आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, "बी " चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

C.O. No. 39/Chd/2012
(In ITA No. 973/Chd/2012)
निर्धारणवर्ष / Assessment Years : 2006-07

Shri Sohan Lal Garcha, 901/2, Punjab Mata Natar, Ludhiana	Vs. बनाम	The DCIT, Circle VI, Ludhiana
स्थायीलेखासं./PAN NO: ALQPG7446L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

C.O. No. 05/Chd/2013
(In ITA No. 1330/Chd/2012
निर्धारणवर्ष / Assessment Years : 2006-07

Shri Sohan Lal Garcha, 901/2, Punjab Mata Natar, Ludhiana	Vs. बनाम	The DCIT, Circle VI, Ludhiana
स्थायीलेखासं./PAN NO: ALQPG7446L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकरअपीलसं./**ITA Nos. 1337/CHD/2016**

निर्धारणवर्ष / Assessment Year : 2006-07

Shri Sohan Lal Garcha, 901/2, Punjab Mata Natar, Ludhiana	Vs. बनाम	The DCIT, Circle VI, Ludhiana
स्थायीलेखासं./PAN NO: ALQPG7446L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे/ Revenue by : Shri Manjit Singh, CIT DR
निर्धारितीकीओरसे/Assessee by : Shri Sanjeev Garg, Advocate

सुनवाईकीतारीख/Date of Hearing : 31.10.2019
उदघोषणाकीतारीख/Date of Pronouncement : 31.10.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeal by the assessee (ITA No.1337/Chd/2016) is against the order dated 26.9.2016 of the CIT(A) passed in first appeal of the assessee against the order of the Assessing Officer dated 11.2.2011 u/s 154 of the Income Tax Act, 1961 (in short 'the Act'), whereas, the Cross objections No. 39/Chd/2012 has been preferred by the assessee with respect to the appeal of the Revenue bearing ITA No.973/Chd/2012 against the order of the CIT(A) dated 20.11.2009 in respect of the appeal against the order of the Assessing Officer passed u/s 143(3) of the Act.

Cross Objections No. 5/Chd/2013 has been filed by the assessee is in respect of the appeal of the Revenue bearing ITA No. 1330/Chd/2012 against the order of the CIT(A) dated 23.11.2012 passed in appeal against the order of the Assessing Officer dated 29.3.2011 u/s 271 (1)(c) of the Act.

2. It is pertinent to mention here that the appeals of the Revenue bearing ITA No. 973/Chd/2012 relevant to the assessment year 2006-07 and ITA No. 1330/Chd/2012 relating to assessment year 2006-07 have been dismissed vide common order dated 22.11.2016 on the ground of low tax effect.

3. It is also pertinent to mention here that ITA No. 1337/Chd/2016 of the assessee was earlier dismissed vide order dated 16.2.2017 for want of prosecution, however, the said order was recalled vide order dated 30.10.2108 of this Tribunal passed in M.A No.92/Chd/2017 and, therefore, the appeal of the assessee was restored. Further, the Cross Objections No. 39/Chd/2012 & 05/Chd/2013 of the assessee were earlier dismissed for want of prosecution vide order dated 22.11.2016 of this Tribunal, however, the said order dated 22.11.2016 was recalled vide order dated 10.11.2017 passed in MA Nos. 41 & 42/Chd/2017 respectively.

4. In view of the above position, the ITA No. 1337/Chd/2016, C.O.No.39/Chd/2012 and C.O. No. 5/Chd/2013 being related to the same assessee and involving connected issues have been heard together and are being disposed of by this common order.

5. Before taking up the appeals and Cross objections separately, we deem it fit to first narrate the relevant facts of the case as extracted from the order dated 20.11.2009 of the CIT(A) in ITA **No.973/Chd/2012**

Brief facts of the case are that from the details filed during the assessment proceedings, the A.O. noted that the assessee had deposited certain cash on different dates in his saving bank account with State Bank of India, Fountain Chowk, Ludhiana. The A.O. further noted that

the assessee had shown an amount of Rs. Rs. 75.30 lacs as agricultural income. On being asked to explain, the assessee explained that the said income was out of the proceeds of sale of rural agricultural land not falling with in the definition of capital asset. These deposited amounts were claimed to represent the sale proceeds of agricultural land belonging to the assessee situated in village Kohara.. The A.O. asked the assessee to furnish the necessary details and evidences to corelate the above deposits with the sale transactions of the land. The assessee claimed that these amounts were out of the sale proceeds of the land sold by the assessee. The A.O. noted from the sale deeds that the details of payment received by the assessee upon the sale of land during the financial year 2005-06 did not tally with the cash payments deposited by the assessee in his saving bank account. The A.O., therefore, concluded that the assessee failed to explain satisfactorily the sources of deposits of cash in his saving bank account of Rs. 16,00,000/- on 31.5.2005 and Rs. 12,50,000/- on 27.6.2005. The A.O., therefore, deemed it to be the income of the assessee from undisclosed sources. Addition of Rs.28,50,000/- was, therefore, made by him u/s 69A of the Act into the income of the assessee for the assessment year under consideration.

6. Further, in respect of the amount received by the assessee as depicted in the sale deeds, the A.O. asked the assessee to explain as to why the income on sale of the land as noted above should not be treated as long term capital gains chargeable to tax under the provisions of the

Act. The assessee furnished before the A.O. the statement of Ex-Sarpanch, Gram Panchayat, Kohara, Sarpanch, Gram Panchayat, Kohara and Nambardar of village Kohara to the effect that the land in question was outside the limit of 8 km. The assessee therefore submitted that the agricultural land sold by him did not fall into the definition of capital asset for chargeability of capital gains tax. The assessee, therefore, submitted before the A.O. that profit on sale of agricultural land situated in village Kohara was not chargeable to tax under the head long term capital gains. The A.O., however, observed that the statements of ex-Sarpanch, Sarpanch and that of Nambardar of village Kohara could not be relied upon as the area Patwari vide his report dated 26.12.2008 had categorically stated that village Kohara was situated within 8 km from the Municipal Limit of Ludhiana during the period 2005-06. As per the A.O., area Patwari was a government employee who maintained the revenue records in respect of Kohara village and that, therefore, there remained no doubt that the land sold by the assessee was situated within 8 km of Municipal Limits of Ludhiana. He, therefore, concluded that capital gains on the sale of this land was duly chargeable to tax. The A.O. further noted that the area Patwari had also furnished average 5 years rates for the period 1970-71 to 1981-82 in respect of land of different kinds situated in village Kohara. These rates were in respect of 4 kinds of lands i.e. *bhad, khalas, chahi and hiyai.* As per these details maximum rates for *bhad* kind of land was Rs.65.29 per marla. In the jamabandi, the land sold by the assessee had been shown as *chahi,*

vacant or *hiyai.* The land was found to have been sold by the assessee to M/s Ashok Malhotra Property Dealer Pvt. Ltd., who were developers and colonizers of the land. The cost of acquisition of the land sold by the assessee was, therefore, adopted by the A.O. at the maximum rate shown for *hiyai & chahi* land at Rs.654.46 per marla as on 1.4.1981. The A.O. accordingly worked out capital gains on the sale of this land as detailed in in para 4.4 of the assessment order at Rs. 17,28,165/-. This amount was added to the income of the assessee under the head long term capital gains.

7. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A) raising the first ground of appeal that the order passed by the Assessing Officer was barred by limitation. It was pleaded that the Assessing Officer had failed to serve the first assessment order in time and that the service was by way of affixture and further that the column meant for date of order was left blank and that under the circumstances it was apparent that the order was passed by the Assessing Officer after 31.12.2008, therefore, the assessment order passed by the Assessing Officer was time barred. Apart from that, the assessee had taken the ground that he was not given proper opportunity to furnish the necessary evidences by the Assessing Officer. Further, on merits the addition made by the Assessing Officer of Rs. 2,85,000/- on account of unexplained cash deposits in the bank

account and addition of Rs. 17,28,165/- made by the Assessing Officer on account of long term capital gains was challenged.

8. The Ld. CIT(A) vide impugned order dated 20.11.2009 dismissed the first ground raised by the assessee relating to the validity of the assessment order being barred by limitation, observing as under:-

> *"2.1 With regard to this ground of appeal Shri H.O. Arora, Advocate, the Id. Counsel for the appellant has submitted that the order under reference had been served upon the appellant on 2.1.2009. As per him, it was duly mentioned in the memo of appeal that the order was received on 2.1.2009 as it was affixed at the premises of the appellant. It is further submitted that the order was neither tendered to the appellant nor it was refused by him and as such the service of order by affixture was misplaced, erroneous and contrary to law. Shri Arora also submitted that the service of order by affixtures is the last mode of service and that the service without refusal and without the evidence of independent witnesses does not establish that the order passed and served within the limitation prescribed under the law i.e. 31.12.2008. The Ld. Counsel also submitted that in the copy of order the A.O. has not mentioned the date of passing this order, in the relevant column. As per him, prima-facie the order seems to have been passed after 31.12.2008 and the service by affixture 2.1.2009 negated that the order was passed within the limitation period prescribed in the Income Tax Act, 1961.*
>
> *3. I have carefully considered the contention of the Ld. Counsel for the appellant and perused the relevant record. Though the Ld. Counsel has contended as above, it is verified from the assessment record of the appellant that whereas a copy of the order was affixed at the last known address of the*

appellant, another copy was also sent by speed post on 30.12.2008. Therefore, the contention of the appellant that the order under appeal was passed after 31.12.2008 is not borne from record and it has to be considered that the assessment order under appeal has been passed on 26.12.2008 itself as indicated in the demand notice issued u/s 156 of the Act along with the assessment order. Just non-indication of date in the assessment order would not mean that the order was not passed on the date before 31.12.2008. It is well known that along with assessment order a copy of demand notice is also sent to an assessee and date indicated in such demand notice is the date of assessment order. It is not disputed by the appellant that the demand notice filed by the appellant himself with appeal memo in this case is dated 26.12.2008. There could not be any doubt that demand notice indicating exact demand on the basis of an assessment order can only be prepared after passing such assessment order. Therefore, once the demand notice filed by the appellant with the appeal memo itself is dated 26.12.2008, it has to be considered that the assessment order was also passed on or before that date only. As far as the contention that notice u/s 143(2) was not issued in this case within the prescribed time, in the written submissions of the Ld. Counsel no specific arguments have been advanced. Therefore, this contention raised in the grounds of appeal can also not be accepted. The above position, therefore, clearly indicate that these grounds of appeal are without any merit. These are accordingly dismissed.

9. So far as the addition made by the Assessing Officer of Rs. 28.50 lacs on account of unexplained cash deposits was concerned, the Ld. CIT(A) held that the assessee had explained the source of the aforesaid deposit as on account of earnest money received vide agreement to sell

dated 29.11.2004. He therefore, deleted the addition made by the Assessing Officer of the amount of Rs. 28.50 lacs.

10. However, so far as the addition made by the Assessing Officer on account of long term capital gains was concerned, the Ld. CIT(A) held that the assessee could not satisfactorily prove that the land sold by the assessee did not fall in the definition of capital asset under the provisions of section 2(14) of the Income Tax Act. The relevant part of the findings of the Ld. CIT(A) on this issue is reproduced as under:-

> *"6. I have carefully considered the contention of the Ld. Counsel for the appellant and perused the relevant record. First let us take up the issue of chargeability to tax or not of the income assessed by the A.O. as long term capital gains. This capital gain has arisen in this case on the sale of land situated in village Kohara. The A.O., on the basis of report of the area Patwari dated 26.12.2008 has considered that the entire village Kohara falls within 8 km from the Municipal Corporation limits of Ludhiana during the period 2005-06. On the other hand, the appellant is contending that the land of the appellant which was sold during the relevant period fell beyond 8 km of Municipal Limits of Ludhiana during the relevant period. This has been claimed by the appellant on the basis of statement of ex-Sarpanch, Gram Panchayat, Kohara, Sarpanch, Gram Pancheyat, Kohina and Nambardar, Village Kohara. However, I am inclined to go by the approach of the A.O. in this regard. Area Patwari is Senior Revenue Officer as compared to Sarpanch or Nambardar etc. As brought out by the AO it is he who maintains the revenue record in respect of such land. Therefore, once such Senior Officer is certifying that the entire village falls within 8 km of Municipal Limits of Ludhiana during the year 2005-06,*

the statement of Junior Official being Nambardar or ex-Sarpanch etc. cannot be taken to be giving the correct position. It was for the appellant to prove as to how in the face of the information filed by the Area Patwari, the statement of Nambardar and ex-Sarpanch of Kohara village should have been accepted. In view of the above the land sold by the appellant during the relevant period which is undisputedly in village Kohara, is taken to be situated within 8 km of Municipal Limits of Ludhiana during the financial year 2005-06 as held by the A.O. also. The A.O. was, therefore, fully justified in considering this land to be a capital asset as per the provisions of Section 2(14)(iii)(b) of the Act and bringing to tax capital gains earned by the appellant on the sale of this asset accordingly.

6.1 During the appeal proceedings the Ld. Counsel has also placed reliance upon the decision of the Hon'ble ITAT Chandigarh in the case of ITO W-I, Sangrur vs. Khazan Singh S/o Sh. Joginder Singh, Sangrur assessment year 2002-03. The Ld. Counsel has produced facts of this case in para 3 of his written submissions reproduced above. In view of the ratio of this decision being ITA No.53/Chd/2005 dated 24.01.2007 it is contended that the land sold by the appellant cannot be considered as a capital asset within the meaning of provisions of Section 2(14) of the Act and capital gain on the sale of which can be taken to be chargeable to tax. However I do not agree with the Ld. Counsel in this regard. The main reason for the Hon'ble ITAT to decide that case in favour of the assessee was that there was nothing on record to show that the village Manglwal in that case fell within the outskirts of 5 km from the Municipal Limit of Sangrur. However as far as the case of the appellant is concerned, it is not disputed that for Ludhiana, as per the relevant notification, area falling within the limit of 8 km from the Municipal Limits of Ludhiana is taken to be a capital asset as per the provisions of Section 2(14) of the Act. Further as already mentioned, as per

the report of the area Patwari entire land in village Kohara falls within the area of 8 km from the Municipal Limits of Ludhiana. Therefore, the land sold by the appellant during the relevant period which is in question, being undisputedly in the village Kohara is to be taken to be within the area of 8 km from the Municipal Limits of Ludhiana for the relevant period and the capital gains on the sale of such land is duly chargeable to capital gains tax. Therefore, the ratio of this decision does not help the case of the appellant in any manner. Further the arguments of the Ld. Counsel that the population of village Kohara was less than 10,000 during the relevant period etc. would not help the case of the appellant in as much as these facts are relevant if the position with respect to a capital asset is to be considered under the provisions of Section 2(14)(iii)(a) of the Act. On the other hand, in the case of the appellant provisions of Section 2(14)(iii)(b) are applicable. Therefore, this would not apply to the case of the appellant.

6.2 I n view of the above, the findings of the A.O. bringing to tax the capital gains on the sale of land in question are upheld."

11. It is pertinent to mention that after passing of the aforesaid impugned order of the CIT(A) dated 20.11.2009, there was an interesting twist in the facts and circumstances of the case owing to subsequent events relating to the case. The Assessing Officer thereafter passed an order dated 11.2.2011 u/s 154 of the Act increasing the tax liability of the assessee by increasing the slab of tax by adding / considering again the amount of Rs. 75.30 lacs as agricultural income of the assessee, the issue relating to which has already been discussed above. What we mean to say here is that the amount of Rs. 75.30 lacs

which has been shown by the assessee as agricultural income on account of sale of agricultural rural land was again taken into account by the Assessing Officer as agricultural income and the same being exempt income, however, the tax slab of the assessee was increased to higher rate for computation purpose raising the additional demand of Rs. 52,783/-.

The assessee filed appeal against the aforesaid order passed by the Assessing Officer u/s 154 of the Act which was dismissed by the Ld. CIT(A) vide order dated 26.9.2016 against which the assessee has preferred appeal in ITA No. 1337/Chd/2016. Another interesting fact which has come to light is that after passing of the order u/s 154 of the Act, it was revealed to the assessee that in fact there were two assessment orders passed by the Assessing Officer relating to the same assessment years. In the first order, though the month and year of the order was mentioned, however, the date of the order was not mentioned but left blank, whereas, in the second assessment order, which form part of the record of the file of the department and on the basis of which the impugned order dated 11.2.2011 u/s 154 of the Act was passed by the Assessing Officer, the date has been filled with ink as 26.12.2008. Another noticeable difference in the first undated order and in the second order was that in the first order there was mention of letter dated 23.10.2008 issued by the Assessing Officer to the assessee and it was mentioned "*contents of which are reproduced below*". Similar was the position regarding the another letter issued by the Assessing Officer to

the assessee dated 28.11.2008 mentioning that the "*contents of the same are reproduced below*", however, the contents of the said letters were actually not reproduced. Another noticeable fact was that in the second order, the agricultural income of Rs. 75.30 lacs was added over and above the total taxable income computed by the Assessing Officer at Rs. 47,68,743/-. However, there was not such double addition of the amount of Rs. 75.30 lacs in the first (updated) order. The assessee contested before the Ld. CIT(A) not about the validity of the assessment order passed but also the validity of the subsequent passed order passed u/s 154 of the Act. However, the Ld. CIT(A) vide impugned order dated **26.9.2016** dismissed the appeal of the assessee against which the present ITA No. 1337/Chd/2016 has been preferred.

12. Now the assessee before us has not only challenged the addition made by the Assessing Officer on merits vide C.O. No. 39/Chd/2012 but has also challenged vide ITA No. 1337/Chd/2016, validity of the order dated 11.2.2011 passed by the Assessing Officer u/s 154 of the Act and further confirmed by the CIT(A) vide order dated 26.9.2016.

Apart from that, the assessee has also challenged the action of the CIT(A) in confirming the penalty in respect of the addition confirmed by the CIT(A) made on account of capital gains. We accordingly, proceed to adjudicate the issues raised in the captioned Cross Objections and appeal.

C.O.No. 39/Chd/2012:-

13. The grounds taken by the assessee vide **C.O.No. 39/Chd/2012** are as under:-

1. *That the Worthy Commissioner of Income Tax (Appeals)-ll, Ludhiana in law, facts and circumstances of the case has righly deleted the addition of Rs. Rs.28,50,000/- (16,00,000+ Rs. 12,50,000) on account of cash deposited in the bank of the appellant.*

2. *That the Worthy Commissioner of Income Tax (Appeals)-ll, Ludhiana in law, facts and circumstances of the case has rightly directed the Assessing Officer to consider Rs. 2850000/- (1600000 + 1250000) received during the year and Rs. 1450000/- in the immediate preceding year, to be a part of sale consideration of agriculture land.*

3. *That the Worthy Commissioner of Income Tax (Appeals) has erred in upholding the addition on account of long term capital gain on sale of agricultural land which was outside the limit of 8 KM of municipal limit.*

4. *That the Ld. CIT(A)-II, Ludhiana has erred in confirming the action of the Assessing Officer on account of assuming the agriculture land within 8KM of the municipal limit. ,*

5. *That the CIT(A)-II, Ludhiana has erred in upholding addition on account of long term capital gain against the facts and circumstances of the case by not considering the detailed submission properly.*

6. *That the CIT(A)-II, Ludhiana in facts and circumstances of the case has erred in deciding that the order of assessment has been passed with in limitation period.*

7. *That the CIT(A)-II, Ludhiana erred in not deleting the additions by setting aside the assessment order in the facts and circumstances of the case.*

8. *That the respondent craves leave to add or amend any ground of cross-objections before the appeal is finally heard or disposed off.*

14. **Ground No.1 & 2:** No grievance has been raised by the assessee vide ground Nos. 1 & 2 of the Cross objections No. 39/Chd/2012, so, these grounds need no adjudication.

15. **Ground Nos. 3, 4 & 5:** So far as the ground Nos. 3, 4 & 5 of C.O.No.39/Chd/2012 are concenred, these grounds are linked with issue relating to chargeability of tax on Long Term Capital Gains on sale of land.

So far as the issue as to whether the land sold by the assessee falls in the definition of capital asset or not as per the provisions of section 2(14) of the Act is concerned, a perusal of the above reproduced order of the CIT(A) reveals that the assessee in support of his claim submitted that the land in question was situated beyond 8 Kms of Municipal Limits of Ludhiana during the relevant period and has relied upon the statement of ex-Sarpanch, Gram Panchyat, Kohara however, the Ld. CIT(A) has given weightage of the report of the Patwari who in his report has stated that the entire village falls within the 8 kms of Municipal Limits of Ludhiana during the years 2005-06. However, the contention of the Ld. Counsel for the assessee is that the report of the

Patwari is in respect of village Kohara and not about the land of the assessee which is beyond 8 kms from the Municipal limit of Ludhiana. The Ld. counsel for the assessee has also submitted that the assessee has not been given proper opportunity to rebut the alleged report of the Patwari. Even the Ld. Counsel for the assessee has submitted that the assessee is in a position to provide another statement of Area Patwari under the observation of the Tehsildar, who is a senior most officer in Revenue Department, to the effect that the land of the assessee was beyond the 8 Kms of the municipal limit. That the said statement of the area Patwari was not procured and produced during the assessment proceedings as the assessee had already produced sufficient and reliable evidence in support of his claim. The statement was collected after the appellate order was passed by the Ld. CIT(A).

16. The Ld. counsel for the assessee has submitted that the statement in possession of the assessee as compared to the statement of Patwari, relied upon by the Assessing Officer, was more reliable as there was lacunas in the statement of Patwari relied upon by the Assessing Officer. The Ld. counsel, therefore, has submitted that the assessee may be given proper opportunity to furnish necessary evidences to the effect that the land of the assessee during the relevant period did not fall within the definition and scope of capital assets as per the provisions of section 2(14) of the Act.

The Ld. counsel for the assessee in this respect has also relied upon the subsequent amendment providing population of the village as also one of the important criteria for deciding as to whether the land is a rural land or urban land and as to whether the same is to be treated as capital asset or not. The Ld. Counsel, therefore, has pleaded that the assessee be given proper opportunity to present his case before the Assessing Officer in this respect.

17. The Ld. DR, on the other hand, has relied on the findings of the lower authorities on this issue.

18. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties. We find force in the contention of the Ld. Counsel for the assessee that the report / statement of the Patwari relied upon by the lower authorities cannot be the sole criteria to determine the nature of the land sold by the assessee during the relevant period. There is a force in the contention of the Ld. Counsel for the assessee that the statement speaks about the village and not specifically about the distance of the land of the assessee from the municipal limit.

On the other hand, the assessee wants to furnish another report of the Patwari and other evidences in support of his contention and these evidences alongwith evidences / statements already furnished by the assessee go to the root of the case. Therefore, this issue raised vide

Grounds No. 3, 4 & 5 is restored to the file of the Assessing Officer with a direction to admit the additional evidences sought to be furnished by the assessee and after considering the entire facts and circumstances of the case, pass a speaking order afresh on this issue uninfluenced by any earlier observation made by the Assessing Officer or the CIT(A) on this issue.

19. **Ground No.6:** The issue raised vide this ground No.6 of C.O.No. 39/Chd/2012 is relating to the validity of assessment order on the ground of limitation period. The contention of the Ld. Counsel for the assessee is that neither the first / undated assessment order passed by Assessing Officer is valid nor the second assessment order dated 26.12.2008 is valid. That both the orders passed by the Assessing Officer are beyond the period of limitation which expired on 31.12.2008. To verify the contention of the assessee, the assessment records were called for . The Ld. CIT DR has submitted that the assessment order was not only served on the assessee by way of affixture but also was served on the assessee through speed post.

20. Both the Ld. representatives of the parties have fairly agreed that if there was an evidence on the record of service of the assessment order through speed post prior to 31.12.2008, then there remains no force in the contention of the Ld. Counsel for the assessee that the order was passed after the stipulated date of 31.12.2008. From the perusal of the

record, especially the Speed Post acknowledgment attached in the record, the Ld. Counsel for the assessee fairly agreed that the order was dispatched on 30.12.2008 by way of speed post. Moreover, the issue has been discussed by the Ld. CIT(A) in the impugned order and has given a categorical finding that the demand notice issued with the assessment order was dated 26.12.2008 which was placed on the file by the assessee himself. In view of this, the ground relating to the validity of the assessment being barred by limitation has no force and the same is accordingly dismissed.

21. **Ground No. 7 & 8**: Ground No. 7 & 8 of C.O.No. 39/Chd/2012 are general in nature and do not require any specific adjudication.

In view of this, the Cross objections raised by the assessee vide **C.O.No.39/Chd/2012** are treated as partly allowed.

C.O.No. 5/Chd/2013

22. The grounds taken by the assessee vide **C.O.No. 5/Chd/2013** are as under:-

> 1. *That the Worthy CIT(A)-II, Ludhiana in the facts and circumstances of the case has deleted the penalty on the addition of Rs.28,50,000/- (16,00,000/-+ Rs. 12,50,000/-) on account of cash deposited in the bank as the assessee had submitted that the addition had been deleted with detailed directions given in appellate order and there were a number of other points which could be accepted in support of the explanations.*

2. *That the Worthy Commissioner of Income Tax (Appeals) has erred in law, case law, facts and circumstances of the case in upholding the penalty on addition on account of long term capital gain on sale of agricultural land which was outside 8 KMs of municipal limit and not chargeable to tax even otherwise.*

3. *That the Ld. CIT(A)-II, Ludhiana has erred in law, facts and circumstances of the case in passing the appellate order and whereas it was also brought on record that the matter with regard to the taxability of cash deposits, capital gain and passing the Assessment Order after the period of limitation, is pending before the ITAT Chandigarh, Bench-B bearing Appeal No.973 and Cross Objection No.39 of 2012.*

4. *That the CIT(A)-II, Ludhiana has erred in law, facts and circumstances of the case in not deleting the penalty or setting aside the penalty order by not considering the detailed submissions properly.*

5. *That the penalty order and the appellate order are in contravention of section 274 and the Rules of Natural Justice, so liable to set aside.*

6. *That additions and penalty is against the laws, case laws, facts and circumstances of the case.*

7. *That the respondent craves leave to add or amend any gad of cross-objections before the appeal is finally heard or disposed off.*

23. So far as the grounds raised by C.O. No. 5/Chd/2013 are concerned, a perusal of the same reveal that the sole issue raised in these grounds is relating to the levy of penalty in respect of the

additions made by the Assessing Officer on account of addition made of long term capital gains on sale of land.

Since as per our observation made above, while deciding the Cross Objections No. 39/Chd/2012, the issue regarding the addition of capital gains has been restored to the file of the Assessing Officer, hence, there is no subsisting addition at this stage. Hence, the very basis on which penalty was levied has ceased to exist, therefore, the impugned penalty levied u/s 271 (1)(c) of the Act, at this stage, has no legs to stand and the same is accordingly ordered to be deleted. However, the Assessing Officer will be at liberty to initiate the same, if he deem so fit, in the light of the decision arrived at in the set aside issue on quantum addition on account of capital gains on sale of land as directed above while disposing of C.O.No. 39/Chd/2012.

These Cross objections stands allowed in above terms.

ITA No. 1337/Chd/2016

24. In ITA No. 1337/Chd/2016, the assessee has taken following grounds of appeal:

1. *That the order of CIT(Appeals) is against the law.*
2. *That the order of CIT(Appeals) is against the facts and circumstances of the case.*
3. *That addition of agriculture income of Rs.7530000 in the original assessment order is prima facie after passing of assessment order, which resulted in passing of order under section 154.*
4. *That the CIT(A) did not take the fact seriously that the addition was without providing any opportunity to the*

assessee and further non service of order the appellate right of the assessee was snatched with regard to addition of Rs.7530000.

5. *That whereas the assessee was unable to file appeal in the absence of service of the order making addition of Rs.7530000, the matter kept through this appeal or rectification letter of the assessee was to be decided, but the CIT(A) did not decide the issue neither in response to the rectification letter nor through this appeal.*

6. *That the CIT(Appeals) did not decide the issue whether AO was right in keeping the addition of Rs.2850000 after having the latest assessment order on record wherein a sum of Rs.7530000 was added as agriculture income, and whereas the AO failed to pass the order in respect of rectification letter filed in this regard.*

7. *That the sum of Rs.7530000 has been taken into account twice while calculating income of the assessee for the assessment year 2006-07.*

8. *That the order of the AO as well as the CIT (A) has violated the Rules of Natural Justice.*

9. *That the respondent craves leave to add or amend any ground of appeal before the appeal is finally heard or disposed off.*

25. So far as the ITA No. 1337/Chd/2016 is concerned, whereby, the assessee has challenged the validity of the rectification order u/s 154 of the Act, the facts on the file speak itself that the second order passed by the Assessing Officer is not a valid order. The Assessing Officer subsequent to passing and serving the first undated assessment order filled in the lacunas left i.e. reproduced the contents of the relevant letters dated 23.10.2008 and 28.11.2008, filled in the date of order with ink and in the end of the order added the amount of agricultural income of Rs. 75.30 lacs with ink (pen) without application of mind which has

resulted into double addition of the same amount. The assessee in the return of income claimed an amount of Rs. 75.30 lacs as agriculture income on account of sale of agricultural land. The A.O. originally made addition by way of bifurcation of the said amount into unexplained deposits and capital gains as discussed above. The A.O. , however, in the second order, while filling in the lacunae left in the first order again mistakenly added the same amount as agricultural income for computation purposes increasing the tax liability of the assessee, wrongly and illegally. The act of the Assessing Officer in modifying the original assessment order wrongly and illegally is not appreciated. The Ld. CIT(A) also failed to take not of the blatant wrongful act on the part of the Assessing Officer to dismiss the appeal of the assessee in a mechanical manner.

There is no justification on the part of the Assessing Officer in adding the same amount twice. Neither there is any evidence nor the assessee has ever claimed any extra agricultural income of Rs. 75.30 lacs except the income claimed on account of sale of land which issue has already been discussed as above.

26. In view of the above, impugned order of the CIT(A) dated 26.9.2016 is set aside and the order passed by the Assessing Officer dated 11.2.2011 u/s 154 of the Act is held wrong, illegal, null and void.

Consequently, the additional demand pursuant to the above order passed by the Assessing Officer u/s 154 of the Act stands deleted.

In the result, this appeal of the assessee is hereby allowed.

Order pronounced in the Open Court on 31.10.2019.

Sd/- Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA) **(संजय गर्ग / SANJAY GARG)**
लेखा सदस्य/ Accountant Member **न्यायिक सदस्य/ Judicial Member**

Dated : 31.10 .2019
"आर.के."

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar