

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1818/Del./2017  
Assessment Year 2007-2008

Shri Jaiveer Singh, s/o. Daryav, Vill. & P.O. Rasoolpur Jahid, Rohta Road, Meerut, Uttar Pradesh. PAN FTJPS0414K	vs.,	The Income Tax Officer, Ward – 1 (3), Meerut. Uttar Pradesh.
		(Respondent)

For Assessee :	Shri R.K. Garg, Advocate.
For Revenue :	Shri Pradeep Singh Gautam, Sr. D.R.

Date of Hearing :	13.11.2019
Date of Pronouncement :	13.11.2019

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Aligarh, Dated 22.12.2016, for the A.Y. 2007-2008, on the following grounds :

- 1. That under the facts & circumstances of the case, the learned lower authority has erred not to allow the deduction u/s 54B in respect of purchase of agriculture land in name of his wife, out of the sale*

*proceeds of agriculture land in name of assessee. The disallowance of reduction u/s 54B is therefore, arbitrary, unjust, uncalled for and in any case illegal.*

2. *That under the facts & circumstances of the case, the learned lower authority has erred to treat the agriculture land as capital assets within meaning of section 2(14), whereas, the agriculture land was outside the notified area exceeding 8 Km from Meerut and had population less than 10 thousand. To assess the non capital assets as capital gain, which is not a capital assets is arbitrary, unjust, uncalled for and void abinitio.”*

1.1. Earlier this appeal were dismissed for default which is restored while allowing the M.A. of the assessee.

2. Briefly the facts of the case are that A.O. noted in the re-assessment order that CIB information in the case was received that assessee has sold property for Rs.3,50,000/-on 04/12/2006. Market rate of the property was Rs. 6,19,000/- .As there was difference of Rs.2,69,000/-

notice under section 148 was issued. Further statutory notices were issued to the assessee. The assessee was required to file complete documentary evidences on record including filing of ITR etc. The assessee claimed before A.O. that he has purchased agricultural land back on 16.07.2007 from the person to whom it was sold on 04.12.2006 but that land was purchased back in the name of his wife. The assessee produced copy of the purchase-deed in the name of his wife. The assessee did not file income tax return and not having PAN. The assessee was having Bank pass book to show that he was getting pension from the Army. Thereafter, nobody appeared before A.O. But assessee produced photo copies of the documents including Bank pass book reflecting pension and copy of Khatoni and Khasra of land records, as per which, some agricultural land is reflected in his wife's' name, but, no agricultural land is in his name. The A.O. noted that statement of assessee was also recorded. The A.O. rejected the claim of assessee for deduction under section 54B because investment is not made in the name of assessee and it was

made in the name of his wife. The A.O. accordingly computed income from long term capital gains.

3. The assessee challenged the addition before the Ld. CIT(A). The assessee contended before the Ld. CIT(A) that assessee is entitled for deduction under section 54B. The assessee also contended that the agricultural land was not capital asset so as to attract capital gains. The Ld. CIT(A), however, rejected both these grounds of assessee. The appeal of assessee was accordingly dismissed.

4. I have heard the Learned Representatives of both the parties. The assessee has filed application for admission of additional evidences. It is contended in the application that the land in question is not capital asset so as to attract long term capital gains. The assessee also filed Certificate of Tehsildar confirming distance of land from Meerut Municipal Corporation at 23 KM as well as filed affidavit and Google Map. Learned Counsel for the Assessee submitted that these additional evidences are relevant to decide Ground No.2 and thereafter, Ground No.1. He has, therefore, prayed that same may be admitted for hearing.

5. On the other hand, Ld. D.R. objected to the same and submitted that same were not produced before the Ld. CIT(A).

6. After considering the rival submissions, I am of the view that since Certificate of Tehsildar is relevant which is supported by Affidavit of the Assessee and it goes to the root of the matter whether the land in question is a capital asset or not, therefore, same being relevant for disposal of the appeal, is admitted for hearing. The application for admission of the additional evidences is accordingly allowed. Since these additional evidences were not produced before the authorities below and Ld. CIT(A) has no occasion to examine the same, therefore, the impugned order is set aside and both the issues are restored to the file of Ld. CIT(A) with a direction to re-decide the appeal of assessee in accordance with Law by considering the additional evidences so admitted above. The Ld. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee as well as A.O. The Ld. CIT(A) may also call for remand report from the A.O. on these additional evidences,

which, assessee shall supply before the Ld. CIT(A). Appeal of assessee is accordingly allowed for statistical purposes.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 13<sup>th</sup> November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.