

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 6390/Del/2016
(Assessment Year: 2007-08)**

Rohtas Singh, Kirti Karan Goel & Associates, Opp. Thana Civil Lines, Near Ambedkar Chowk, Old G.T.Road, Karnal-132001. PAN-ADIPS0484R	Vs	ITO, Ward-3, Karnal.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Surender Pal, Sr.DR	

**ITA No:- 6392/Del/2016
(Assessment Year: 2007-08)**

Late Sh. Ram Sarup, Through Legal Heir Sudesh Kirti Karan Goel & Associates, Opp. Thana Civil Lines, Near Ambedkar Chowk, Old G.T.Road, Karnal-132001. PAN-BPCPK1493R	Vs	ITO, Ward-5, Karnal.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Surender Pal, Sr.DR	

ORDER

PER ANADEE NATH MISSHRA, AM

These two appeals filed by the aforesaid two different assessees have been filed against two separate orders, each dated 07.10.2016 passed by Ld.CIT(A), Karnal, pertaining to 2007-08 assessment year. For the sake of convenience, these two appeals are disposed of through this consolidated order. In both the appeals, the disputed

issues relate to the provision u/s 54 of the Income Tax Act, 1961 ("Act"). In both the appeals, the grounds of appeals are similarly worded. In the case of Late Sh. Ram Sarup assessment order u/s 147/143(3) of the Act was passed on 26.03.2015 wherein addition of Rs.86,02,120/- was made towards Long term Capital Gain ("LTCG"). Similarly, in the case of Sh. Rohtas Singh assessment order u/s 143(3)/147 was passed on 27.03.2015 wherein an addition of Rs.1,42,91,610/- was made on account of LTCG. The relevant portions from two assessment orders are reproduced as under:-

ITA No:- 6390/Del/2016 [In the case of Sh. Rohtas Singh]
(Assessment Year: 2007-08)

The notice under section 148 was issued after recording the following reasons

"As per the information available from Deputy Director of income-tax (Investigaton), Panipat, Sh. Randhir Singh S/o Sh. Mongol Singh, Vill. Uchana has sold the land for Rs. 3,83,00,000/- on 26.03.2017 during the F. Y. 2006-07 (A. Y. 2007-08).

The assessee was asked to explain the sale of property/capital gain u/s 133(6) vide inquiry letters dated 26.12.2013 reminder dated 23.01.2014 duly served upon him. But assessee has failed to furnish any explanation despite several opportunities given to him. It is, thus, presumed that assessee has no explanation in the matter.

The land measuring 9 Acre 4 Kanal 12 Marla in village Uchana, Karnal was owned by the assessee. The rate of land in Village Uchana was approx. Rs. 1,00,000/- per acre in the year 1981-82. Accordingly the cost of acquisition of the land in question measuring 9 Acre 4 Kanal 12 Marla in village Uchana works out to Rs. 9,50,000/-. Hence, the indexed cost of acquisition works out to Rs. 49,30,500/-. Thus, the LTCG works out to Rs. 3,33,69,500/-

(3,83,0000/- minus 49,30,500/-). Thus, Capital Gain amounting to Rs. 3,69,500/- has escaped assessment for the A. Y. 2007-08.

Therefore, there is lapse on the part of the assessee to disclose fully and truly all material facts and information relating to sale of land at Rs. 3,83,000/- which caused escapement of long term capital gain of Rs.3,33,69,500/- on sale of land as he has not filed his return of income.

I have therefore, reasons to believe that long term capital gain on sale of above land has escaped assessment for the A. Y. 2007-08 and liable to tax. ”

3. Since the land sold by the assessee falls within Municipal Limit, the assessee required to explain as why the Long Term Capital Gain may not be charged on Rs.3,33,89,500/- as discussed above. Assessee has filed reply on 09.05.2014, 16.06.2014, 06.07,2014 and 18.03.2015 along copy of registration deeds and valuation report from the Govt. Approved valuer and explained that he has purchased agricultural land of Rs. 1,43,30,500/- in the name of his spouse (Smt.Saraswati Devi) and agricultural land of Rs.96,02,000/- in his name and purchased a plot of Rs. 10,60,000/- and constructed residential house thereon spending Rs. 98,16,000/- within the period of two years from the date of sale of agricultural land. Copy of purchase deeds showing purchase of agriculture land, copies of affidavits regarding purchase of plot from seller and a valuation certificated dated 24.04.2014 and detailed valuation report dated 11.08.2014 from the Govt. approved valuer in support of his claim that he has made investment in purchase of agriculture land, purchase a plot and constructed a house which are placed on record after due verification. Assessee has, thus, claimed exemption u/s 54B and 54F in respect of whole amount of capital gain.

I have carefully considered the reply filed by the assessee. The facts and circumstances of the case laws filed by the assessee and the facts of the case of the assessee are distinguishable. Hence, the contentions put forth by the assessee are not acceptable in toto. As per provisions of Section 54B of the I.T.Act, 1961, exemption is

allowable only in the case of investment for purchase of agriculture land by the assessee. Further, the assessee has failed to explain the circumstances and reasons for purchase of agricultural land in the name of spouse except filing affidavits stating there that he has purchased land in name of his wife for availing lower stamp duty charges. Hence, the exemption u/s 54B of the I.T.Act, 1961 of the amount of Rs.1,43,30,500/- for purchase of agricultural land in the name of his spouse (Smt.Saraswati Devi) is rejected. Therefore, keeping in view the above facts and circumstances of the case, the exemption u/s 54B of the I.T.Act, 1961 on investment in agricultural land of Rs.96,02,000/- in the name of the assessee is allowed and investment on purchase of plot of Rs. 10,60,000/- and on construction of residential house spending at Rs.95,16,000/- totaling Rs.1,08,76,000/- made by the assessee on which deduction u/s 54F is allowable at Rs.94,75,890 as per the following calculations:-

The exemption u/s 54 F is worked out as under:-

$$\begin{aligned} &= \text{Long term capital gain} \times \frac{\text{Amount invested in new house}}{\text{Net sale consideration}} \\ &= 33369500 \times \frac{1,08,76,000}{3,83,00,000} \\ &= 94,75,890/- \end{aligned}$$

Thus, total exemption u/s 54B and 54F of the Income Tax Act, 1961 is allowed at Rs.1,90,77,890/- (96,02,000 + 94,75,890). The remaining amount of capital gain of Rs.1,42,91,610/- (3,33,69,500 (-) 1,90,77,890) is added to the income of the assessee on account of undisclosed Long Term Capital Gain. I am fully satisfied that the assessee has furnished inaccurate particulars of income regarding Long term Capital Gain, penalty proceeding u/s 271(1)(c) are initiated on wrong claim of exemption u/s 54B and 54F of the I.T.Act, 1961.”

ITA No:-6392/Del/2016 [In the case of Late Shri Ram Sarup]
(Assessment Year: 2007-08)

2. “The notice under section 148 was issued after recording the following reasons.

As per the information available from Deputy Director of Income Tax (Investigation), Panipat, Sh. Ram Sarup, S/o-Sh.Data Ram, Vill.-Uchana has sold the land for Rs.2,11,76,875/- on 16.06.2006 during the F.Y. 2006-07 (A.Y.2007-08).

The assessee was asked to explain the sale of property/capital gain u/s 133(6) vide inquiry letters dated 19.07.2013, 21.08.2013 reminder dated 29.10.2013 & 24.01.2014 duly served upon him. But assessee has failed to furnish any explanation despite several opportunities given to him. It is, thus, presumed that assessee has no explanation in the matter.

The land measuring 6 Acre 6 Kanal 13 Merlas in village Uchana, Kamal was owned by the assessee. The rate of land in Village Uchana was approx. Rs. 1,00,000/- per acre in the year 1981-82. Accordingly the cost of acquisition of the land in question measuring 6 Acre 6 Kanal 13 Merlas in village Uchana works out to Rs. 7,00,000/-. Hence, the indexed cost of acquisition works out to Rs. 36,33,000/-. Thus, the LTCG works out to Rs. 1,75,43,875/- (2,11,76,875/- minus 36,33,000/-). Thus, Capital Gain amounting to Rs. 1,75,43,875/- has escaped assessment for the A.Y. 2007-08.

Therefore, there is lapse on the part of the assessee to disclose fully and truly all material facts and information relating to sale of land at Rs.2,11,76,875/- which caused escapement of long term capital gain of Rs. 1,75,43,875/- on sale of land as he has not filed his return of income.

I have therefore, reasons to believe that long term capital gain on sale of above land has escaped assessment for the A. Y. 2007-08 and liable to tax. ”

Assessee was required to explain the above. Assessee has filed reply and explained that Shri Ram Sarup has expired on 09.01.2007. The copy of death certificate is submitted. In his reply the amount of Long Term capital Gain is worked out at Rs. 1,76,31,457/-. It is further explained that the assessee has four legal heirs i.e. two sons and two daughters namely Shri Rampal Sharma, Shri Sudesh Sharma, Smt. Sunita and Smt. Pushpa. Since the assessee had

expired immediately after the sale transaction, therefore, all the agricultural land purchases and construction of houses were made in the name of legal heirs of the assessee and becomes eligible for exemption. Assessee has explained that agricultural land was purchased in the name of Smt. Mamta Devi w/o Shri Sudesh Sharma for Rs. 65,00,000/- on 03.04.2007. Also agricultural land was purchased in the name of Shri Karam Chand husband of Smt. Sunita for Rs. 7,74,800/- on 19.07.2007. Assessee has, thus, claimed exemption u/s 54B in respect these investments. The contentions of the assessee are not acceptable. Assessee has purchased agricultural land in the name of legal heirs. The assessee has failed to explain the circumstances and reasons for purchase of agricultural land in the name of spouses of legal heirs. Hence, exemption for purchase of agricultural land in the name of spouses of legal heirs is rejected.

Further, it is explained that the legal heirs constructed residential houses in the year 2007-08 for Rs. 1,08,45,000/- in the name of all four legal heirs. In support valuation reports of approved valuer are submitted. Assessee has, thus claimed exemption u/s 54F for Rs. 1,08,45,000/-. However, the exemption u/s 54F on construction of residential house works out to Rs. 90,29,337/- as per the provisions of section 54F as following

$$\begin{array}{l} \text{Amount invested in residential house X } \frac{\text{Capital Gain}}{\text{Sale Consideration}} \\ \\ =1,08,45,000 \text{ X } \frac{1,76,31,457}{2,11,76,875} \qquad \qquad \qquad = \text{Rs.}90,29,337 \end{array}$$

Therefore, the exemption 54F on investment in construction of residential house of Rs.90,29,337/- only is allowable. The remaining amount of capital gain of Rs.86,02,120/- (1,76,31,457 – 90,29,337) is added to the income of the assessee on account of undisclosed capital gain.”

2. Both the assessees filed appeals before Ld. CIT(A), Karnal. Vide separate orders, each dated 07.10.2016 in the case of aforesaid two assessees, Ld.CIT(A) dismissed the appeals of both the assessees.

2.1. The present appeals before us, filed by the two assessee in ITAT against the aforesaid impugned orders, each dated 07.10.2016. At the time of hearing before us, the two assessees were not represented. Ld. DR submitted that disputed issues in both the appeals may be restored to the file of Ld.CIT(A) with the direction to pass speaking orders. In the absence of any assistance from the side of the assessees, we are persuaded by the submissions of the Ld. DR. Accordingly, we set aside the orders of Ld.CIT(A) in the case of the two assessees, each dated 07.10.2016 and restore the disputed issues to the CIT(A) with the direction to pass a speaking order afresh in accordance with law, having regard to facts and circumstances of the case, after providing due opportunity to the assessee. Both these appeals filed by the assessees are disposed of in accordance with aforesaid direction.

3. Before we part, we explicitly clarify that the assessees will be at liberty to approach ITAT for restoration of the appeals in accordance with proviso to Rule 24 of Income Tax Appellate Tribunal Rules, 1963. If the assessee(s) do approach the Tribunal for restoration of the appeals, the matter will be considered in accordance with law as well as facts and circumstances.

4. For statistical purposes, both appeals filed by the assesseees are partly allowed.

4.1. Order was orally pronounced in the open court on 05.08.2019 immediately after hearing. This written order is pronounced in the open Court on 08th day of August, 2019.

Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

Dated: 08.08.2019
** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI