IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.2641/Del./2016
(ASSESSMENT YEAR : 2006-07)

Smt. Shanti Devi, W/o Shri Mool Chand, C/o Shri Mahavir Singh, Advocate 1078, Sector 15, Part 2, Gurgaon – 122 001. **(PAN : ARNPD8936G)**	vs.	ITO, Ward 2, Rewari.

ITA No.2643/Del./2016
(ASSESSMENT YEAR : 2006-07)

Smt. Shashi, D/o Shri Mool Chand, C/o Shri Mahavir Singh, Advocate 1078, Sector 15, Part 2, Gurgaon – 122 001. **(PAN : ARNPD8936G)**	vs.	ITO, Ward 2, Rewari.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Mahavir Singh, Advocate
REVENUE BY : Shri Surender Pal, Senior DR

Date of Hearing : 12.06.2019
Date of Order : 14.06.2019

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellants, Smt. Shanti Devi and Smt. Shashi (hereinafter referred to as the 'assessees') by filing the present appeals sought to set aside the impugned orders both dated 09.02.2016 passed by the Commissioner of Income-tax (Appeals)-2, Gurgaon qua the assessment year 2006-07 on the identical grounds inter alia that :-

> ***"1. The Ld. Commissioner of Income Tax (A) has erred in law and in facts in deciding first ground of appeal regarding proper service of notice under section 148 without looking in to the record and without calling for any evidence of service from the AD on whom the burden of service lies at the first instance by passing almost non speaking order in just 8 words "There is no evidence of non-service of notice". It is prayed that in the absence of proper service of notice u/s 148, the assessment proceedings may kindly be quashed ab initio.***
>
> ***2. The Ld. CIT (A) has also erred in fact and in law by upholding the issue of notice u/s 148 of the Act on merits without giving just a cursory look to the reasons recorded and also quoted in the assessment as well as appellate order. The action of the CIT(A) is illegal, arbitrary, unjustified and against the bare facts of the case. It is prayed that in view of above facts and circumstances of the case, the assessment proceedings may be not only quashed alone but with further directions as per discretion of the Honorable Court.***
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> ***3. The Ld. CIT (A) has erred in law and in facts by assuming that the land in question is covered in the definition of capital asset in view of the notification issued by CBDT vide F.No.164/03/87 ITAI dated 06-01-1994 by relying on the text from TAXMANN while ignoring the official Gazette notification produced by the assessee during appellate proceedings and also admitted by the AO in his remand report that there is mistake in the name of the place which is Dhantera in the notification where as land in question was in Dharuhera. It is prayed that due to above facts and circumstances of the case the property***

sold in 2005 in Dharuhera may not be allowed to be treated as capital assets.

4. That the Ld. CIT (A) has also erred in law and in facts by confirming the taxing of total receipts of sale of land in place of taxing the capital gain only computed as per provisions of law after deducting the indexed value of the property from the total receipts by holding that this contention does not find place separately in grounds of appeal though contested strongly during appellate proceedings. It is prayed that indexed value of the property by taking the value of the land as 6400 per kanal as on 01/04/1980 may be allowed for computation of capital gain.

5. The Ld. CIT (A) has erred in law and in facts in rejecting the claim of the assessee u/s 54F of the LT. Act. It is prayed that exemption as claimed u/s 54F during appellate proceedings may be allowed."

2. Briefly stated the facts necessary for adjudication of the controversy at hand in both the aforesaid appeals are : On the basis of information available in case of M/s. Mool Chand HUF, notice dated 26.03.2013 under section 148 of the Income-tax Act, 1961 (for short 'the Act') was issued after recording reasons that, "In the case of M/s Mool Chand HUF that said HUF had sold a land at Dharuhera for a consideration of Rs.8,89,12,500/- in the F.Y.2005-06 for AY 2006-07 which was a capital assets, therefore, notice u/s 148 for AY 2006-07 was issued to M/s Mool Chand HUF. During the course assessment proceedings Smt. Shanti Devi wife, Ajit Singh & Sunil son and Smt. Savita & Shashi Bala daughter of late Sh. Mool Chand filed a reply stating therein that M/s Mool Chand HUF was not in existence in past nor present. They further stated that the land sold by Smt. Shanti Devi wife, Ajit Singh & Sunil son

and Smt. Savita & Shashi Bala daughter of the late Sh. Mool Chand on 29.12.2005 was in their individual capacity, Keeping in view the facts, substantive assessment was made vide order dated 28.03.2013 in the hands of M/s Mool Chand HUF and to protect the interest of revenue, assessment proceeding are being initiated in the individual capacity being T.B. matter involved. The share of the assessee was calculated at Rs.1,78,73,561/- in the land in question. The land sold by the assessee is situated at Dharuhera and therefore is situated within the limits of notified area of Dharuhera, thus, the land in question is covered in the definition of Capital Assets in view of the notification issued by the CBDT on 06.01.1994 F.No. 164103187 ITAI dated 06.01.94. The assessee's share of Rs.1,78,73,561/- in the land in question is liable for LTCG. In this regard, the assessee has not filed his return of income for the A. Y. 2006-07 relevant to F. Y. 2005-06."

3. AO, having reason to believe that the assessee has not disclosed his income from capital gain and from other income, which subsequently comes to the notice of the AO and the same has escaped assessment within the meaning of section 147 of the Act. AO stated to have provided numerous opportunities to the assessee by way of issuance of notice u/s 142(1) of the Act and on failure of the assessee to appear, proceeded to make addition of

Rs.1,78,73,561/- and Rs.1,77,55,511/- in case of Smt. Shanti Devi and Smt. Shashi respectively on account of Long Term Capital Gain (LTCG) on protective basis.

4. Assessees carried the matter by way of appeals before the ld. CIT (A) who has confirmed the additions by dismissing the appeals in both the cases. Feeling aggrieved, both the assessees have come up before the Tribunal by way of filing the present separate appeals.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, both the assessees along with other co-sharer, total 5 in numbers, had sold agricultural land situated at Dharuhera, District Rewari for a sale consideration of Rs.8,89,12,500/- on 29.12.2005. It is also not in dispute that Assessing Officer vide order dated 28.03.2013 made substantive assessment in the name of M/s. Mool Chand HUF but under the garb of protecting the interest of Revenue, AO made assessment in the name of assessees in their individual capacity by way of initiating the proceedings u/s 148/147 of the Act.

7. Ld. AR for the assessee challenging the impugned order contended inter alia that the issue in controversy is covered vide order dated 28.12.2018 in case of one of the co-sharers who had also sold land and in whose case, assessment proceedings were also initiated in individual capacity; that when substantive assessment in the hands of M/s. Mool Chand HUF has already been made, protective assessment against the assessees in their individual capacity, is not sustainable and as such, is liable to be quashed. However, on the other hand, ld. DR for the Revenue, relied upon the order passed by the AO/ld.CIT (A).

8. When we examine the very basis of initiating the reassessment proceedings from the "reasons recorded" by the AO which are extracted in the preceding paras, it goes to prove that substantive assessment on the basis of same subject matter of this case has already been made vide order dated 28.03.2013 in the hands of M/s. Mool Chand HUF, but only under the garb of protecting the interest of Revenue, assessment proceedings have been initiated against both the assessees in these cases in their individual capacity.

9. First of all, when both the assessees being partners of M/s. Mool Chand HUF have already faced with the substantive addition in their hands on the same subject matter, it is very surprising as to

how they have been put to another round of assessment proceedings in their individual capacity.

10. Even otherwise, the entire exercise of recording the reasons dated 26.03.2013 by the AO is proved to be anti-dated one because when substantive assessment in the hands of M/s. Mool Chand HUF has been made on account of LTCG on 28.03.2013, which fact has been recorded in the reasons itself, then how and under what circumstances, the AO has recorded all these facts in reasons recorded on 26.03.2013. In these circumstances, we are of the considered view that notice u/s 148 of the Act has not been issued in the true spirit rather a malafide exercise has been made by issuing the notice on the basis of anti-dated reasons recorded by the AO, which makes the notice invalid nor the AO was having any reason at that point of time that the assessee has not disclosed his income from capital gain and any other income and the same has escaped assessment. We are constrained to record that this is an exercise carried out by the AO as well as by the ld. CIT (A) to generate unnecessary litigation.

11. In view of what has been discussed above, we are of the considered view that in the absence of valid issuance/service of notice u/s 148 of the Act, no valid reassessment can be initiated. When the notice issued u/s 148 of the Act is prepared anti-dated,

consequent assessment order is liable to be quashed on this score only. Even otherwise, when substantive assessment has already been made in the hands of M/s. Mool Chand HUF of which both the assessees are partners, initiation of assessment proceedings u/s 147/148 of the Act is misuse of process of law. So, the ld. CIT (A) has erred in confirming the addition made by the AO by losing sight of all the material perversity and illegality of the assessment order. Consequently, both the assessment orders passed in case of both the assessees for AY 2006-07 are ordered to be quashed, hence both the appeals filed by the assessees are allowed.

Order pronounced in open court on this 14th day of June, 2019.

Sd/-	**sd/-**
(G.D. AGRAWAL)	**(KULDIP SINGH)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated the 14th day of June, 2019
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-2, Gurgaon.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.