

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.492/Del/2018
Assessment Year: 2009-10

Late Shri Badan Singh through Legal representative Shri Anil Kumar, Village- Nistauli, Ghaziabad(UP)	Vs.	Ld. Income Tax Officer WARD-1(2), Ghaziabad (UP)
PAN : DEG9S9705P		
(Appellant)		(Respondent)

Appellant by	Sh. Anoop Sharma, Adv. & Sh. Sanjay Parashar, Adv.	
Respondent by	Shri P.S. Thuingaleng, Sr. DR	
Date of hearing		11.09.2019
Date of pronouncement		30.10.2019

ORDER

PER SUCHITRA KAMBLE, JM:

This appeal is filed by the assessee against the order dated 03.11.2017 passed by CIT(A)-Ghaziabad.

2. The grounds of appeal are as under:

1. *That the Ld. CIT(A) erred in law, on facts and in surrounding circumstances in dismissing the appeal on illogical and arbitrary grounds without appreciating the fundamental errors of law in right perspective.*
2. *That the Ld. CIT(A) further erred in law, on facts and in surrounding circumstances in rejecting the application for additional grounds as well as application for additional evidence u/r 46A of I.T. Rules, in arbitrary manner merely on technical considerations, resulting in a meritorious matter having been thrown out at the very threshold in utter disregard of principles of advancing substantive justice.*
3. *That the Ld. CIT(A) also erred in law, on facts and in surrounding*

circumstances in failing to appreciate that consequent upon the sad demise of the original assessee, (Shir Badan Singh) during the course of assessment proceedings, issuance service of notices to all legal representative is mandatory as per law and defect of not sending/ not serving the notices to all legal representative, is not curable under I.T.Act.

4. *That without prejudice to above, the Ld. CIT(A) also erred in law, on facts and in surrounding circumstances in failing to appreciate that since the deceased assessee had more than one legal representative, assessment framed in the name of deceased assessee through one of the legal representative, the proceedings were invalid in the absence of material to show that legal representative represented the entire estate of the deceased with the consent express or implied of the other legal representative, as per settled proposition of law.*

5. *That without prejudice to above, the Ld. CIT(A) also erred in law, on facts and in surrounding circumstances in failing to appreciate that notice u/s 148 of I.T. Act in pursuance of which impugned assessment had been framed, having been issued in the name of deceased assessee (Shri Badan Singh) and no notice having been served even on one of the legal representative (Shri Anil Kumar, appellant), the assessment so framed, is nullity in law.*

6. *That the Ld. CIT(A) also erred in law, of facts and in surrounding circumstances in failing to appreciate that if no notice is issued, or is not severed in accordance with law, the I.T.O does not get jurisdiction to make assessment on that particular assessee/legal representative as per law, as in the present case.*

7. *That the Ld. CIT(A) also erred in law, of facts and in surrounding circumstances in failing to appreciate that the exemption claimed u/s 54F of I.T. Act had been disallowed by Ld. A.O. merely on mis-appreciation, misunderstanding or confusion, whereas, the same is completely allowable on the basis of documentary evidence.*

8. *That the appellant craves leave to modify/amend or add any one or more grounds."*

3. The assessee is an individual. As per the assessment order, in this case notice u/s 148 of the Income Tax Act, 1961 dated 06.02.2014 was issued by the Assessing Officer, after recording reasons u/s 147 of the Act as under :-

"The assessee is an individual. As per the AIR information available with this office, the assessee sold a property at the sale consideration of Rs. 1,18,56,000/-. A letter was issued to the assessee. Vide assessee's reply dated NIL, the assessee confirmed that the assessee has sold the inherited land to M/s BCC Builders Pvt. Ltd.-,D-

224, Vivek Vihar, Delhi for a sum of Rs. 1,18,56,000/-, Further, the assessee has also submitted that no return of income was filed by the assessee for the year under consideration.

On the basis of the information in my possession, I have reason to believe that the assessee has not offered any capital gain for taxation on sale consideration of Rs. 1,18,56,000/- which was chargeable to tax for the A.Y. 2009-10 and has escaped assessment within the meaning of provisions of section 147 of the I.T. Act. In order to assess the above escaped income, proceedings u/s 147 of the I. T. Act, 1961 are being initiated and notice u/s 148 is being issued.”

Subsequently notice u/s 142(1) dated 15.04.2014 was issued calling for the return. In response to the notice, a return was filed by the assessee on 08.05.2014 declaring income of Rs. 80,570/-, besides, income from agriculture is shown at Rs. 1,00,000/-. Thereafter, notices u/s 142(1) / 271(1)(b) were issued from time to time. In compliance to these notices, Advocate and Authorised Representative of the assessee attended the proceedings from time to time and filed written submissions alongwith other information / documents called for. During the year under consideration, the assessee sold immovable property on 30.05.2008 situated at village Nistauli to M/s. BCC Builders Pvt. Ltd., New Delhi for Rs. 1,18,56,000/-. Vide notice u/s 142(1) dated 02.05.2014, the assessee was asked to furnish computation of capital gain in respect of the property sold during the year under consideration. Vide reply dated 02.06.2014, the counsel of the assessee stated that the impugned land is an agricultural land, therefore, it is not a capital assets within the meaning of section 2(14)(iii) of the Income-tax Act. The assessee further submitted that the Tehsildar, Ghaziabad was requested to provide a certificate regarding nature and location of the land. It is informed by the Tehsildar, Ghaziabad vide letter dated 23.09.2013 that village Nistauli falls under the limits of Nagar Nigam, Ghaziabad. Therefore, the Assessing Officer observed that the said land is not an agricultural land but a capital asset, attracting capital gain. The assessee vide reply dated 19.01.2015 submitted before the Assessing Officer that the assessee invested the amount in the purchase of agricultural land and balance amount in the construction of house at Ghaziabad. The assessee filed copy of purchase

deals before the Assessing Officer. Thus, the assessee submitted before the Assessing Officer that the assessee rightly claimed exemption u/s 54B of the Act, hence, the investment in construction of house is not qualified at all for exemption u/s 54F of the Income-tax Act. Thus, the Assessing Officer made addition of Rs. 76,61,189/-.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that Ground No. 1 to 6 are not pressed. Therefore, Ground No. 1 to 6 are dismissed.

7. As regards Ground No. 7, the Ld. AR submitted that the Assessing Officer as well as CIT(A) has not taken into cognizance the price of property. The Ld. AR further submitted that the assessee inherited the land in the Village Nistauli, Ghaziabad from his ancestors and has sold on 30.05.2008 to M/s. BCC Builders Pvt. Ltd., for a sum of Rs. 1,18,56,000/- and submitted the sale deed of the said transactions before the Assessing Officer. The Ld. AR submitted that the sale land is an agricultural land and is not Capital Asset under the provisions of Section 2(14)(iii) of the Act. Moreover, the assessee invested the amount in the purchase of agricultural land and invested the balance amount in the construction of house on 83.61 Square Meters of land at Ghaziabad. The Ld. AR submitted the purchase deal. Thus, the Ld. AR submitted that the CIT(A) as well as the Assessing Officer erred in appreciating that the exemption claimed u/s 54F of the Act was wrongly disallowed despite producing all the documentary evidence.

8. The Ld. DR relied upon the assessment order and the CIT(A) order.

9. We have heard both the parties and perused all the relevant material available on record. From the perusal of the assessment order as well as the order of the CIT(A), it can be seen that certain documents were filed for the

first time before the CIT(A) upon which no remand report has been called upon by the CIT(A) from the Assessing Officer. Thus, the documents were not thoroughly verified in consonance with the claim of the assessee under section 54F of the Act. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for verifying the claim of the assessee in consonance with the documents produced before the CIT(A). Needless to say, the assessee be given proper hearing by following principles of natural justice. Hence, Ground no. 7 is partly allowed for statistical purpose.

10. In result appeal of the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 30th October, 2019.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 30th October, 2019.

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	24/10/2019
2.	Date on which the draft of order is placed before the Dictating Member:	25/10/2019
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	