

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.334/Del/2016
(Assessment Year: 2008-09)

Sh. Naresh Kumar, S/o. Shri Rishal Singh, R/o. House No. 90, Baprola Village, New Delhi PAN: AWIPS4862N	Vs.	ITO, Ward-42(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Naveen Singh, CA
Revenue by:	Smt Sugandha Sharma, Sr. DR
Date of Hearing	06/03/2019
Date of pronouncement	24/05/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-15, New Delhi dated 26.10.2015.
2. The assessee has raised the following grounds of appeal:-
 - “1. Recording the belief of escapement of income and in thereafter issuing a notice u/s 147/148 of the Income Tax Act, 1961 to the Appellant;
 2. Carrying out the assessment u/s 144 of the Income Tax Act, 1961 in wrong hands of the Appellant without a specific notice in that behalf;
 3. Completing the assessment without providing reasonable, adequate and proper opportunity of hearing;
 4. Charging a sum of Rs. 1,26,14,035.00/- to capital gain tax by adopting estimated fair market value as on 01-04-1981 without any evidence basis.
 5. Deduction under section 54B for investment in agricultural land is not given any relief.”
3. Brief facts of the case shows that assessee is an individual, not having any permanent account number, assessed u/s 144 read with section 147 of the income tax by the order dated 28/2/2014 wherein the total income of the assessee was assessed at INR 1 2614035/-.

4. The information was received in this case from the office of The Director Of Income Tax (Investigation), New Delhi on 22/10/2009 that assessee has sold one agricultural land admeasuring 7.6875 acres comprising various sellers at village Baprola Delhi to M/s Experience builder private limited for a consideration of INR 196,000,000/- and in the said land the share of the assessee is 10%, therefore, assessee has received a sum of INR 19603125/- during the financial year 2007 - 08. Therefore the learned assessing officer issued inquiry letter to the assessee but no reply was received, therefore, another letter dated 1/2/2012 was issued and same also remained uncomplied with. Therefore the learned assessing officer recorded the reasons for initiating proceedings for assessing income of the assessee under section 147 of the act, notice u/s 148 was issued on 29/8/2012. However in response to that notice no response was received and therefore the notice u/s 142 (1) was issued on 14/1/2013, same also remain uncomplied with. Therefore, after the several opportunities granted to the assessee but he did not appear before AO. So Assessing officer was left with no other alternative but to pass an order u/s 144 of the income tax act and he found that the capital gain on sale of the land has escaped the assessment. To compute the capital gain, the learned AO estimated the fair market value of such property as on 1/4/1981 amounting to INR 1650000/- per Acre gathered from different sources and computed the capital gain on the sale of land considering the sale consideration of INR 19603125/- and granting indexed cost of acquisition as deduction of INR 6889090/- , computed the long-term capital gain of INR 12614035/-. Consequently the assessment order was passed.
5. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT -(A) - 15, New Delhi. The learned CIT - A passed an order on 26/10/2015 in case of all the 10 joint owners of the land dismissing their appeals. Before the learned CIT - A the assessee raised an objection that the reopening of the assessment is invalid as notice u/s 148 of the act issued by the AO on 29/8/2012 , was never served on him. Hence the proceedings under section 148 was challenged. The learned CIT - A verified the assessment record and found that notice u/s 148 of the act was issued on 29/8/2012 on the same date through Speed

speed and there is no evidence on record to suggest that the notice has returned back by postal authorities as unserved. Therefore respectfully following the decision of the honourable Jharkhand High Court in case of Miln Poddar vs CIT 357 ITR 619 as well as the honourable jurisdictional High Court in case of CIT vs Madhsy films private limited 301 ITR 692 dismissed this ground, as assessee has failed to give any evidence to establish that notice u/s 148 has returned back or unserved. He stated that therefore normal presumption has to be drawn that the notice was duly served upon the appellant within the time limit prescribed under the act. The 2nd objection raised before him for the computation of the capital gain stating that the capital gain did not belong to the assessee as an individual but it belonged to the Hindu undivided family of Sri Dalel Singh stating that the land was inherited by his father, who in turn had inherited it from his father. Therefore the contention of the assessee was that since the land belonged to the HUF of the appellant, AO has wrongly issued notice u/s 148 to the assessee in individual capacity. The learned CIT – A rejected the above explanation stating that the enquiry report received from the assessing officer shows that the assessee has sold the property in his individual capacity and not in HUF capacity. Therefore he held that the property belongs to the assessee and in individual capacity and not in the hands of the Hindu undivided family. The 3rd objection raised by the appellant is the reason for reopening was not communicated to the assessee. The same argument was also rejected stating that notice u/s 148 of the act was issued along with the reasons recorded therein which was sent through speed post and the assessee did not comply with the notices and therefore the above objection does not survive. On the merits it was stated that AO has estimated the cost of acquisition without any material available but is on arbitrary valuation. The learned CIT – A held that the cost of the land for the purpose of computing the indexed cost of acquisition has been taken at INR 1 650000 per acre by the assessing officer on the basis of information gathered by him from different sources to know that what is the fair market value as on 1/4/1981. He held that as the appellant could not find any fault except raising general objection, he rejected it.

Consequently appeal in cases of all 10 persons being the joint owners of the above land were dismissed.

6. Therefore, aggrieved with the order of the learned CIT – A the assessee is in appeal before us. Firstly the assessee contested the same argument as raised before the learned CIT – A that notice u/s 148 was never served on anyone at anytime. It was further stated that assessee himself took assessment file inspection and he has not seen the delivery status report of the notices sent by speed post in the assessment file. He therefore stated that the order passed under section 148 of the income tax act without service of notice under that section is invalid. The 2nd point the assessee raised is that the land belonged to the HUF of the assessee but not to the assessee. The notices should have been issued to the Hindu undivided family of the assessee but according to the assessment order it has been issued on the individual status of the assessee, therefore, the notice issued is also invalid. Therefore the order passed by the learned assessing officer taxing the above capital gain in the hands of the individual status of the assessee in state of Hindu undivided family is invalid. He submitted that action has been taken against the wrong person. He reiterated the same argument as were raised before the learned CIT – A. The 3rd point that was raised is that he further challenged the notice itself stating that the notice dated 1/7/2014 which was issued to the assessee at addressed K 01 – 06, Mohan Garden, Nagar, New Delhi 59 does not mention the permanent account number, father's name and address is incorrect. He further referred to the another notice dated 28/2/2014 stating that there are more than one person of the similar name in the village and when the assessee questioned the assessing officer about the receipt of the above notice and by which person, no reply was given to the assessee. He further stated that the name of the assessee is Mr Naresh Kumar Solanki and the permanent account number of the assessee is AWIPS4862N and the address of the assesseees 90, village Baprola, Najfgarh , New Delhi 43. He therefore submitted that the learned assessing officer never mentioned the permanent account number in the notice. He also noted the error in the writing of the name of the father of the assessee. Adverting to the 2nd ground of the appeal he stated that the passing of the assessment order

u/s 144 of the income tax act in wrong hands of the appellant without a specific notice in that behalf in completing the assessment without providing the reasonable and adequate and proper opportunity of hearing is bad in law. It only contention in this regard is that the income is required to be assessed in the hands of the Hindu undivided family and not the assessee in the individual capacity. With respect to the 4th ground of appeal with respect to the chargeability of the capital gain he submitted that the learned AO has estimated the fair market value as on 1/4/1981 without any evidence. His main argument is that the learned assessing officer has gathered the market rate as on 01/04/1981 but has not shown the evidences for estimating the same.

7. The learned departmental representative vehemently stated that that notice has been served to the assessee by the speed post which is not returned back and therefore same is deemed to have been served. It is further submitted that the assessee has never appeared before the assessing officer or objected to it despite service of the letters as well as the notice. With respect to the merits of the case he stated that the assessee has sold his agricultural land at Baprola village under the limits Municipal limits which is covered as a capital asset chargeable to tax the capital gain. He further relied upon the decision of the honourable Delhi High Court in 125 Taxman 1075 for this proposition. He further referred to the decision of the learned assessing officer as well as the learned CIT – A and submitted that all the issues have been covered exhaustively by these 2 lower authorities on the merits of the case. He further submitted that the assets does not devolve upon the assessee in his HUF status but in the hands of assessee in his individual status. He therefore submitted that the order of the lower authorities deserves to be upheld on this count. Further with respect to the fair market value of the land, he submitted that as assessee has not produced any information before the learned assessing officer and has also not reported before the learned CIT – A, therefore, now the assessee cannot question that the fair market value of the property as on 1/4/1981 adopted by the learned assessing officer is erroneous. He submitted that if assessee wanted to dispute it seriously then he should have produced the valuation report of the registered valuer before the AO or

before the learned CIT – A. It is not produced before bench also. In view of this it is submitted that now assessee cannot challenge the above ground.

8. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts clearly show that the assessee has sold an agricultural land for Rs 19,60,00,000 in village Baprola to M/s Experience builder private limited wherein the assessee's having 10% share. Accordingly, assessee received a sum of INR 1 9603125/-. On the basis of the information received from the annual information return (AIR) as per address mentioned in the sale deed, the learned assessing officer sent communications for inquiring about the chargeability of capital gain on transfer of above assets. However assessee did not respond to the communications. Therefore the learned assessing officer issued notices u/s 148 of the income tax act at the same address. The notices were admittedly sent by the speed post at the given addresses which were never returned as unserved. The learned CIT – A has noted that assessee has been served the notice through speed post bearing number ED613882447 IN and there is no evidence on record to suggest that this notice was returned back by postal authorities as unserved. He has followed the decision of the honourable Jharkhand High Court in 357 ITR 619. The assessee has stated that on inspection of the file it did not find any evidence of service of the notice. It is to be noted that he did not find any cover returned unserved. The notices were sent at the address which is mentioned in the sale deed. Assessee did not file any return of income nor mentioned the PAN in the sale deed. The return filed by the assessee are also for Ay 2011-12 and not Ay 2008-09. The ld AO did not have any mechanism to find out who is the person who has sold the land. The only source of information is the copy of the sale deed and address mentioned there in , notices / communication were sent. It is not the claim of the assessee that in sale deed wrong address is mentioned. Therefore, the argument of the assessee that no notice has been served on the assessee is rejected.
9. Further with respect to the claim of the assessee that the land belongs to the Hindu undivided family and not in the status of individual is also dealt with by the learned CIT A wherein he held that in the documents submitted by the assessee for the sale of land, it is nowhere mentioned that the

assessee has sold the above land in the name of Hindu undivided family. Further in all the documents the names of all the appellants including Sri Dalel Singh is mentioned in their individual capacity only. Further the enquiry report also names the appellants in their individual capacity only. In view of this we reject the claim of the assessee that capital gain is chargeable to tax even if it is at all in the hands of the Hindu undivided family.

10. As we already rejected the argument of the assessee that land belongs to the Hindu undivided family and not to the assessee in his individual capacity, all the arguments of the assessee with respect to the service of notice not made in the hands of the Hindu undivided family of the assessee is also rejected.
11. Accordingly we dismiss the ground number 1 – 3 of the appeal of the assessee.
12. In the present appeal it is not disputed by the assessee that the land sold is not a capital asset transfer of which is chargeable to income tax under the provisions of section 45 of the income tax act. Therefore, the arguments placed by the learned departmental representative that whether the sale consideration received is chargeable to tax or not is not an issue in this appeal.
13. Adverting to the 4th ground of appeal which is against the adoption of the estimated market value as on 1/4/1981 without any evidence by the learned assessing officer, facts shows that learned assessing officer has computed the capital gain by adopting the fair market value of the asset as on 1/4/1981 at INR 1,650,000 per acre on the basis of the market enquiries. However no evidence of such market enquiries was shown to the assessee. According to the provisions of section 55 (1) of the act , for the purpose of computation of capital gain u/s 48 of the income tax act, the cost of acquisition being land is required to be taken at the cost of acquisition of the asset to the assessee or the fair market value of the asset as on 1/4/1981 at the option of the assessee. According to the provisions of section 2 (22B) of the income tax act, the fair market value in relation to a capital asset means the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date i.e 01/04/1981. As the

learned assessing officer has not given any evidence that how the fair market value has been determined by him, we reject the fair market value adopted by the learned assessing officer of INR 1,650,000 per acre as on 1/4/81. It is also true that assessee has also not produced before the lower authorities any evidence with respect to FMV of the land as on 1/4/1981. In view of this, we set aside this issue back to the file of the learned assessing officer to determine the fair market value of the impugned property as on 1/4/81 by giving an opportunity to the assessee to first show the cost of acquisition of the asset and fair market value of the asset. Then at the option of the assessee any one of them can be taken as cost of acquisition of the asset for indexation. If the learned assessing officer is not satisfied with the fair market value of the asset shown by the assessee as on 1/4/1981, then the learned assessing officer may decide the whole issue either by referring the matter to the district valuation officer for determining the fair market value or accepting the fair market value shown by the assessee and then decide the computation of the capital gain on sale of the above land in accordance with the provisions of the law. Accordingly ground number 4 of the appeal of the assessee is set aside to the file of the learned assessing officer with above direction.

14. The 5th ground of appeal is with respect to the deduction under section 54B for investment in agricultural land. No arguments were advanced before asked by either of the parties on this issue. Therefore this ground of appeal is dismissed.
15. Accordingly appeal of the assessee is partly allowed with above directions. Order pronounced in the open court on 24/05/2019.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 24/05/2019

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT 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	
Date of dispatch of the order	