IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.-5402/Del/2016, A.Y. 2009-10

Sh. Prem Chand C/o. M/s. Kissan Agro Properties, Khema Khatti Road, Opp. Thakkar Hospital Fatehabad PAN : AMKPC3654J	Vs.	ITO Ward-1 Fatehabad
Appellant		**Respondent**

Assessee by : Sh Suransh Pandya, Adv.
Revenue by : Sh. Gaurav Dudeja, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, A.M.:

(A) This appeal filed by the assessee is against impugned appellate order dated 08.08.2016 passed by the Ld. CIT (Appeals)-Hisar for assessment year 2009-10. Following grounds of appeal have been raised as under :

1. *"That the notice issued u/s 148 and the assessment order passed in pursuance to said notice are illegal, bad in law and without jurisdiction.*

2. *That in view of facts and circumstances of*

the case and in law the CIT(A) failed to appreciate that the "Reasons to believe" provided by the AO are absolutely subjective, based on suspicion and have been recorded without exercise of mind over information received by the AO.

3. *That in the "Reasons to believe" the AO has arbitrarily concluded that the land which has been sold is a capital asset within the meaning of section 2(14) and in the absence of any tangible material. Therefore, reopening of the assessment u/s 147 is illegal, unjust and void ab initio at the very threshold.*

4. That in view of facts and circumstances of the case and in law, the CIT(A) grossly erred in upholding the actions of AO as re-assessment order passed by AO is arbitrary, without application of mind and in gross violation of principles of natural justice. The additions made are illegal and bad in Law.

5. That the CIT(A) and AO have erred in assuming that the said agricultural land is situated within the municipal limits and hence a capital asset within the meaning of capital asset within the meaning of sub section 14 of section 2 of the income tax act.

6. That without prejudice in view of facts and circumstances of the case and in law, the CIT(A) & AO have grossly erred in adopting the FMV as on 1.04.1981 of the said land at Rs. 5,760/- arbitrarily and ignoring all other evidences and material available and placed on record by the assessee in this regard.

7. That without prejudice the facts and circumstances of the land deal relied by the AO are completely different from the assessee's case and thus the land value of the earlier deal, as relied by the AO cannot be made basis for

estimating the fair market value of the assesse's land.

8. That in view of facts and circumstances of the case and in law, the CIT(A) have grossly erred in upholding the additions made AO on account of capital gains arising from sale of the agricultural land owned by the assessee.

9. That in view of the facts and circumstances of the case and in law , the CIT(A) and AO have grossly erred in not allowing exemption/deduction u/s 54B and 54F on the ground that it was not claimed in the return.

10. That the AO has erred in not allowing the deduction u/s 54F for amount of consideration applied towards purchase of residential house property by the assesee.

11. That without prejudice to the above the CIT (A) & AO have erred in the view of the facts and circumstances by ignoring the fact that the claim of exemption/deduction u/s 54B and 54F could not have been made by the assessee at the time of filing the return as there was a capital loss in computation of Long term. However a claim was made and a note regarding the investments made was mentioned in the computation of income which is wrongly and illegally ignored by the lower authorities.

12. That the material used by the AO has not been confronted to the assessee and reasonable opportunity to place the document and evidence in support of his case is not given to assessee. Hence the additions made are against the natural principles of justice.

13. That without prejudice to the above the capital gains have been wrongly computed and wrongly worked out by the AO.

14. That in view of the facts and circumstances of the case and in law , the various observations made by the AO and CIT(A) are factually incorrect, illegal , bad in law and contrary to facts on record and based on mere guesswork and surmises and conjectures .

15. The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and additions are also excessive.

16. The explanations given, the evidence produced and material placed has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

17. That the interest u/s 234A, 234B and 234C has been wrongly and illegally charged and is wrongly worked out.

18. That the assessee reserves the right to add, amend, alter the grounds of appeal."

(B) Assessment order dated10.12.2014 was passed u/s 143(3) read with Section 147 of Income Tax Act wherein total income was assessed at Rs. 1,23,25,450/- (rounded of) as against returned income of Rs. 1,27,560/-. Relevant portion of the assessment order is reproduced as under :-

3.1 From perusal of the records, it transpires that though the assessee filed return declaring 'Nil' income, yet in Schedule 'CG' (Capital Gains), Long Term Capital Loss at Rs.13,01,339/- has been declared by the assessee from transfer of the above-mentioned land. It is worth notable

that no exemption under Sections 54, 54B, 54D, 54EC, 54ED and 54F has been claimed by the assessee in his Return of Income, as in column No.B(2)(d) of the Schedule 'CG' of the ITR-2 filed by the assessee, the figure of claim under these sections has been shown as "NIL" meaning thereby that the assessee claims no exemption under these sections **(emphasis added).**

3.2 From perusal of the computation of income furnished by the assessee before the then AO (on 27.05.2014) during the course of assessment proceedings, it can be observed that the sale consideration of the assessee's share of the land works out to Rs.1,23,70,840/-, against which the 'Indexed Cost of Acquisition' at Rs.1,30,90,140/- and indexed cost of improvement at Rs.5,82,039/-has been claimed by the assessee and the long term capital loss from the transaction, after claiming the indexed cost of acquisition & improvement has been declared at Rs.13,01,339/-. A scanned copy of the computation of income is reproduced as under :

Name of Assessee	PREM CHAND		
Father's Name	SH. MALIK DITTA		
Address	S/O SH. MALIK DITTA ASHOK NAGAR FATEHABAD FATEHABAD HARYANA 125050		
Status	Individual	Assessment Year	2009-2010
Ward	WARD-1, FATEHABAD 58 [1]	Year Ended	31.3.2009
PAN	AMKPC3654J	Date of Birth	
Residential Status	Resident	Sex	Male
A.O. Code	NWR-W-058-03		
Filing Status	Original		
Tele:	(01667)222307 Mob:9416045307		

Computation of Total Income

Income from Salary (Chapter IV A)		**136208**
MV COLLEGE FATEHABAD		
Salary	136208	
Income from Capital Gain (Chapter IV E)		**Nil**

Long Term Capital Gain

LAND(Before 15/6)			
Sales Consideration		12370840	
Less:Indexed Cost			
LAND	13090140		
F.Y. 1981-82 2249165/100*582			
TUBEWELL EXP	75259		
F.Y. 1983-84 15000/116*582			
TUBEWELL EXP	75660		
F.Y. 1984-85 16250/125*582			
SUBMERSIBLE PUMP EXP	99384		
F.Y. 1993-94 41666/244*582			
RESI HOUSE	199863		
F.Y. 1990-91 62500/182*582			
RESI HOUSE	131873		
F.Y. 1997-98 75000/331*582			
		13672179	
		-1301339	
Investment in House Property u/s 54F Rs. 5000000/-			
Investment in Agriculture Land u/s 54B Rs. 5264981/-			
Capital Loss Rs. 1301339/- will not set off from any other head of income			
Gross Total Income			136208
Less: Deductions (Chapter VI-A)			
u/s 80C			
P.F.	8644		
		8644	
Total Income			127564
Round off U/s 288A			127560
(+) Agricultural Income			275000

4.1 From perusal of the above computation of income the following observations can be made :

i) the assessee has substituted the Fair Market Value (hereinafter called FMV, for short) of the land as on 01.04.1981 in place of the cost of acquisition of his land in terms of Section 55(2)(b)(i)

of the Income Tax Act, 1961. The FMV of the land as on 01.04.1981 has been taken by the assessee @ Rs.8,00,000/- per Acre calculating the cost of acquisition at Rs.22,49,165/- as on 01.04.1981 and indexed cost of acquisition/improvement has been shown at Rs.1,36,72,179/-, resulting into Long Term Capital Loss at Rs.13,01,339/-.

ii) No claim of exemption under Sections 54, 54B, 54D, 54EC, 54ED and 54F has been made.

iii) Though there is a mention in the above computation of income that investment in agri. land made at Rs.52,64,981/- and investment in construction of house Rs.50 lac, **yet no claim of exemption U/s 54B and 54F of the Act has been made in the return of income i.e. in the prescribed Schedule 'CG' in the ITR filed by the assessee** (copy enclosed as per Annex.2). It is worth notable that neither computation of income in the form of a separate sheet was required to be filed alongwith the return of income, nor it has been filed. It has been furnished separately alongwith a written reply to some query raised by the then AO during the course of assessment proceedings and thus it has been furnished subsequent to filing the return of income. **Therefore, no claim of exemptions under Sections 54B and 54F of the Act has been made by way of (i) filing the return of income voluntarily U/s 139(1) of the Act or (ii) by way of filing a revised return of income U/s 139(5) of the Act.**

4.2 The fair market value of the land shown @ Rs.8,00,000/- per acre as on 01.04.1981 *prima facie* appears to be highly inflated. Therefore, the assessee was required to explain the basis of adopting the FMV at

Rs.8,00,000/- as on 01.04.1981. In response thereto, the assessee furnished a copy of the application dated 18.11.2013 moved by him to the Sub Registrar, Fatehabad, seeking the information in respect of the prevalent market rate of the land in that area during the F/Y 1981-82. The said application was marked by the Tehsildar to the 'Patwari', who made his noting dated 19.11.2013 on this application as under :

"Sir,

S/Shri Sohan Lal, Dharam Chand, Dharam Chand, Karam Chand sons of Shri Malik Ditta were owners of the land mentioned in the above khasra numbers (khasra numbers mentioned in the application) in the year 1981-82. Market Value of this land was @ Rs.8,00,000/- per acre in the year 1981-82."

4.3 The Patwari's mention of the value is without any basis and the role of Patwari has not been recognized as that of Valuer either as per the Income Tax Act, 1961 or any other Act. Therefore, the matter was referred by this office to the two different Registered Valuers namely – (i) Ar. Sanjeev K. Nagpal, Br.Arch.,AIIA, MCA, FIV, 15-Medical Enclave, Chandigarh Road, Tohana and (ii) Ar. Rajni Gupta, FIIA, MICA,FIV, Vakil City Centre, Hisar. In response, Ar. Sanjeev K. Nagpal, valued the FMV of the land as on 01.04.1981 @ Rs.32,000/- per acre vide his report dated 15.09.2014, received in this office on 16.09.2014, and Ar. Rajni Gupta, valued the FMV of the land as on 01.04.1981 @ Rs.10,000/- per acre approx. vide her report dated 08.10.2014. Copies of both the reports are placed on records.

4.4 It may be seen that the assessee has adopted the FMV of the land as on 01.04.1981 at a much higher value i.e. @ Rs.8,00,000/-per acre

and tired to justify the valuation on the basis of noting of the Patwari. Therefore, a letter was written by this office to the Sub Registrar, Fatehabad, inquiring the prevalent market rate of the land in Bhiva Basti, Fatehabad in the F/Y 1981-82 with supporting documentary evidence. In response thereto, the Sub Registrar, Fatehabad, furnished vide his letter No.363 dated 26.09.2014 photo-copies of the two sale-deeds bearing Sale Deed No.3429 dated 24.02.1982 and Sale Deed No.3435 dated 25.02.1982, as documentary evidence/instances of the sale of the land in Bhiwa Basti, Fatehabad in the F/Y 1981-82. From perusal of the copy of the sale deed No.3429 dated 24.02.1982, it is observed that land measuring 25 kanals was

sold for total consideration of Rs.18,000/- i.e. @ Rs.5,760/- per acre on 24.02.1982. This land is situated in Bhiva Basti, Fatehabad, where the assessee's transferred land is situated. **Thus, both the pieces of land i.e. the land sold vide the above mentioned sale-deed and the land sold by the assessee to M/s Soma New Towns Pvt. Ltd. are situated in the same area but strangely the assessee has claimed Fair Market Value of the transferred land as on 01.04.1981@ Rs.8,00,000/- per acre; as against the above mentioned actual instance of sale of the land @ Rs.5,760/- per acre on 24.02.1982 i.e. in the same financial year. More interestingly, both the above-mentioned pieces of land are not only situated in the same vicinity, but these belong to the adjoining *khasras*, as the land sold @ Rs.5,760/- per acre as per the above-mentioned sale deed is situated in *Khasra* No.180 of Bhiwa Basti, Fatehabad and part of the assessee's transferred land to M/s New Soma Towns Pvt. Ltd. is situated in *Khasra* No.179 in the same area. Hence, the above mentioned sale deed provided by the Sub Registrar, Fatehabad is perfectly a comparable case.**

4.5 Similarly, piece of land, which is subject matter of another sale deed provided by the Sub Registrar, Fatehabad i.e. Sale Deed No.3435

dated 25.02.1982, land situated at Bhiwa Basti was sold @ Rs.9,921/- per acre during the same financial year i.e. in the F/Y 1981-82.

4.6 In order to cross-examine **the witness of the assessee** i.e. Shri Madan Lal, Patwari, the noting of whom is being claimed as support for claim of the value of the land at Rs.8,00,000/- per acre as on 01.04.1981, the assessee was specifically required vide this office letter dated 08.10.2014 to produce his witness i.e. the Patwari for examination on or before 14.10.2014.. However, **the assessee could not discharge the onus laid upon him heavily and did not produce his witness for examination by the date fixed**. Accordingly, the Patwari was summoned by this office U/s 131 of the Act requiring his personal appearance for examination. The said Patwari, namely Shri Madan Lal S/o Shri Sarjeet Singh, R/o Adampur, appeared on 17.10.2014 in compliance of the summons issued and he was examined on oath. In his statement dated 17.10.2014, the Patwari categorically admitted that the noting/report was prepared by him purely on 'estimated basis' and no records/documents etc. were consulted by him while preparing the report and further stated that the FMV reported by him was nothing; but his mere estimation. Relevant questions put to the Patwari and answers given by him are reproduced below :

*"**Q.4:** Please state whether you were having any basis or documentary evidence in support of the report prepared by you in this case?*

Ans : No basis or documents were available with me in this regard. I had prepared the report on the basis of 'my own estimation'.

Q.5: What do you understand by the Market Value?

Ans. Rates of the land were very high a few days ago, hence I estimated on this basis that the market rates of the land in that year should be @ Rs.8,00,000/- per acre as per my estimation.

Q.6 : While estimating the market rate, whether you had consulted any sale deeds of the adjoining land as instances of the prevalent sale rate or consult any other relevant documents for preparing your report?

Ans. I had not consulted any such documents. It was my 'personal estimation' on the basis of which I have reported the market rate of the land."

A scanned copy of the said statement of the *Patwari* is enclosed herewith as **Annexure-1** to this order under my seal & signature. It can be inferred from the statement that a vague & frivolous noting/report was prepared by the Patwari on the basis of conjunctures & surmises, which deserves no cognizance simply for the reason that it has been prepared at the instance of the assessee to reduce the incidence of taxation.

4.7 The noting/report of the *Patwari* is required to be ignored in view of the following reasons :

i) The *Patwari* has admitted that he has no documents or otherwise any basis to provide the said figure of Rs.8,00,000/- per acre. The noting/report has been made on the basis of conjecture & surmises, hence it deserves no cognizance.

ii) The said *Patwari* was not in service in the said year i.e. in the F/Y 1981-82, as he deposed in his statement that he joined his duties at *Patwari* in the Year 1997 only.

iii) The Income Tax Act, 1961 does not give any role to *Patwari* to determine value of an 'Asset'. In fact no other Act also assigns this role to *Patwari*, who is actually a very low class employee of the Revenue Department.

4.8 The aforementioned statement of the *Patwari* was confronted to the assessee vide this office letter dated 31.10.2014 requiring him to explain as to how it is reliable and as to why it may not be rejected. However, the assessee chose not to furnish any response to thereto.

4.9 The aforementioned reports of the Registered Valuers and copies of the sales deeds provided by the Sub Registrar, Fatehabad were also confronted to the assessee vide this office letter dated 16.10.2014, requiring him to explain as to why the rates mentioned in the said Valuation Reports and Sales Deeds may not be adopted for working out the FMV and consequently taxable long term Capital Gains earned by the assessee from transfer of the aforementioned pieces of land. The above said letter was enclosed with the notice dated 16.10.2014 issued under sub section (1) of Section 142 of the Act requiring the assessee to make compliance by 30.10.2014. But neither the assessee filed any written submission in this respect nor sought any adjournment for extension of time for compliance. Hence, no explanation could be offered by the assessee in respect.

5.1 The above discussion makes it clear that the assessee could not furnish any explanation with regard to the documents confronted to him which clearly proves that the FMV adopted by the assessee is highly inflated. Therefore, it is but natural to conclude that the assessee has adopted the inflated FMV just to avoid incidence of taxation on account of capital gains.

5.2 It is pertinent to mention here that the inquiries made revealed that during the F/Y 1981-82, the Collector's rate (circle rate) were not specified for the purposes of charging stamp duty at Fatehabad. The said rates were specified for the first time in the F/Y 1997-98 as informed by the

Dy. Commissioner, Fatehabad vide his letter No.438 dated 13.11.2014. It has further been informed that the Collector's rate were notified in respect of Bhiwa Basti, Fatehabad @ Rs.1,40,000/- for the irrigated land (*chahi land*) in the F/Y 1997-98. **It is worth notable that the Collector's rate for Bhiwa Basti, Fatehabad, were prescribed @ Rs.1,40,000/- per acre in the Financial Year 1997-98, but strangely the assessee claimed the FMV of the land @ Rs.8,00,000/- per acre in the F/Y 1981-82.** In view of the above discussion it is clear that the highly inflated FMV of the transferred land has been adopted by the assessee as on 01.04.1981 and, therefore, Fair Market Value is adopted as per the perfectly comparable case of sale deed No.3429 dated 24.02.1982 provided by the Sub Registrar, Fatehabad, according to which land measuring 25 kanals was sold for total consideration of Rs.18,000/- i.e. @ Rs.5,760/- per acre on 24.02.1982 i.e. in the same year & area, rather from the adjoining khasra.

6.1 The assessee has also claimed deduction in respect of indexed cost of improvement at Rs.5,82,039/- in his computation of income. On being confronted regarding the nature of improvement etc. made, the assessee contended that tube-wells and submersible pumps were installed on the land and residential house was also construed in different years from F/Y 1981-82 to 1997-98, as detailed in the computation of income.

6.2 The assessee was specifically required vide order sheet entry dated 04.08.2014 to furnish documentary evidence in respect of the indexed cost of improvement claimed in the computation of income in respect of installation of pumps and construction of residential house. In response, the assessee furnished a written submission on 20.08.2014, contending that since the expenses incurred are very old i.e. belonging to the years 1983-84, 1984-85, 1993-94 1990-91 and 1997-98, hence it is not possible to trace-out

and produce vouchers of these expenses. In this connection, it may be mentioned that the onus of proving genuineness of the expenses incurred on improvement of the land lied upon the assessee, but he has failed to discharge the same. Hence, credit of expenses incurred on the alleged improvement cannot be allowed in the absence of vouchers thereof.

7. From perusal of the records, it can be observed that claim of exemption U/s 54B and 54F of the Act has not been made (i) by filing the return of income voluntarily U/s 139(1) of the Act or (ii) by filing a revised return of income U/s 139(5) of the Act. Although no such claim is admissible in the return filed in response to the notice U/s 148 of the Act, yet from perusal of the relevant column of the return of income filed in response to the notice U/s 148 of the Act ITR-2,photo-copy of the relevant page of which is enclosed herewith as Annexure-2 under my seal & signatures, it can be observed that no claim of exemption U/s 54 and 54F of the Act has been made by the assessee, hence the exemption is not allowable under these sections. In this regard, reliance is placed upon the judgement of the Hon'ble Apex Court delivered in the case of *Goetze (India) Ltd. Vs. CIT 284 ITR 323 (SC)*, wherein it has been held that the assessee cannot claim for deduction other than by filing a revised return of income. In the instant case, the claim has not been made by the assessee in his return of income as is clear from perusal of the relevant page of the Return of Income, enclosed herewith as per Annexure-2 and the claim has also not been made subsequently by way of filing a revised return of income, hence no such claim is admissible in view of the above-mentioned judgment.

8.1 In view of the above discussion, Long Term Capital Gain is computed as under without allowing benefit of the indexed cost of

improvement and in view of the observations made in the foregoing paragraphs :

i)	The assessee's 1/4th share in the total sale consideration of the land measuring 57 kanals 18 marlas at Rs.3,16,35,112/-	:	79,08,778/-
ii)	The assessee's 1/6th share in the total sale consideration of the land measuring 49 kanals at Rs.2,67,72,376/-	:	44,62,062/-
	Total Sales consideration of the land		: 1,23,70,840/-....(A)....

i)	Fair Market Value of the assessee's 1/4th share in land measuring 57 kanals 18 marlas @ Rs.5760/- per acre.	:	41,688/-
i)	Fair Market Value of the assessee 1/6th share in land measuring 49 kanals @ Rs.5760/-per acre.	:	35,280/-
	Total cost of acquisition as On 01.04.1981	:	76,968/-
a)	Indexed cost of acquisition (76,968 x 582/100)		: 4,47,953/-.....(B)...

Computation of Long Term Capital Gains from transfer of the land :

Total Sales consideration of the land as per (A) above.	:	Rs.1,23,70,840/-
Less : Indexed cost of acquisition, as per (B) above.	:	Rs. 4,47,953/-
Taxable Long Term Capital Gains {(A) – (B)}	:	Rs.1,19,22,887/-

8.2 In view of the above discussion, an addition of Rs.1,19,22,887/- is hereby made to the income of the assessee on account of Long Term Capital Gains arising out of the transfer of the land by the assessee, situated at Bhiva Basti, Fatehabad to M/s New Soma Towns Pvt. Ltd. during the year under consideration.

8.3 From perusal of the records, it can be observed that the assessee was not at all intended to file his Return of Income voluntarily under the provisions of Section 139(1) of the Income Tax Act, 1961 as he has filed his Return of Income only after issuance of the notice U/s 148 of the Income Tax Act, 1961 dated 02.08.2013 that too after issuance of another notice dated 02.09.2013 U/s 142(1) of the Income Tax Act, 1961. Had such notices not been issued, the assessee would have never come forward to file his Return of Income. It is also noted that only after issuance of the notices U/s 148/142(1) as mentioned above, the assessee, jointly with other co-owners, moved an application dated 18.11.2013 to the Sub Registrar, Fatehabad inquiring the Market Rate of the land in Bhiwa Basti, Fatehabad as on 01.04.1981. This clearly indicates that the application was moved with a preconceived design for the purpose of tax dodging. It is quite possible that assessee first orally inquired with the said *Patwari* and sensing his ignorance, moved formal application. The assessee is local resident of Fatehabad and must be knowing the actual market rate of the land at Bhiwa Basti as on 01.04.1981, but still he adopted highly inflated rate at Rs.8,00,000/- per acre as on 01.04.1981 on the basis of noting of the *Patwari*; to whom the Income Tax Act, 1961 or any other Act does not give any role to determine value of an 'Asset'. While adopting such market rate, the assessee has ignored the fact that the Collector's Rate (Circle Rate) in that area were prescribed by the District Administration for the first time in the year 1997-98 for the purpose of charging Stamp Duty @ Rs.1,40,000/- per

acre only, as against claimed at Rs.8 lac per acre by the assessee as on 01.04.1981. From the above, it is clear that the assessee has made willful attempt to avoid the chargeability of tax on the Capital Gains arose to him on account of transfer of the aforementioned land. Therefore, I am satisfied that it is a fit case for imposition of penalty for furnishing inaccurate particulars of income as well as for concealment of particulars of income under the general provisions of Section 271(1)(c) of the Income Tax Act, 1961. It is also covered under the **mischief of both the clauses of Explanation-1 to Section 271(1)(c).** Hence, the penalty proceedings U/s 271(1)(c) of the Act are being initiated separately for furnishing inaccurate particulars of income.

9.1 During the year, the assessee has declared agri. income at Rs.2,75,000/- in his return of income. The assessee was required vide order sheet entry dated 26.08.2014 to prove genuineness of the agri. Income with supporting documentary evidence on 12.09.2014. But no documentary evidence or any explanation in this regard was furnished on the date fixed. However, taking a reasonable view of the matter, the assessee was provided another opportunity vide this office letter dated 16.10.2014, which was accompanied by notice U/s 142(1) of the Act, to establish genuineness of the agri. Income with supporting documentary evidence by 30.10.2014. But the assessee has again failed to furnish the same till date. In view of the failure of the assessee to prove genuineness of the agri. income with supporting documentary evidence i.e. form No.J etc., it is inferred that income earned by the assessee from other sources has been shown in the garb of exempt income i.e. agri. Income to reduce the incidence of taxation. Accordingly, the agri. Income shown at Rs.2,75,000/- is considered to be income of the assessee from other sources and hereby added in the income of the assessee.

9.2 I am satisfied that the assessee has furnished inaccurate particulars of income and also concealed particulars of income in respect of the above mentioned addition of Rs.2,75,000/-, hence penalty proceedings U/s 271(1)(c) of the Act are being initiated against the assessee. With the above observations, total income of the assessee is computed as under :

	Income declared by the assessee	:	Rs. 1,27,560/-
Add :			
i)	Long Term Capital Gains as per para-8.1, above	:	Rs.1,19,22,887/-
ii)	Addition, as per para-9.1, above	:	Rs. 2,75,000/-
	Total Income	:	**Rs.1,23,25,447/-**
	Rounded off U/s 288A	:	**Rs.1,23,25,450/-**

Charge interest U/s 234A and 234B of the Act. Issue penalty notice U/s 271(1)(c) of the Income Tax Act, 1961.

Assessed at Rs.1,23,25,450/-. Issue requisite documents to the assessee.

(R.K.Munjal)
Income Tax Officer, Ward-1,
Fatehabad

Copy to the assessee.

ITO

(C) ssessee filed appeal before Ld. Counsel of Income Tax (Appeals) vide impugned appellate order dated 08.08.2016 the Ld. Commissioner of Income Tax (Appeals) allowed the appeal of the assessee. The relevant portion of the aforesaid impugned appellate order dated 08.08.2016 of the Ld. CIT(A) is reproduced as under :-

5.1 **Ground no. 1** is general in nature.

5.2 In **ground no. 2**, the appellant has contended the said agricultural land is situated outside the municipal limits and therefore is agricultural land and therefore is not taxable as

capital assets under sub section (14) of section 2 of the I.T. Act, 1961. It has been claimed by the appellant that the Registered Valuer of the Department estimated the fair market value (FMV) of the land and stated that said agricultural land is situated outside the Municipal Limits. However, it is noted that on the sale of said land, the appellant had not filed any return. Only on receipt of AIR information, after notice u/s 148 was issued, and

further notice u/s 142(1) was issued, return of income was filed. In the return of income the appellant has claimed Long Term Capital Loss on transfer of said land. Therefore, the claim now made that the land was agricultural land is not correct. There is a specific finding by the AO that the land is situated within the Municipal Limits. Therefore it is held that the land is 'Capital Asset' within the meaning of sub section (14) of section 2 of the I.T Act, 1961 and is therefore liable for charge of capital gain. Ground no. 2 is therefore dismissed.

5.3 In **ground no. 3**, the appellant has contested adoption of cost of land @ ₹ 5,760/- per acre as FMV as on 01.04.1981 against the cost of land @ ₹ 8,00,000/- per acre adopted by the appellant on the basis of certificate received from the Sub Registrar, Fatehabad. I have carefully examined the facts of the case and the evidences gathered by the AO during the course of reassessment proceedings, the evidences furnished by the appellant before the AO as well as written submissions made before me. Considering all evidences, my observations are as under:

5.3.1 Regarding cost of acquisition of land, appellant has given the following reasons for adopting the FMV as on 01.04.1981 @ ₹ 8,00,000/- per acre.

i) The appellant has adopted the FMV as on 01.04.1981 @ ₹ 8,00,000/- per acre on the basis of certificate of FMV issued by the Sub Registrar Fatehabad on 16.01.2012 in the case of Sh. Parveen Kumar S/o Sh. Bhim Sain R/o Fatehabad whose land is adjoining to the land of the appellant. The appellant also produced certificate of FMV as on 01.04.1981 @ ₹ 8,00,000/- per acre issued by the Sub Registrar, Fatehabad in its own case issued on the basis of certificate issued in the case of Sh. Parveen Kumar as stated above. It is the claim of the appellant that above certificate has been accepted by CIT (A) Rohtak in the case of Sh. Parveen Kumar.

ii) The DCIT, Sirsa Circle, Sirsa adopted FMV as on 01.04.1981 @ ₹ 5,00,000/- per acre of land situated at village Matana adjoining the land of the appellant in the case of Smt. Rajender Mehtani W/o Sh. Chiranjiv Mehtani, Fatehabad.

iii) The appellant has contested that the value adopted by the Registered Valuers @ ₹ 10,000/- per acre and ₹ 32,000/- per acre has been ignored by the AO.

iv) The FMV of the land as on 01.04.1981 @ ₹ 14,000/- per acre estimated by the Income Tax Inspector and which formed basis of issue of notice u/s 148 has been ignored by the AO.

v) The appellant has contested rejection of report of Patwari and stated that no opportunity was granted for cross examination of Patwari. The contentions of the appellant in this regard are quoted above.

vi) The appellant has relied on grant of compensation by the Supreme Court @ ₹ 350/- per Sq. Yards i.e. ₹ 16,94,000/- per acre for land acquired on 21.07.1993 for purpose of development of residential Sector 3, Fatehabad. The appellant has claimed that when compensation can be granted @ ₹ 16,94,000/- during F.Y. 1997-98, then the FMV @ ₹ 8,00,000/- per acre adopted by the appellant as on 01.04.1981 is quite reasonable.

5.3.2 The AO did not agree with the valuation of cost of land adopted by the appellant @ ₹ 8,00,000/- per acre as FMV as on 01.04.1981. The reasons given by the AO for not accepting the FMV are as under:

i) The appellant had not filed return of income originally. No return of income was filed in response to notice u/s 148. Return was only filed after notice u/s 142(1) was issued to the appellant. In the return filed, appellant after adopting cost of land @ ₹ 8,00,000/- per acre as FMV on 01.04.1981 filed return claiming Long Term Capital Loss @ ₹ 13,01,339/-

ii) The AO held that the FMV of the land @ ₹ 8,00,000/- per acre as on 01.04.1981 appeared to be highly inflated. The AO found that the certificate given by the Sub Registrar, Fatehabad was signed by Sh. Madan Lal, Patwari on 19.11.2013. The AO held that the Patwari had calculated the value of the land without any basis. The Patwari is not recognized as a Valuer as per Income Tax Act on any other Act.

iii) The matter was referred to two Registered Valuers Sh. Sanjeev K. Nagpal who valued the FMV of the land as on 01.04.1981 @ ₹ 32,000/- per acre vide his report dated 15.09.2014. Ar. Rajni Gupta valued the FMV of the land as on 01.04.1981 @ ₹ 10,000/- per acre vide his report dated 08.10.2014. The AO noted that the appellant has tried to adopt the FMV of the land at a much higher value @ ₹ 8 lac per acre on the basis of noting of Patwari. The AO thus wrote a letter to the Sub Registrar, Fatehabad inquiring the prevalent market rate of the land in Bhima Basti, Fatehabad in F.Y. 1981-82 with supporting documentary evidence.

iv) The Sub Registrar, Fatehabad vide letter No. 363 dated 26.09.2014 submitted photo copies of two sale deeds bearing sale deed No. 3429 dated 24.02.1982 and sale deed no. 3435 dated 25.02.1982 as documentary evidence and instance of sale of land in Bhima Basti, Fatehabad in F.Y. 1981-82. From this sale deed, it was noted by the AO that land measuring 25 Kanal was sold for a total consideration of ₹ 18,000/- i.e. ₹ 5,760/- per acre on 24.02.1982. This land is situated in Bhima Basti, Fatehabad where the appellant's transferred land is situated.

v) AO found that as against claim of appellant for FMV of land transferred as on 01.04.1981 @ ₹ 8 lac per acre to be high as compared with actual sale of land @ ₹ 5,760/- per acre in the same financial year. AO also found that both the piece of land are in the same area, in the same vicinity, in fact both the land are adjoining each other. Appellant's land is Khasra No. 179, land sold @ ₹ 5,760/- per acre is Khasra No. 180 of Bhima Basti, Fatehabad.

vi) The other piece of land, detail of which was provided by Sub Registrar, Fatehabad vide sale deed No. 3435 dated 25.02.1982 is land situated in Bhima Basti, Fatehabad was sold @ ₹ 9,921/- per acre during the same financial year i.e. F.Y. 1981-82.

vii) To cross examine the Patwari, AO required appellant to produce Sh. Madan Lal, Patwari as witness. As appellant could not produce Sh. Madan Lal, Patwari, Sh. Madan Lal, Patwari was summoned u/s 131 and statement recorded on 17.10.2014. Statement of Patwari in the AO order is quoted above. In his statement Sh. Madan Lal, Patwari stated that the noting/report was prepared purely on 'estimate basis' and no records/documents were consulted in preparing the report. He stated that FMV reported by him was mere estimation. It has been mentioned by the AO that the aforesaid statement of the Patwari was confronted to the appellant vide letter dated 31.10.2014. However, appellant did not respond to the same.

viii) The copies of the sale deeds obtained from the Sub Registrar, Fatehabad as well as the reports of the Registered Valuers were also confronted to the appellant vide AO letter dated 16.10.2014. However, no reply was filed by the appellant nor any explanation was offered by him. Therefore, the AO concluded that the appellant had inflated the FMV just to avoid incidence of taxation on account of Capital Gains.

ix) The AO also found that in F.Y. 1981-82, the Collector's rate (Circle rate) was not specified for charging stamp duty at Fatehabad. The said rates were specified for the first time in F.Y. 1997-98 @ ₹ 1,40,000/- per acre for irrigated land. The circle rate @ ₹ 1,40,000/- per acre for F.Y. 1997-98 was informed by the Deputy Commissioner, Fatehabad vide his letter no. 438 dated 13.11.2014. The AO found the rate of FMV of ₹ 8 lac per acre

adopted by the appellant for F.Y. 1981-82 highly inflated when compared with collector's rate @ ₹ 1,40,000/- per acre in F.Y. 1997-98.

In view of the above findings AO held that FMV of the transferred land adopted by the appellant as on 01.04.1981 @ ₹ 8 lac per acre to be highly inflated and therefore adopted Fair Market Value as per comparable case of sale deed No.3429 dated 24.02.1982 provided by the Sub Registrar, Fatehabad, according to which land measuring 25 kanals was sold for total consideration of ₹18,000/- i.e. @ ₹5,760/- per acre on 24.02.1982 i.e. in the same year & area, rather from the adjoining khasra.

5.3.3 After having carefully considered the evidences furnished, my observations on the FMV of the land for the purpose of calculating the cost of acquisition of the land as on 01.04.1981 is as follows. The AO has correctly arrived at the FMV for cost of acquisition of the land based on contemporaneous evidence in the form of sale deeds of adjoining areas obtained from the Sub Registrar, Fatehabad for the same financial year. The reliance placed by the appellant on the FMV as on 01.04.1981 @ ₹ 8 lac per acre on the basis of certificate issued by Sub Registrar, Fatehabad is not correct in the light of statement of Sh. Madan Lal, Patwari recorded and quoted above. The plea of the appellant that it was not granted opportunity to cross examine the Patwari is also not correct in the light of opportunity given to refute the findings of the AO during the course of assessment proceedings. The evidence gathered in the form of reports from the two Registered Valuers as well as the report of the Income Tax Inspector is but an estimate, which could have been adopted if in case no contemporaneous document was available. However, AO was able to gather exact value in the form of sale deed obtained from the Sub Registrar, Fatehabad. The two sale deeds, report of the two valuers as well as the report of the Income Tax Inspector were also given to the appellant during the course of assessment proceedings. However, the appellant could not refute the said findings and chose not to reply to that opportunity.

5.3.4 The reliance placed by the appellant on the award granted by the Supreme Court @ ₹ 350/- per Sq. Yards i.e. ₹ 16,94,000/- per acre for land acquired in F.Y. 1993-94 cannot be taken to compute value of the land in F.Y. 1981-82 as no reverse indexation is provided for in the Income Tax Rules. The market conditions and values of land have changed dramatically in the aforesaid period. Any value so arrived at will only at best be an estimation. In the light of specific evidence gathered by the AO in the form of sale deeds for the same period i.e. F.Y. 1981-82, any estimation will not be correct.

5.3.5 It was also found by the AO that the circle rates during F.Y. 1997-98 were ₹ 1,40,000/- per acre. Therefore, the AO correctly held that the rate of ₹ 8 lac per acre adopted by the appellant in F.Y. 1981-82 was highly inflated. The fact that the Supreme Court awarded a higher rate in F.Y. 1993-94 is based on market conditions and this does not prove that the rate in F.Y. 1981-82 could be as quoted by the appellant.

5.3.6 In view of the above, the finding of the AO holding that FMV of the transferred land adopted by the appellant as on 01.04.1981 @ ₹ 8 lac per acre to the highly inflated is correct. The FMV adopted by the AO as per comparable case of sale deed no. 3429 dated 24.02.1982 provided by the Sub Registrar, Fatehabad @ ₹ 5,760/- per acre on 24.02.1982, which was in the same year, in the same area and from adjoining Khasra is confirmed. This ground of appeal is therefore dismissed.

5.4 In **ground no. 4**, appellant has challenged non-granting of exemption u/s 54F on account of investment in residential house amounting to ₹ 50 lacs. In **ground no. 5**, the appellant has challenged non-granting of exemption u/s 54B on account of investment in agricultural land. The AO had disallowed the claim of the appellant as the appellant had filed return of income in ITR-2 and no exemptions u/s 54, 54B, 54D, 54EC, 54ED and 54F had been claimed by the appellant in his return of income. In column No. B(2) (d) of the schedule 'CG' of the ITR-2, claim had been shown as ₹ NIL. AO held that no computation of income or separate sheet had been filed along-with return of income. The same, according to AO was filed during course of assessment proceedings. The AO stated that as no claim or exemption u/s 54B and 54F had been made at the time of filing return u/s 139(1) or revised return u/s 139(5) of the Act, no exemption was available to the appellant. No claim is admissible in the return filed in response to notice u/s 148 of the Act. The AO placed reliance on the case of *Goetz (India) Ltd. Vs. CIT 284 ITR 323 (SC)*, wherein it has been held that assessee cannot claim deduction other than by filing revised return of income.

5.4.1 The appellant has submitted that return of income in physical form No. ITR-2 was generated through Computax Software while filing return appellant had claimed exemption u/s 54F of ₹ 50 lacs as investment in residential house and exemption u/s 54B of ₹ 52,64,981/- as investment in agricultural land. But the exemption did not appear in column No. B(2) (d) of the schedule 'CG' of the ITR-2 due to the fact that appellant had claimed Capital Loss and in the software the same was appearing as a negative figure. Regarding the

observation of the AO that exemption u/s 54F and 54B has not been made by filing return of income u/s 139(1) or u/s 139(5), the appellant was under a bona-fide belief that there is a Long Term Capital Loss as advised by the counsel of the appellant and he therefore did not file any return of income u/s 139(1). When no return of income has been filed u/s 139(1) or later on revised u/s 139(5) then how can the appellant claim exemption u/s 54F and 54B. Moreover, there is no such restriction that exemptions u/s 54F and 54B shall be available only when a return of income has been filed u/s 139(1) as is in the case of claiming of deductions u/s 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE as specific lay down u/s 80AC of The Income Tax Act, 1961. The appellant has stated that decision of the SC in the case of *Goetz India* is not applicable on the facts of the case as stated in the reply quoted above. The claim made by the appellant is not a new or fresh claim. The appellate authorities are not barred from allowing such claim.

5.4.2 I have carefully considered the facts of the case regarding claim of allowance for deduction u/s 54F and u/s 54B. The appellant has relied on the decision of Supreme Court in the case of *Hindustan Steel Ltd. Vs. State of Orrisa (1972) 83 ITR 26 (SC)* for the proposition that a claim cannot be denied when it is a purely technical defect. The judgement in the case of *Goetz India (2004) 284 ITR 323 (SC)* is not applicable to the case of the appellant as no fresh claim whatsoever has been made by the appellant. The appellant has stated that the Delhi High Court in the case of *Bharat Aluminium 163 Taxman 430*, which case was decided after *Goetz India* has held that an assessee can filed revised computation in the course of ongoing assessment proceedings without making recourse to revised return, despite the fact that time limit for revising return u/s 139(5) had already expired. Mumbai ITAT in the case of *Chicago Pneumatic India Ltd. 15 SOT 252* has held that assessee can make new claim during the course of assessment proceedings without recourse to revised return. The appellant has also relied on case of Delhi ITAT in *Moser Baer 295 ITR 148 (AT)*. The appellant has also relied on Kolkata Tribunal ruling in the case of *Van Oord Atlanata B.V 112 TTJ 229* which has inter-alia held that "there is no estoppel against that statute" and AO is duty bound to bring correct legal position to assessee's notice and give effect to the same while passing assessment order, irrespective of assessee's mistake.

5.4.3 I have also examined the legal position in this regard. The Bombay High Court in the case of *CIT vs. Pruthvi Brokers and Share Holders (2012) 23 Taxmann.com 23 (Bom)* has

held that the assessee is entitled to raise before appellate authorities additional grounds in terms of additional claims not made in return filed by it. In that case assessee had claimed deduction u/s 43B in respect of payment of SEBI fees of ₹ 20 lacs. Subsequently, claim for deduction was increased to ₹ 40 lacs during the course of assessment proceedings. The AO rejected the claim on the ground that he had no authority to allow any relief or deduction which had not been claimed in the return. The CIT (Appeal) and Tribunal allowed the claim of the assessee. On appeal to the High Court by the revenue, the High Court observed as under:

> *"A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims not made in the return filed by it. [Para 10]*
>
> *From a consideration of decision of the Supreme Court rendered in the case of* ***Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688/[1990] 53 Taxman 85****, it is clear that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. They may choose not to exercise their jurisdiction in a given case is another matter. [Para 11]*
>
> *Further the observation of the Supreme Court in the case of* Jute Corpn. of India Ltd. *(*supra *) to the effect 'if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....' or 'that the ground became available on account of change of circumstances or law,' does not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz., 'if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....' clearly relate to cases where the ground was available when the return was filed and the assessment order was made but 'could not have been raised' at this stage. The words are 'could not have been raised' and not 'were not in existence'. Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz., where 'the ground became available on account of change of circumstances or law.' [Paras 12 and 13]*

It is indeed a question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made. As held by the Supreme Court in the case of Jute Corpn. India Ltd. *(supra) there may be several factors justifying the raising of a new plea in appeal and each case must be considered on its own facts. However, such cases include those, where the ground though available when the return was filed or the assessment order was made, was not taken or raised for reasons which the appellate authorities may consider valid. In other words, the jurisdiction of the appellate authorities to consider a fresh or new ground or claim is not restricted to cases where such a ground did not exist when the return was filed and the assessment order was made. [Para 15]*

In the instant case, the Commissioner (Appeals) and the Tribunal have held the omission to claim the deduction of ₹ 40 lakhs to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of ₹ 20 lakhs paid after the end of the year in question. There is no reason to interfere with this finding. There is less reason to interfere with the exercise of discretion by the appellate authorities in permitting the assessee to raise this claim. The assessee is entitled to the deduction in law is admitted and, in any event, clearly established. In the circumstances, the assessee ought not be prejudiced. [Para 18]

The orders of the Commissioner (Appeals) and the Tribunal clearly indicate that they had exercised their jurisdiction to consider the additional claim, as they were entitled to in view of the various judgments on the issue, including the judgment of the Supreme Court in the case of **National Thermal Power Corpn. Ltd.** *v.* **CIT** *[1998]* **229 ITR 383** *. [Para 19]*

Both the appellate authorities have themselves considered the additional claim and allowed it. They have not remanded the matter to the Assessing Officer to consider the same. Both the orders expressly direct the Assessing Officer to allow the deduction of ₹ 40 lakhs under section 43B. The Assessing Officer is, therefore, now only to compute the assessee's tax liability which he must do in accordance with the orders allowing the assessee a deduction of ₹ 40 lakhs under section 43B. [Para 20]

The conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason. It is a finding of fact which cannot be termed perverse. There is nothing on record that militates against the finding. The revenue has not suggested much less established that the omission was deliberate, mala fide *or even otherwise. The inference that the omission was inadvertent is, therefore, irresistible. [Para 21]*

Therefore, the appeal of the revenue was liable to be dismissed. [Para 26]"

5.4.4 However, in the said case, the appellant had not filed original return on income u/s 139(1) of the Act, albeit under the pretext that they had been advised by their counsel that

theirs was a loss return. However, for allowing a claim, as per provisions of the Act, return is mandatorily required to be filed. The appellant had not filed any revised return u/s 139(5) of the Act. The appellant also did not file return in response to notice u/s 148. It was only after notice u/s 142(1) was issued to the appellant that return was filed. According to the AO, no claim for deduction u/s 54F and u/s 54B was made in the return so filed. It is the contention of the AO and which fact is not disputed by the appellant that claim statement for deduction u/s 54F and u/s 54B was filed for the first time during assessment proceedings. In the above cited case of Pruthvi Brokers and Share Holders (Supra) claim was made in original return and revised subsequently during assessment proceedings. In *Jute Corpn. of India 187 ITR 688 (SC)* no deduction towards purchase tax was made in original return. The claim was made during appellate proceedings. In the case quoted by the Bombay High Court in Pruthvi Brokers (Supra) i.e. Full bench decision of Bombay High Court in *Ahmedabad Electricity Ltd. Vs. CIT (1993) 199 ITR 351 (Bom)* also dealt with similar situation where no claim was made in original return and later claim was made during appellate proceedings.

5.4.5 In all the cases quoted by the appellant and also quoted above, return of income has been filed. The distinguishing factor with the case of the appellant is that original return u/s 139(1) had been filed. In the case of the appellant, no return u/s 139(1) or section 139(5) had been filed. No return was filed originally and in response to first notice u/s 148. The notice u/s 148 was issued on account of information gathered from AIR. Therefore, when there was no intention to file return of income, the intention to claim valid deduction becomes doubtful. All the cases quoted above, original return of income has been filed. It is only a case where inadvertently a claim or deduction had not been made or else such claim/deduction had become allowable due to some later event. It is not the case where appellate authority is required to examine admissibility of the claim during appellate proceedings. In the light of the above discussion, the claim of the appellant for deduction u/s 54F and section 54B is not allowed. This ground of appeal is dismissed.

5.5 In ground no. 6, appellant has stated that the AO is not correct in not allowing expenses incurred on tube-well and residential house as cost of improvement. The AO held that as the appellant was not able to produce vouchers for claim of expenses on cost of improvement, hence the onus of proving genuineness of the expenses was not discharged and therefore disallowed the same.

5.5.1 The appellant had stated that it had installed tube-well/submersible pump set for the purposes of irrigating the said land. It was stated that in the sale deed it is mentioned that the land is being sold including house and tube-well etc.

5.5.2 After considering facts of the case, it cannot be said that the appellant did not incur any expenditure on tube-well and residential house etc. The expenses incurred of ₹ 15,000/- in F.Y. 1983-84 on tube-well expenses, ₹ 16,250/- in F.Y. 1984-85 on tube-well expenses, ₹ 41,666/- on submersible pump expenses in F.Y. 1993-94, ₹ 62,500/- on residential house in F.Y. 1990-91 and ₹ 75,000/- on residence house in F.Y. 1997-98 along-with indexed cost is therefore held to be allowable as cost of improvement claimed by the appellant. In the result, this ground of appeal is allowed.

5.6 In ground no. 7, the appellant has contested treating of agricultural income as income from other sources. AO has held that the agricultural income of ₹ 2,75,000/- could not be proved in the absence of documentary evidence and form No. J etc. Therefore, the AO treated this income as income from other sources.

5.6.1 The appellant has contended that he owns about 80 kanal agriculture land at Village Basti Bhima, Fatehabad. The said agriculture land was being cultivated by the appellant himself. Copy of the jamabandi furd and khasra girdawari showing the above facts was furnished. Appellant also stated that some of the crops grown by him were sold through a Commission agent namely M/s Chanan Dass Om Parkash, Anaj Mandi, Fatehabad and some of the crops were sold at the site. Therefore, while filing the return of income, he had shown net agriculture income ₹2,75,000/- as average gross receipt from sale of agriculture produce in this area comes to ₹ 45,000/- per acre approximately and expenses on agriculture operation are generally 40% of the gross receipts i.e. ₹18,000/- per acre approximately. The appellant stated that he has also withdrawn ₹ 2,32,244/- from the above commission agent to meet out agriculture expenses as well as house hold expenses of the family. Copy of account of the appellant as appearing in the books of the above commission agent confirming the above facts have been furnished. These facts were also furnished before AO. Hence, from the above facts, it is very much clear that the appellant has fulfilled all the conditions in support of the agriculture income as specifically laid down in section 2(1A) of the Income Tax Act, 1961.

5.6.2 In view of the above, the addition made by the AO by treating ₹ 2,75,000/- declared by the appellant as agricultural income to be income from other sources is directed to be deleted. This ground of appeal is therefore allowed.

(D) This present appeal has been filed by Revenue against the aforesaid impugned appellate order dated 08.08.2016 of the Ld. CIT(A). In the course of appellate proceedings in ITAT, a paper book containing the following particulars was filed from the assessee's side :-

Sr.	***Particulars***
1.	*Written Submission*
2.	*Written Submission of computation of income, showing the details of investments made by the appellant u/s 54B and 54F which was available before the Ld. A.O. during the course of assessment proceedings.*
3.	*Certified copy of Sale Deed.*
4.	*Certified copy of the valuation report of registered valuer regarding fair market value as on 01.04.1981.*
5.	*Certified copy of the certificate issued by the Sub-registrar, Fatehabad regarding fair market value as on 01.04.1981.*
6.	*Copy of the order of CIT(Appeals) Rohtak in the case of Mr. Parveen Kumar S/o. Sh. Bhim Sain R/o. Fatehabad*
7.	*Copy of the order made by the DCIT, Sirsa in the case of Smt. Rajender Mehtani W/o. Sh. Chiranjiv Mehtanin R/o H. No. 220, Model Town, Fatehabad*
8.	*Certified copy of the reasons recorded u/s 147 of the Income Tax Act,*
9.	*Certified copy of the judgment of the Hon'ble of the Hon'ble Supreme Court of India regarding compensation for acquisition of agriculture aldn @ 350/- per sq. yard i.e. Rs. 1694000/- per acre*
10.	*Certified copy of Form No. ITR-2*
11.	*Certified copy of the valuation report got prepared by the Ld. A.O. regarding investment in residential house*
12.	*Copy of judgment of the Hon'ble Supreme Court of India in the case of Hindustan Steel Ltd. vs. State of Orisa reported at [1972] 83 ITR 26 (SC)*
13.	*Copy of the judgment of the Hon'ble Delhi High Court in the case of Bharat Aluminum (decided on 24 May 2007 after the judgment of Goetze India decided o 24 March 2006) 163 Taxman 430*
14.	*Copy of judgment of the Hon'ble Allahabad High Court in the case of Dhampur Sugar Mills 90 ITR 236*
15.	*Copy of the judgment of the Hon'ble Mumbai ITAT in the case of Chicago Pneumatic India Limited 15 SOT 252*

16.	*Copy of the judgment of the Hon'ble Delhi ITAT in Moser Baer Further 295 ITR 148*
17.	*Copy of the judgment of the Hon'ble Kolkata Tribunal in the case of Van Oord Altanata B.V. 112 TTJ 229*
18.	*Copy of Jamabandi furd and Khasra Girdawari*
19.	*Copy of account of the assessee as appearing in the books of his commission agent M/s Chanan Dass Om Parkash, Fatehabad.*

(D.1) Moreover, additional evidences were also filed from the assessee's side, details of which are as under :-

Sl. No.	***Particulars***
1.	*Application for admission of additional evidence.*
2.	*Affidavit of Prem Chand*
3.	*Certificate from the Tehsildar dated 05.02.2018.*
4.	*Certificate from the Tehsildar dated 19.04.2017 & 07.09.2017.*
5.	*PWD Letters dated 31.10.2017, 10.11.2017 & 06.11.2017.*
6.	*Certificate from Tehsildar, dated 16.01.2018.*
7.	*Notification u/s 2(1A)(C), proviso, clause (II) (B) and section (2)(III)(B) of IT Act, dated 06.01.1994.*
8.	*Area Map dated 05.02.2018.*
9.	*Google Map.*

(D.1.1) An application for admission of the additional evidences, vide letter dated 16.08.2019 was also filed from the assessee's side requesting admission of aforesaid additional evidence referred to in the foregoing paragraph (D.1) of this order.

(D.2) In addition, orders of co-ordinate Bench of ITAT, Delhi in the cases of related parties were also filed from assessee's side during the appellate proceedings in ITAT,

including (i) order dated 15.10.2019 in the case of Sh. Karam Chand vs. ITO vide ITA No. 5401/Del/2016, for A.Y. 2009-10 (ii) order dated 09/09/2019 in the case of Sh. Dharam Chand vs. ITO vide ITA No. 5400/Del/2016 for A.Y. 2009-10 (iii) consolidated order dated 16/03/2018 in the cases of Ms. Kaushalya Devi vs. ITO vide ITA No. 5399/Del/2016, for A.Y. 2009-10 and Ms. Maya Devi vs. ITO vide ITA No. 5403/Del/2016 for A.Y. 2009-10.

(E) At the time of hearing before us, the Ld. Counsel for the assessee submitted at the outset that the issues in dispute in the present appeal are squarely covered by orders of co-ordinate Bench of ITAT, Delhi in identical facts and circumstances, in the cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra). It was brought to our attention that in the aforesaid cases of related parties, in identical facts and circumstances, co-ordinate Bench of ITAT, Delhi has admitted the additional evidences and has set aside the disputed issues to the file of the Assessing Officer with direction to pass fresh assessment order in the light of additional evidences and other materials on record. It was further brought to our attention that the additional evidences admitted by co-ordinate Bench of ITAT, Delhi in the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra) are the same

evidences which have been filed in the present appeal from the assessee's side. In view of above Ld. Counsel for the assessee submitted that the additional evidences be admitted in the present appeal also and the disputed issues may be set aside to the file of the Assessing Officer for fresh assessment order in the light of the additional evidences.

(E.1) The Ld. Departmental Representative agreed that the issues in dispute in the present appeal are squarely covered by orders of co-ordinate Bench of ITAT, Delhi in the cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra). He further agreed that the additional evidences admitted by co-ordinate Bench of ITAT, Delhi in the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra) are the same which are now being also presented for admission from the assessee's side in the present appeal. He was agreeable to the prayer of the Ld. Counsel of the assessee seeking admission of additional evidences [which are already admitted by co-ordinate Bench of ITAT, Delhi in the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra)] and to the submission of the Ld. Counsel of the assessee that issues in dispute be set aside to the file of the Assessing Officer for fresh assessment order in the light of the additional

evidences; and expressed no objection to the aforesaid prayer of the Ld. Counsel of the assessee.

(F) We have heard both sides. We have perused materials on record. We have considered the precedents brought to our attention, or referred to in the records. There is no dispute that facts and circumstances of the present appeal before us are identical to the facts and circumstances of related parties in the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra). There is also no dispute that the additional evidences presented from assessee's side for admission in the present appeal are the same as were presented by the respective assessees in the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra). Neither side has brought any material facts and circumstances to our attention to persuade us to take a view different from the view already taken by co-ordinate Bench of ITAT, Delhi the aforesaid cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra). Respectfully following the aforesaid precedents in the cases of Sh. Karam Chand vs. ITO (supra), Sh. Dharam Chand vs. ITO (supra), Ms. Kaushalya Devi vs. ITO (supra) and Ms. Maya Devi vs. ITO (supra); and as both sides have agreed to this at the time of

hearing before us; we also admit the additional evidences filed from the assessee's side in the present appeal before us and we set aside all the issues in dispute to the file of the Assessing Officer with the direction to pass fresh assessment order in accordance with law in the light of the additional evidences and other materials on record. For statistical purposes the appeal is partly allowed.

Order pronounced in Open Court on 21/01/2020.

Sd/-	**Sd/-**
(H.S.SIDHU)	**(ANADEE NATH MISSHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21/01/2020
BR

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.01.2020
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the	

website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	