

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.327/Del/2016
Assessment Year: 2008-09**

**Shri Raj Singh, vs Income-tax Officer,
S/o Shri RisalSingh, Ward 26(4), New Delhi.
R/O House No.90,
Baprola Village, New Delhi.
PAN: DCSPS2990Q**

**I.T.A. No.328/Del/2016
Assessment Year: 2008-09**

**Shri Chand Ram, vs Income-tax Officer,
S/o Shri RisalSingh, Ward42(4), New Delhi.
R/O House No.90,
Baprola Village, New Delhi.
PAN: AYMPR7607J**

**I.T.A. No.329/Del/2016
Assessment Year: 2008-09**

**Shri Jaswant Singh, vs Income-tax Officer,
S/o Shri Mukhtyar Singh Ward 42(4),New Delhi.
R/O House No.89,
Baprola Village, New Delhi.
PAN: BCMPS7705K**

**I.T.A. No.330/Del/2016
Assessment Year: 2008-09**

**Shri Surender Kumar, vs Income-tax Officer,
S/o Shri MukhtyarSingh, Ward 42(4), New Delhi.
R/O House No.89,
Baprola Village, New Delhi.
PAN: APYPK4873N**

I.T.A. No.331/Del/2016
Assessment Year: 2008-09

Shri Vijay Singh, vs **Income-tax Officer,**
S/o Shri MukhtyarSingh **Ward 42(4),New Delhi.**
R/O House No.89,
Baprola Village, New Delhi.
PAN: BRNPS4683L

I.T.A. No.332/Del/2016
Assessment Year: 2008-09

Shri PradeepKumar, vs **Income-tax Officer,**
S/o Shri Rishal Singh **Ward 42(4), New Delhi.**
R/O House No.90,
Baprola Village, New Delhi.
PAN: BGSP8477M

I.T.A. No.333/Del/2016
Assessment Year: 2008-09

Shri Suresh, vs **Income-tax Officer,**
S/o Shri RishalSingh, **Ward 42(4), New Delhi.**
R/O House No.90,
Baprola Village, New Delhi.
PAN: BDMPS2474Q

AND

I.T.A. No.335/Del/2016
Assessment Year: 2008-09

Shri BaljeetSingh, vs **Income-tax Officer,**
S/o Shri MukhtyarSingh, **Ward 42(4),New Delhi.**
R/O House No.89,
Baprola Village, New Delhi.
PAN: AHHPS4467K
(Appellant) **(Respondent)**

Appellant by:Shri Naveen Singh, CA
Respondent by:Ms Ashima Neb, Sr.DR

Date of hearing: 13.8.2019
Date of Pronouncement: 02.9.2019

ORDER**PER BENCH:**

Challenging the order dated 26.10.2015 in a batch of cases involving 10 assesseees, passed by the learned Commissioner of Income-tax (Appeals)-15, New Delhi {"CIT(A)"}, assesseees filed these appeals almost on common grounds. Since the facts and questions for adjudication involved in all these appeals are identical, we propose to dispose these off by way of this common order.

2. Briefly stated facts are that pursuant to the information received by the Id. AO from the Office of DIT(Inv.), New Delhi on 22.10.2009 that ten persons had sold their urban agricultural land measuring 7.6875 acres comprising various khasra at Village Baprola, Delhi to M/s Experience Builders P. Ltd. for a consideration of Rs.19.60 crores and had received each a sum of Rs.1,96,03,125/- during the financial year 2007-08 relevant for the Asstt. Year 2008-09, Id. AO issued a query letter dated 2.5.2011, subsequently another letter dated 1.2.2012 but in view of non-compliance with the same by any of such persons, after recording reasons, Id. AO issued notice u/s 148 of the Income-tax Act, 1961 ("the Act") on 29.8.2012. There was no return of income filed and, therefore, another notice dated 14.1.2013 was issued u/s 142(1) of the Act and it also remained uncompiled with. Id. AO, therefore, proceeded u/s 144/147 of the Act and taking the sale consideration at Rs.1,96,03,125/- and a cost as fair market value of the property as on 1.4.1981 at Rs.16,50,000/- per acre as gathered from different sources Id. AO computed the long-term capital gain at Rs.1,26,14,035/- after giving benefit of indexing.

3. All the assesseees challenged the respective assessment orders before the Id. CIT(A). It was contended before the Id. CIT(A) that the notice u/s 148 of the Act issued by the Id. AO on 29.8.2012 was never received by any of the assesseees and, therefore, the proceedings-initiated u/s 147/148 of the Act are void ab initio. According to them, the transaction culminating in the capital gains did not belong to the assesseees in their individual capacities but the property belonged to the HUF since it was inherited by the person who in turn inherited from his father and, therefore, the issuance of notice u/s 148 of the Act to the assesseees in their individual capacities is incorrect and vitiates the proceedings. They further contended that the reasons for reopening of the assessment proceedings were not communicated by the Id. AO to any of the persons and, therefore, necessary formalities such as raising objections or furnishing submissions could not be complied with and on that score also the proceedings are vitiated. Lastly it was contended that the Id. AO estimated the basic cost without any material in an arbitrary and erroneous manner and on that ground also the assessment proceedings are liable to be quashed.

4. Ld. CIT(A), as stated above, disposed of all the 10 appeals by way of a common order dated 26.10.2015. Ld. CIT(A) held that since the notice u/s 148 was sent by way of speed post and the postal envelope was not returned by the postal authorities unserved. Ld. CIT(A), therefore, in the light of the decisions reported in the case of Milan Poddar vs CIT, 357 ITR 619 (Jharkhand), CIT vs Yamu Industries Ltd. 306 ITR 309(Del) and CIT vs Madhay Films P. ltd., 301 ITR 69, raised a presumption that the notice sent by way of speed post was duly served upon the assesseees within the time prescribed and on that score, Id. CIT(A) the first contention of the assesseee.

5. Ld. CIT(A) further held that throughout the proceedings, at no point of time, the assessees did not produce any evidence whatsoever, in support of their claim that the land was belonged to the HUF and not to the assessees in their personal capacities, and the copy of the sale deed and khatauni of the relevant land containing names of the assessees in their individual capacity; and that there was no reference to the HUF of any of such persons in such documents. Ld. CIT(A), therefore, did not agree with the contention of the assessee that notice issued u/s 148 of the Act to the persons in their individual capacities are bad in law.

6. Ld. CIT(A) further found that the notice u/s 148 and the subsequent notices u/s 142(1) on several occasions were not complied with by the assessees and, therefore, the AO was compelled to pass the assessment order ex parte u/s 144 of the Act.

7. Lastly, Ld. CIT(A) observed that the assessees could not raise any specific objection about the computation made by the Id. AO, the sale consideration taken by the Id. AO was based on the amount reported by the office of DIT(Inv.), New Delhi and was confirmed by the land transaction on which the capital gain was computed by the cost of the land at Rs.16.50 lacs per acre on the basis of the fair market value as on 1.4.1981 gathered by the Id. AO from different sources and, therefore, the assessees have no case on merits also. For these reasons, Ld. CIT(A) dismissed the appeal preferred by all the ten persons.

8. At the outset, it is brought to our notice by both the counsel that one of the appellants before the Id. CIT(A) by the name of Shri Naresh Kumar challenged this common order dated 26.10.2015 passed by the first appellate authority on identical grounds as raised in these appeals and

such an appeal in ITA No.334/Del/2016 was disposed of by a coordinate bench of this Tribunal by order dated 24.5.2019. Both the counsel submitted that since the facts and questions of law giving rise of the grounds are identical, the same course may be followed in this batch of appeals also. We record the said statement.

9. We have gone through the order dated 24.5.2019 in ITA No.334/16 in the case of Naresh Kumar. It is the categorical observation of the Tribunal on the aspect of presumption of the service of notice that in the absence of any PAN available with the authorities about the identity of the sellers under the sale deed, only source of information was the copy of the sale deed and the addressees mentioned therein and, therefore, the authorities discharged their burden by issuing notices or communications to such addresses. In view of the absence of any claim of the person to say that the addresses mentioned in the sale deed are wrong, it is not open for the said person to say that they did not receive the notices/communications.

10. On this aspect, on a careful consideration of the submissions on either side in the light of the material on record, we are also of the considered opinion that the law presumes that any administrative or judicial act is performed properly and regularly as per the procedure prescribed under law. Since the assesseees do not contend that the address was wrong nor is there was any reason for non-service of the notice, we conclude that it is not open for the assesseees to agitate the issue of non-service of notice.

11. In so far as the merits of the case are concerned, the coordinate bench took into consideration the fact that the assesseees have not

produced any evidence before the authorities below in respect of the fair market value of the land as on 1.4.1981 and, therefore, the matter had to go back to the file of the Id. AO for determination of the fair market value of the impugned property as on 1.4.1981 after giving an opportunity of being heard to the assessee.

12. Relevant observations of the coordinate bench need to be extracted for completeness and those read as follows:

“We set aside this issue back to the file of the Id. 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 Id. Assessing officer is not satisfied with the fair market value of the asset shown by the assessee as on 1.4.81, then the Id. 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.”

13. In view of the above, while respectfully following the view taken by the coordinate bench and in view of the submissions made on either side, we set aside the impugned order and remand the issue to the file of the Id. AO to comply with the above directions.

14. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 2nd September, 2019.

Sd/-

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Dated: 2nd September, 2019.
VJ

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Draft dictated	14.8.2019
Draft placed before author	16.08.2019
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	