

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.Nos.4735/Del./2018
Assessment Year 2010-2011

Shri Vinod Kumar, S/o. Shri Randhir Singh, VPO Saboli Nathpur, Distt. Sonipat. PAN ANXPV9444M	vs.	The Income Tax Officer, Ward-5, Sonapat.
(Appellant)		(Respondent)

For Assessee :	Shri Naveen Kumar Goyal, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	26.02.2019
Date of Pronouncement :	08.03.2019

ORDER

This appeal by assessee has been directed against the Order of Ld.CIT(A), Rohtak, Dated 04.05.2018, for the A.Y. 2010-2011, on the following grounds :

- 1. "That Order of Ld.CIT(A) and Ld. A.O. is bad in law and liable to be quashed.*
- 2. The CIT(A) has erred in law and on facts in upholding the additions of Rs.20,59,064/-.*

3. *That Ld.CIT(A) and Ld. A.O. has erred in law and on facts by not considering the claim of the appellant for Exemption u/s.54F of the Income Tax act, 1961.*
4. *The Ld.CIT(A) has erred in law and on facts not considering the appellant plea that sufficient opportunities not provided by the Ld. A.O.”*

2. Briefly the facts of the case are that as per information available on record, assessee has not filed return of income for the assessment year 2010-2011. The assessing officer, after recording reasons initiated reassessment proceedings. Notice under section 148 was issued on 20th March, 2015. In response thereto, assessee has filed the return of income, declaring income of Rs.90,340/- + Rs.95000/- agricultural income on 8th March, 2016. The A.O. issued statutory notice for completion of the asst. The A.O. on perusal of the reply filed by the assessee and copy of the registered deed of land sold by assessee, noted that assessee has sold land measuring ac.2. acres for Rs.90 lakhs at village Bazidpur saboli and circle rates for the year 1997-1998 at village Bazidpur saboli

was Rs.2 lacs per acre. There are four shareholders viz., (1) Smt. Geeta D/o. Shri Randhir Singh, (2) Smt. Manju D/o. Shri Randhir Singh (3) Shri Vinod S/o. Shri Randhir Singh and (4) Shri Sanjeet S/o. Shri Randhir Singh, each having equal shares. Thus, the share of the assessee comes to Rs.22,50,000/-. The distance of Bazidpur saboli from Singhu Border (MCD area) is about 5.5 km. Away. The assessee explained that the amount of sale proceeds was invested in residential house and hence no capital gain arises but he failed to submit any supporting documents in respect of construction of house. As the distance of the concerned land from Singhu Border, Delhi is about 5.50 km. and from Sonipat Municipal Limit, it is about 14 km. and as the land is situated within 8 km. from MCD limit, therefore, land sold was found to be capital asset and thus, taxable. The assessing officer calculated long term capital gain at Rs.20,59,064/- and completed the assessment on 29th April, 2016.

3. The assessee challenge the addition before the Learned CIT(A) and also requested for admission of the

additional evidence. The assessing officer sent remand report at the appellate stage, which is produced in the appellate order. The assessing officer, in the remand report mentioned that sufficient opportunity of being heard have been granted to the assessee at the assessment stage and that assessee furnished valuation report of construction of residential house which is prepared by the valuer on 9th February, 2018. During the assessment proceedings, assessee simply stated that the funds received against sale of the land were utilised in the construction of residential house. The assessing officer asked the assessee to produce relevant bills and vouchers in respect of construction of residential house, but, the assessee failed to furnish the same, despite giving proper opportunity. Now during the appellate proceedings, assessee furnished valuation report on 9th February, 2018 without supported by any copy of the bill/voucher for construction of house. The report is prepared after 8 years, therefore, the same is not genuine and reliable. The remand report was also provided to the assessee. The Learned CIT(A), thereafter, decided all the

issues as raised by the Counsel for Assessee before him regarding sufficient opportunity, distance of the land from Municipal limit and construction of residential house. The Learned CIT(A) found that assessee has been given ample opportunities. The contention of the assessee that the land in question is not capital asset as the land is more than 8 km. away from Municipal limit of Sonipat was not accepted and rejected. The assessee did not substantiate that sale proceeds have been invested in residential property within the stipulated time. Therefore, the contention of assessee were rejected. The Learned CIT(A), therefore, held that land sold by assessee was not agricultural land, but, it was a capital asset as per Section 2(14) of the Income Tax Act. Further, assessee was failed to prove that sale proceeds were invested in residential property, therefore, benefit of Section 54F is not available to assessee. The appeal of assessee was accordingly dismissed.

4. After considering the rival submissions, I am of the view that no interference is called for in the matter. The Learned Departmental Representative was directed to

produce record. The Learned Departmental Representative produced the record. Learned Counsel for the Assessee also filed copy of the remand report filed by Assessing Officer before Learned CIT(A). The Order sheet of the assessing officer shows that A.O. had taken-up the assessment proceedings in March 2015 and thereafter, has taken-up the proceedings several times in April 2015 May 2015, July 2015, September 2015, October 2015, November 2015, December 2015, and January 2016, but, none of the statutory notices have been responded by the assessee. The assessee appeared at the later stage of the assessment proceedings and filed the written submissions, which have been considered by the assessing officer. The assessee produced the valuation report and some other documents at appellate stage, on which, Learned CIT(A), called for the remand report. Thus, the A.O. as well as the Learned CIT(A) have given sufficient opportunity of being heard to the assessee. Therefore, there is no merit in the contention of Learned Counsel for the Assessee that no proper opportunity have been granted to the assessee at any stage.

Further, the Learned Counsel for the Assessee submitted that the Learned CIT(A) should have admitted the additional evidence. At this stage also, Learned Counsel for the Assessee filed copy of the Certificate of Architects dated 4th February, 2019 and some bills of building material, which are not attested and no application have been filed for admission of the additional evidence. No reasons have been explained as to why the same were not produced before the authorities below. The Learned Departmental Representative, therefore, rightly contended that the same papers cannot be admitted at this stage, since, no request have been made by assessee for admission of the additional evidences by filing a proper application and no reasons have been explained why these documents were not filed before the authorities below. Therefore, the Certificate of the Architects dated 4th February, 2019 and bills of building material cannot be taken into consideration. The request of the Learned Counsel for the Assessee to entertain these documents is, therefore, rejected. During the course of arguments Learned Counsel for the Assessee did not point

out any error in the Orders of the authorities below that the land sold by the assessee was not capital asset. The assessee also failed to prove that sale proceeds were invested in residential house within the time prescribed under the Law. Therefore, assessee failed to substantiate any of the grounds raised in the present appeal. In the absence of any evidence or material or any submissions in respect of Grounds of Appeal, the appeal of assessee has no merit and the same is accordingly dismissed.

5. In the result appeal of Assessee dismissed.

Order pronounced in the open Court.

Delhi, Dated 08th March, 2019
VBP/-
Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.