld. CIT(A) failed to appreciate that mere so called recital in the sale deed by no cannon of law a gospel truth and it does not rule out, supersede the entries in land revenue records maintained at Tehsil level.
4. That on the facts and the surrounding circumstance of the case, the Ld. CIT(A) has not appreciated the fact that mere so called description of land as residential in the sale deed itself is not a legal bar for exemption u/s. 54B of I.T. Act, as it clearly refers to "land" used for agricultural purposes, as in the case of appellant.
5. That on the facts and circumstances of the case, ignition of penalty proceeding u/s. 271(1)(c) of I.T. Act is not legally sustainable.
6. Any additional ground / grounds.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. None appeared on behalf of the Assessee. Ld. DR relied upon the orders of authorities below.

4. We have heard the Ld. DR and perused the records. We find that assessee has filed a Paper Book containing pages 1-98 in which he has attached the acknowledgement of ITR and computation for AY 2011-12; assessment order u/s. 143(3) of the I.T. Act, 1961 alongwith copy of submission dated 19.2.2014 to provide a clear copy of text copied by AO in his assessment order; appellate order u/s. 250 of the I.T. Act, 1961; copy of sale deed for sale of land; copy of submission

made to AO on 24.2.2014; copy of Fard submitted to AO for crop years 1416,1417; copy of ITR and computation of income for AY 2009-10, 2010-11 showing agricultural income; certified copy of khata khatauni showing title of land as agricultural alongwith Death Certificate of father of the assessee; certified copy of Khasra Girawari for crop year 1416,1417 and 1418 reflecting agricultural activity on subject land; clarification by Tehsildar on Crop year and its corresponding calendar months; CIT vs. Savita Rani; 2003 133 Taxman 712 (P&H); ACIT vs. Sri N Raghu Varma; ITA No. 613/Yd/2010, ITAT, Hyderabad and CWT, Andhra Pradesh vs. Officer in Charge (Court of Wards) 1977 AIR 113 (SC). We find in the grounds of appeal the assessee submitted that lower authorities erred in disallowing the legitimate claim of exemption u/s. 54B of I.T. Act, in an abrupt, arbitrary and cursory manner without considering at all the clinching evidence relied upon by the assessee. It was further mentioned that in doing so, the Ld. CIT(A) further erred in placing reliance exclusively on the recital of land as residential in the sale deed, which is nothing but a typographical error and lack of vigilance and legal knowledge on the part of deed writer. It was further mentioned that even otherwise too the Ld. CIT(A) failed to appreciate that mere so called recital in the sale deed by no cannon of law a gospel truth and it does not rule out, supersede the entries in land revenue records maintained at Tehsil level. It was further mentioned that on the facts and the surrounding circumstance of the case, the Ld. CIT(A) has not appreciated the fact that mere so called description of land as residential in the sale deed itself is not a legal bar for exemption u/s. 54B of I.T. Act, as it clearly refers to "land" used for agricultural purposes, as in the case of assessee. In view of the above contention of the assessee made in the grounds of appeal and in the interest of justice, we set aside the issues in dispute to the file of the AO to decide the same afresh, in accordance with law and after

considering the documentary evidences filed by the assessee, as aforesaid and give adequate opportunity of being heard to the assessee. Assessee is also directed to fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 20/12/2018.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Date 20/12/2018

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches