

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील सं. / ITA No. 52/BLPR/2012**  
**निर्धारण वर्ष / Assessment Year : 2009-10**

Sandeep Behl,  
L/H of Late Prem Sagar Behl,  
A-13, VIP Estate,  
Shankar Nagar, Raipur (C.G)  
PAN : AHAPB6319G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax-1(1)  
Raipur (C.G)

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No. 56/RPR/2012**  
**निर्धारण वर्ष / Assessment Year : 2009-10**

The Deputy Commissioner of Income Tax-1(1)  
Raipur (C.G)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Sandeep Behl,  
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Shankar Nagar, Raipur (C.G)  
PAN : AHAPB6319G

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi  
Revenue by : Shri Sanjay Kumar

सुनवाई की तारीख / Date of Hearing : 07.11.2019  
घोषणा की तारीख / Date of Pronouncement : 07.11.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

These cross appeals preferred by the assessee and Revenue emanates from the order of the Ld. CIT(Appeals), Raipur dated 15.03.2012 for the assessment year 2009-10 as per the grounds of appeal on record.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order.

For the sake of convenience, we would first adjudicate the Revenue's appeal in ITA No.56/BLPR/2012 for the assessment year 2009-10.

**ITA No.56/BLPR/2012 ( By Revenue)**  
**A.Y 2009-10**

3. In ITA No.56/BLPR/2012, grounds raised by the Revenue are as follows:

*"1. Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in calculating the fair market value for the land sold by the assessee u/s.55(2) (b) at Rs.20/- sq.ft. instead of Rs.0.06/- sq. ft. taken by*

*the AO disregarding the Government Rate guidelines supplied by the Registrar at the Collectorate.*

2. *“Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in allowing deduction of Rs.65,776/- u/s.50 of the I.T. Act, 1961 when there was no construction on the said land.”*

3. *“Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.10,00,000/- made by the AO on account of brokerage/commission paid for sale of land.”*

4. *“Whether in law and on facts and circumstances of the case, the Ld. CIT(A) has erred in allowing deduction of Rs.32,47,100/- not claimed by the assessee in its return of income u/s.54B of the I.T Act, 1961.*

5. *“The order of the Ld. CIT(A) is erroneous both in law and on facts”*

6. *“Any other ground that may be adduced at the time of hearing”*

3.1 In **ITA No.52/BLPR/2012**, the assessee has raised the similar ground as raised by the Revenue in first ground of ITA No.56/BLPR/2012 and the same is as under:

*“1. In the facts and circumstances of the case, the Ld. CIT(Appeals) erred in directing the AO to adopt the fair market value as on 01.04.1981 of the land sold by the appellant at Rs.20/- per sq.ft. in place of Rs.50/- per sq.ft. claimed by the appellant on the basis of report of approved valuer. The order of the Ld. CIT(Appeals) is contrary to facts.”*

It is evident from the ground of the assessee’s appeal that the assessee has challenged the value adopted by the Ld. CIT(A) @ Rs.20/- per sq.ft. as fair market value as against Rs.50/- per sq.ft claimed by the assessee on the basis of report of approved valuer.

4. That referring to the first ground in the Revenue's appeal, it is with regard to the **“calculation of the fair market value for the land sold by the assessee u/s.55(2) (b) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’)”**.

5. The brief facts on the issue are that the Assessing Officer has stated in his order that as per information/documents received from the Registrar, Raipur it is clear that the assessee had purchased land at Labhandih bearing khasra No.382/1 of 0.426 hectare, Khasra No.382/3 of 0.162 hectare and Khasra No.382/4 of 0.214 hectare from Shri Dinesh Rathore, Fafadih, Raipur on 15.03.1977 for Rs.18,000/- i.e. Rs.0.20/- sq.ft that the purchase price of land at Labhandi bearing Khasra No.381/1 of 0.275 hectare from Shri Shivram Panka, S/o. Shri Umrao Panka, Labhandi on 21.08.1979 at Rs.12,000/- that in the absence of the Government Guidelines, the price of the land per square feet at village Labhandi as on 21.08.1979 will be suitably taken at Rs.0.41 i.e. the purchase price of the land by the assessee that since the plot was agricultural land and by considering the price of land to increase @20% per year, the market price of the plot as on 01.04.1981 will be Rs.0.60/- sq.ft. Thus, the fair market value of the land as on 01.04.1981 is considered at Rs.0.60 per square feet instead of Rs.50/- per square feet as adopted by the assessee.

6. Therefore, the facts demonstrate that the Assessing Officer made calculation of the land from the time, it was purchased in the year 1977 and increase in the price of land estimated at 20% per year, the Assessing Officer calculated market price at Rs.0.60 per square feet. The Assessing Officer has himself estimated the fair market value of the land instead of referring the matter to the Departmental Valuer (DVO). The assessee on the other hand had taken fair market value of the land at Rs.50/- per sq.ft. determined by the Registered Valuer.

7. The Ld. CIT(A) as per reasons appearing in his order estimated the fair market value of the land with average annual growth rate of 25% at that particular point of time and thus, determined the value @Rs.20/- per sq. ft. Here also, the Ld. CIT(A) did not make any reference to the DVO.

8. The Ld. DR vehemently supported the findings of the Assessing Officer determining the fair market value @ Rs.0.60/- per sq.ft.. However, the Ld. DR could not controvert the fact that neither the Assessing Officer nor the Ld. CIT(A) had referred the matter for determination of the fair market value before the DVO. The Ld. DR could not explain the basis of estimation of the fair market value adopted by the Assessing Officer neither he could explain the rational of the decision taken by the Ld. CIT(A)

though the Authorities are not technically competent to determine the fair market value of the land and for which purpose, specifically Departmental valuer is there.

9. The Ld. AR opposed the estimation adopted by the Assessing Officer i.e. Rs.0.60/- per sq.ft and also opposed the estimation determined by the Ld. CIT(A) @Rs.20/- per Sq.ft. The Ld. AR vehemently submitted placing reliance on the decision in the case of Smt. Pramila M. Desai, HUF Vs. DCIT, Circle 1(2), Baroda in ITA No.04/Ahd/2012 for assessment year 2008-09, wherein the Ahmedabad Bench of the Tribunal observed that *“before us it was submitted that when the assessee has submitted a report of registered valuer, the same cannot be ignored or varied or substituted without obtaining valuation report from DVO. We find no report of the DVO was obtained and moreover, when the assessee submitted a report of the registered valuer, same cannot be ignored or substituted without obtaining report of technical person i.e. DVO and or some other technical expert.”*

10. Reverting to the facts of the present case, it is undisputed and admitted fact that neither the Assessing Officer nor the Ld. CIT(A) had made reference to the DVO for estimation of the fair market value of the said land in question. Both the Authorities evolved their own ideas calculating the estimation of the fair market value without referring the

matter to the DVO. This cannot be accepted within the ambit of the Income Tax Act.

11. We have perused the case records and heard the rival contentions. We have also analyzed the judicial pronouncements placed before us. The assessee has adopted fair market value as on 01.04.1981 at Rs.50/- per Sq. Ft. The Assessing Officer has considered the same to be at Rs.0.60/- per Sq. Ft. as per own calculation and estimation without referring the matter to the DVO. The Ld. CIT(A) as per reasons appearing in his order considered the fair market value on estimation basis @Rs.20/- per Sq. Ft. That too also is without any reference made to the DVO. We find in the case of **Thulasimani Ammal Vs. CIT (2000) 158 CTR 5 ( Mad.)**, the Hon'ble Madras High Court has held that "*the market value shown by the assessee which was based on valuer's report and there was no justifiable reason to discard the same.*" Similarly in the case of **Smt. Pramila M. Desai Vs. DCIT (supra.)**, the Ahmedabad Bench of the Tribunal has held that "*the registered valuer's report cannot be ignored or substituted without obtaining the report of a technical person i.e. DVO or some other technical expert.*"

12. In the instant case before us, it is admitted and undisputed fact that there was no reference made either by the Assessing Officer or by the Ld.

CIT(A) to DVO for determination of the fair market value of the land. In absence of the DVO's report, the rejection by the Revenue Authorities of the registered valuer's report submitted by the assessee is not justifiable, rather, arbitrary, un-judicious, such action is required to be discarded.

13. In view of the examination of facts and legal parameters, enshrined in the judgments referred hereinabove, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to take fair market value @Rs.50/- per square feet as provided in the registered valuer's report submitted by the assessee. Thus, **ground No.1 raised in appeal by the Revenue is dismissed.**

14. We have dismissed ground No.1 of the Revenue's appeal and **ground No.1 raised by the assessee in his appeal in ITA No.52/BLPR/2012 is allowed.**

15. In the result, **appeal of the assessee in ITA No.52/BLPR/2012 is allowed.**

16. Now, we adjudicate the ground No.2 of the Revenue's appeal which pertains to "**allowing deduction of Rs.65,776/- u/s.50 of the Act when there was no construction on the said land.**"

17. The Ld. CIT(A) on this issue has held and observed as follows:

*“5.3 I have carefully gone through the assessment order and submissions of the appellant. It is an undisputed fact that the appellant was engaged in the business of poultry Farming since 1997. It is also an undisputed fact that the survey operation u/s.133A was conducted in the premises of the appellant on 07.12.1999. In the said survey operations, the survey team had visited the Poultry Farm of the appellant at Lalbandih, Raipur. I find that the appellant did give statement before the survey team that he owns the poultry farm land on which poultry farm building was got constructed between 1977 to 1986 and that no investment was made thereafter, the relevant page of the statement is contained in page No.131 of the paper book submitted by the appellant. The photographs submitted by the appellant are also providing strength to the claim of the appellant. The books of accounts of the appellant for the assessment years 2008-09, 2007-08, 2006-07 and 2005-06 were audited u/s.44AB and in the financial statements also, the auditor mentioned the nature of business of the appellant to be that of poultry farming. I find that the appellant did claim depreciation in respect of building and cages, grinders etc. I am of the considered opinion that merely because the fact of existence of poultry farm building is not emerging from the sale deed, the vital evidences submitted by the appellant in support of existence of poultry farm building cannot be disregarded.*

*5.4 It is also seen that the appellant had availed bank loan from Central Bank of India for construction of the poultry farm building and in support thereof the appellant has placed before me the copy of certificates issued by the Central Bank of India, civil Lines Branch, Raipur, contained in page No.51 and 52 of the paper book submitted by the appellant. In view of the above, it cannot be denied that at the most there is an omission in the drafting of sale deed or kist Bandi Khatoni. It was their incumbent upon the AO to make the necessary enquiry from Central Bank of India that had lend money to the appellant. It cannot be denied that the information collected by the AO from M/s. R.K. Hotliers & Developers (P). Limited is unreliable as the same is biased and has been given out of vested interest of saving stamp duty. Therefore, I am convinced that the appellant had constructed a poultry farm building on the land owned by him at Village : Lalbandih. And hence, the appellant is entitled for deduction on account of cost of construction of poultry farm building etc. However, as the appellant had claimed depreciation, the appellant is entitled for deduction of written down value of building etc. as on 31.03.2008 in view of the provisions of section 50 of the Act which*

*contains special provision for computation of capital gains in case of depreciable assets. Thus, the appellant is entitled for deduction of Rs.65,776/- (Rs.60889 +Rs.4887/-) being written down value of poultry farming building and cages etc. Thus, the deduction claimed by the appellant on account of indexed cost of construction by taking fair market value of cost of construction at Rs.80/- per Sq. Ft. cannot be accepted. Therefore, this ground of appeal is dismissed. The AO is directed to allow deduction of Rs.65,776/- in view of the provisions of section 50.”*

18. We have perused the case records and analyzed the facts and circumstances of the case. We have also given considerable thought to the findings of the Ld. CIT(A) on this issue. The facts of the case demonstrates that the assessee is engaged in the business of poultry Farming since 1997. The survey operation u/s.133A was conducted in the premises of the appellant on 07.12.1999. In the said survey operations, the survey team had visited the Poultry Farm of the assessee at Lalbandih, Raipur. The assessee had given statement before the survey team that he owns the poultry farm land on which poultry farm building was got constructed between 1977 to 1986. The books of accounts of the assessee for the assessment years 2008-09, 2007-08, 2006-07 and 2005-06 were audited u/s.44AB and in the financial statements also, the auditor mentioned the nature of business of the assessee to be that of poultry farming. The main basis of addition on this ground was that existence of poultry farm building was not emerging from the sale deed, however, the other vital evidences submitted by the assessee in support of existence of poultry farm building were not considered by the Assessing Officer. But those were

taken into consideration by the Ld.CIT(A). That further in the record, it is stated that the assessee had availed bank loan from Central Bank of India for construction of the poultry farm building and in support thereof the assessee has placed before the Ld.CIT(A), the copies of certificates issued by the Central Bank of India, civil Lines Branch, Raipur. The Ld.CIT(A) had adjudicated the issue regarding existence of building constructed right from the time when survey took place, a declaration by the assessee was made before the survey team regarding the construction of the poultry farm building and the bank loan was taken by the assessee for construction of the said poultry farm building. All these were analyzed by the Ld.CIT(A) and therefore, existence of poultry farm building cannot be doubted. Thus, relief provided to the assessee at Rs.65,776/- in view of provisions of Section 50 of the Act is thereby sustained and there is no need for any interference to the findings of the Ld. CIT(A). Thus, **ground No.2 raised in appeal by the Revenue is dismissed.**

19. Ground No.3 of the Revenue's appeal pertains to the "**deletion of addition of Rs.10,00,000/- on account of brokerage/commission paid for sale of land**".

20. On this issue, it was noticed by the Assessing Officer that the assessee had paid brokerage of Rs.10,00,000/- and the assessee could

only produce the ledger copy of sale of asset's account that the details with complete name and address of the persons to whom the brokerage was given was not submitted by the assessee. That however, before the Ld. CIT(A), the assessee had provided complete names, address and PAN of the brokers to whom brokerage/commission was paid by the assessee. It is the grievance of the Revenue that the Ld. CIT(A) allowed this amount and deleted the disallowance by accepting the evidences furnished before him regarding genuineness of the transactions and the brokerage paid but these evidences were not placed before the Assessing Officer for his comments.

21. We have perused the case records and heard the rival contentions on this issue. We find that regarding payment of brokerage, no details were furnished by the assessee before the Assessing Officer. That however, before the Ld. CIT(A) as the facts on record demonstrates all the necessary and relevant details regarding payment of brokerage were furnished before the First Appellate Authority. The only grievance of the Revenue is that the Ld. CIT(A) has granted relief to the assessee relying on all these evidences but these evidences were not confronted before the Assessing Officer for his comments. We find that the premise of the Revenue's contention arises from Rule 46A of the Income Tax Rules, 1962, Clause (3) wherein it states "*the Commissioner (Appeals) shall not take into account any evidence*

*produced under sub rule (1) unless the Assessing Officer has been allowed a reasonable opportunity (a) to examine the evidence or document or to cross examine the witness produced by the appellant or; (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant".* However, Rule 46A(4) categorically states as follows:

*"(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals) or as the case may be, the Commissioner (Appeals) to direct the production of any document or the examination of any witness, to enable him to dispose of the appeal or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer] under clause (a) of sub section (1) of Section 251 or the imposition of penalty under section 271."*

That from this, it is absolutely clear that notwithstanding anything contained in this particular Rule, the Commissioner (Appeals) shall have power to direct the production of any document or examination of any witness to enable him to dispose of the appeal.

22. Therefore, it was well within the jurisdiction of the Ld. CIT(A) to admit those evidences produced before him and provide relief to the assessee. That mostly, Rule 46(A)(3) pertains to a when any doubt arises in the mind of the Ld. CIT(A) regarding additional evidences furnished before him then he can call for a remand report from the Assessing Officer.

However, it is not in all cases and not for all additional evidences, the Ld. CIT(A) has to call for remand report from the Assessing Officer. This is absolutely clear from Rule 46(A) (4) of the Income Tax Rule, 1962.

23. In view of the examination of the aforesaid matter, the relief provided to the assessee by the Ld. CIT(A) is sustained. Thus, **ground No.3 raised in appeal by the Revenue is dismissed.**

24. Ground No.4 of the Revenue's appeal pertains to **“allowing deduction of Rs.32,47,100/- not claimed by the assessee in its return of income u/s.54B of the Act.”**

25. The brief facts on the issue are that the assessee had not claimed any exemption u/s.54B of the Act in respect of investment made by the assessee in purchasing agricultural lands out of the sale proceeds of agricultural lands in the return of income filed by the assessee. The assessee did not claim any such exemption even before the Assessing Officer during the course of assessment proceedings. This claim was for the first time claimed before the Ld. CIT(A). The Ld. CIT(A) after obtaining comments of the Assessing Officer and in view of natural justice, this issue was admitted and decided on merits by the Ld. CIT(A).

26. The Ld. CIT(A) as per reasons appearing in his order which is on record allowed exemption u/s.54B of the Act to the assessee in respect of sum of Rs.32,47,100/- reinvested in purchase of agricultural lands out of the sale proceeds of the agricultural land.

27. At the time of hearing, the Ld. DR submitted that this claim of deduction was neither filed in the return of income by the assessee nor was claimed at any point of time during the assessment proceedings. The Ld. CIT(A) therefore could not have granted exemption u/s.54B of the Act to the assessee even if the assessee is claiming such exemption.

28. The Ld. AR of the assessee at the time of hearing brought to our notice the decision of the Raipur Bench of the Tribunal in ITA No.30/RPR/2014 in the case of Pankaj Kumar Agarwal Vs. Income Tax Officer, Bilaspur wherein it was observed by the Bench as follows:

*“Further, we agree with the submissions of the Ld. AR that it is duty of the Assessing Officer to guide the assessee and allow the deduction wherever and whenever it is applicable depending on facts and circumstances of each case. The Income Tax laws are welfare in nature and the very purpose of welfare legislation is that there should not be any cohesive action by the quasi-judicial Authority. Even if, the assessee has not claimed, the Assessing Officer is duty bound to guide the assessee and allow the deduction. Thus, duty of the Revenue Authority is to communicate with the assessee and provide them required relief or deduction for which he is legally eligible. In that way, there will be continuity of justice and fair-play and the principles of natural justice shall be upheld for its true purpose and applicability.*

29. We also find that the Revenue Authorities have not contradicted the facts and circumstances in this case regarding claim of exemption u/s.54B of the Act by the assessee. Meaning thereby ingredients required for the exemption u/s.54B of the Act have been duly complied with by the assessee. Even in the paper book filed before us, evidences are included in the form of purchase deed wherein the land is recorded as agricultural land. Similarly, when the land was repurchased, it was also recorded as agricultural land. There are also copies of Land Revenue records filed in the paper book where it is shown that crops were grown on the said land. Therefore, ingredients and the facts and circumstances for getting exemption u/s.54B of the Act were duly complied with by the assessee. The only omission, the assessee made was that he did not include the same in the return of income claiming exemption u/s.54B of the Act and as we have already taken a view in ITA No.30/RPR/2014 that the Income Tax laws are welfare in nature and the very purpose of welfare legislation is that there should not be any cohesive action by the quasi-judicial Authority. It is the duty of the quasi-judicial authority, the Assessing Officer or the Ld. CIT(A) to guide the assessee to enable him to get benefit whether or not claimed by him for which he is legally eligible.

30. In view of the matter, we do not find any infirmity with the findings of the Ld. CIT(A) and relief provided to the assessee is hereby sustained.

Thus, **ground No.4 raised in appeal by the Revenue is dismissed.**

31. In the result, **appeal of the Revenue in ITA No.56/BLPR/2012 is dismissed.**

32. In the combined result, **appeal of the assessee in ITA No.52/BLPR/2012 is allowed and appeal of the Revenue in ITA No.56/BLPR/2012 is dismissed.**

Order pronounced on 7<sup>th</sup> day of November, 2019.

Sd/-

**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-

**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 7<sup>th</sup> November, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur.
4. The CIT, Raipur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	07.11.2019	Sr.PS/PS
2	Draft placed before author	07.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		