IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'SMC' "I (2)", NEW DELHI]

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 8211/Del/2018
Assessment Year: 2010-11

Shri Surat Singh, VPO Bhapra, Samhalka, Panipat – 132 103 [Haryana] **PAN : CQLPS9692H**	Vs.	The Income Tax Officer, Ward : 4, Panipat.
ITA No. 8212/Del/2018 Assessment Years : 2010-11		
Shri Sultan Singh, VPO Bhapra, Samhalka, Panipat – 132 101 [Haryana] **PAN : CPSPS0826K**	Vs.	The Income Tax Officer, Ward : 4, Panipat.
(APPELLANTS)		**(RESPONDENT)**

Assessees by	Shri P. C. Yadav, Advocate;
Revenue by	Shri Pradeep Singh Gautam, Sr. D. R.;

Date of hearing:	**04/03/2020**
Date of Pronouncement:	**26/ 05/2020**

O R D E R

PER PRASHANT MAHARISHI, AM:

1. These are the two appeals filed by two brothers involving same issue arising out of single transaction of sale of land those are argued together and therefore, are disposed of by this common order.

2. We first take up the appeal in **ITA No. 8211/Del/2018** filed by the Mr. **Surat Singh** against the order of the ld CIT (A), Karnal dated 31.10.2018. The assessee has raised the following grounds of appeal:-

"1. That in the facts and circumstances of the case and in law the order passed by Ld AO dated 29 12 2017and further order passed by Ld. CIT(A) on 31.10.2018 are bad in law as order has passed without affording any further opportunity to assessee to explain the case.

2 That in the facts and circumstances of the case and in law the Ld. CIT(A) sustaining the action of Ld. A.O. in making of addition of Rs. 8,76, 186/- to the total income on account of Capital Gain arising out of the agriculture land.

3. That in the facts and circumstances of the case and in law the ld CIT(A) erred in not accepting the tehsildar certificate due to mismatch in sign on first page and second page, which is the matter of government authorities and beyond the control of assessee.

4 That in the facts and circumstances of the case and in law the Ld. CIT(A) erred in sustaining the action of Ld. AO in making capital gain because the said asset is not a capital asset, it is beyond the municipality limit of Samalkha.

5. That in the facts and circumstances of the case and in law the Ld. AO and further Ld. CIT(A) has erred in assessed the case in the capacity of Individual. But although this property is an ancestral property and should be assessed as HUF property."

3. The brief facts of the case show that the assessee is an individual deriving income from agriculture. The case of the assessee is reopened for the reason that there is an escapement of Rs. 1640500/- being cash deposit in the bank account. Therefore, notice u/s 148 was issued on 29.03.2017. The reason recorded are as under:-

> "As per non-PAN AIR information in possession of the department, the assessee has deposited cash of 1 600500/– in bank account number 5507041843 maintained with state bank of Patiala, samalka , during the financial year 2009 – 10 relevant to the assessment year 2010 – 11 and submitted form

number 60 to the bank. The assessee was issued a letter number : NAN PAN /8053 dated 10/2/2017 requiring him to give the details of the source of financial transactions along with copies of documents in support of his claim. The assessee did not make any compliance of the said letter. As per records of this office, the assessee has not filed his return of income for the assessment year 2010 – 11. As such, the assessee failed to declare the source of cash deposit made in his bank account before the Department.

In the circumstances, I have reason to believe that due to failure/omission on part of the assessee to disclose fully and truly all necessary facts and essentials for his assessment of income chargeable to tax on account of cash deposited with bank amounting to 1640500/– has escaped assessment for the assessment year 2010 – 11 within the meaning of section 147 of The Income Tax Act , 1961 and also other income chargeable to tax in respect of which assessee is assessable which has escaped assessment and which comes to the notice subsequently in the course of proceedings under this section for the assessment year under consideration. As such notice under section 148 of The Income Tax Act, 1961 is issued in case of the assessee for the assessment year 2010 – 11."

4. In response to the above notice assessee filed his return of income declaring total income of Rs. 93699/- and disclosed agricultural income of Rs. 135485/-. In the return of income the assessee declared that his 1/5th share in sale consideration of agricultural land situated at tehsil Samlakha District Panipat is Rs. 977700/-, whose cost of acquisition is Rs. 505600/- resulting into long term capital gain of Rs. 472100/-. He further claimed an exemption u/s 54B of the Act for purchase of agricultural land of Rs.

4559910/- . He claimed his share in above property @ 1/5th , therefore, he did not earn any taxable long term capital gain.

5. The ld AO noted that assessee along with his four brothers has sold an agricultural land for Rs. 4888500/-. The assessee submitted that it was a joint family property, which was sold, and new property of agricultural land was purchased. The assessee also submitted that the capital gain earned is Nil. The assessee also submitted circle rate for FY 1995-96 should be adopted for the purpose of the computation of capital gain, if any. The ld AO disturbed the computation of the capital gain. He held that land admeasuring 21865 sq yards was sold by the assessee along with his brothers for Rs. 4888500/-. He also worked out the cost of acquisition holding that the assessee purchased 10890 sq yards for Rs. 40,000/- on 08.07.1980. He adopted the fair market value as on 01.04.1981 and indexed the same determining at Rs. 507571/-. Accordingly, he determined the total capital gain of Rs. 4380929/- and assessed 1/5th share of assessee at Rs. 876186/-. The assessee claimed exemption under section 54B of the income tax act as assessee has purchased agricultural land for Rs. 4559910 having 1/5 share. Such deduction was claimed at 1139978/– and capital gain was computed Nil. The learned assessing officer held that assessee has purchased along with his brother agricultural land of 8 acres 5 canals approximately for Rs 45,59,900/– on 7/10/2009 in the name of the sons of all the four brothers. Therefore, according to him the assessee is not entitled to deduction under section 54B of the act. The assessee also claimed that in fact the land does not belong to the assessee as an individual but in the hands of his Hindu Undivided family. He submitted the detailed chart how assessee came in to possession of the above property from his great grandfather. The learned assessing officer rejected this explanation and held that as the land was transferred in the name of assessee through court decree and there was no direction in the court decree that the land would go

in the status of Hindu undivided family of assessee. Therefore applying the principle laid down by the honourable Supreme Court in 3 SCC 567, he held that it cannot be said that property would be taxable in the hands of the HUF of the assessee. Accordingly, the assessment order u/s 147 read with section 143(3) of the Act dated 29.12.2017 was determined at Rs. 969886/-.

6. The assessee challenged the same before the ld CIT (A) who dismissed the appeal of the assessee. Before the learned CIT – A assessee challenged by raising a new issue that the impugned land which was sold by the assessee was not a 'capital asset' as it was situated beyond 5.5 Kms from municipal limits of samalkha . Assessee submitted a of certificate of Tehsildar. The learned CIT – A rejected the above explanations holding that the certificate is merely a photocopy and mentions that the land is approximately 5.5 km away from Samalkha. The learned CIT – A also held that there is a difference in signature on the first page and on the next page; it does not bear the stamp of the tehsildar on second page. Therefore the authenticity of the said evidences is suspect and hence cannot be accepted. The learned CIT – A further held that statement signifying the distances on an approximate basis cannot be relied upon. He further held that the explanation of the assessee is merely an afterthought to wriggle out of the clear-cut finding made by the learned assessing officer. Accordingly, he dismissed the appeal of the assessee. Therefore, assessee is in appeal before us.

7. Assessee has filed an application for admission of the additional ground as per Rule 11 of The Income Tax Appellate Tribunal Rules. The assessee wanted to admit the following additional grounds of appeal:-

> "On the facts and circumstances of the case the jurisdiction of the AO under section 147 is bad in law, as there is no independent application of mind to the material for reopening

of the matter and clearly a case of borrowed satisfaction, which is bad in law.

On the facts and under the circumstances of the case the assumption of jurisdiction is bad in law as there is no live link between the reasons recorded and belief entertained escapement of income, as is evident that finally the AO has assessed other income which does not form part of the reasons recorded.

On the facts and circumstances of the case, the jurisdiction assumed by the AO under section 147 is bad in law as the sanction which has been granted under section 151 is mechanical without seeing the relevant provisions of the act."

8. The assessee submitted that the above grounds are legal and goes to the root of the matter and all the facts necessary for the adjudication of the above grounds are on record. The assessee also submitted that assessee can raise a legal additional ground or fresh legal plea at any stage of the proceedings relying upon the decision of the honourable Supreme Court in case of Cit Versus Varas International P Ltd reported in 284 ITR 80 and National Thermal Power Co Ltd versus CIT reported in 229 ITR 383. The assessee also explained that why he had not raised this ground categorically at the time of filing of the appeal since the assessee on the advice of earlier counsel, who filed this appeal, was of the bona fide belief that ground number four covers the challenge to the jurisdiction of AO under section 147 of the act. It was further stated that it is a settled principle of law that unless the malafide writ large on its face, the delay should be condoned and justice should be done. Therefore assessee is submitted that the previously mentioned grounds are permitted to be urged which have not been raised due to incorrect legal advice and documents. The learned authorised

representative reiterated all these above arguments and pressed that the additional ground raised by the assessee should be admitted.

9. The learned departmental representative vehemently objected to the additional grounds raised by the assessee and stated that they could have been raised before the lower authorities. It was further stated that reopening of the assessment has never been challenged by the assessee before the learned CIT – A and therefore now that cannot be admitted as an additional ground.

10. We have carefully considered the rival contentions and perused the application made by the assessee and grounds raised by the assessee in the additional ground. It is apparent that all these grounds raised by the assessee praying for admission as an additional ground are legal ground and goes to the root of the matter. They challenge the assumption of jurisdiction of ld AO to reopen the case of assessee as well as sanction of the approving authority. The assessee has also given reasons for not raising these grounds earlier. The assessee has also relied upon several binding judicial precedents before us for admission of the above grounds. In view of all these facts, we admit the additional grounds raised by the assessee and proceeded to adjudicate the appeal on the grounds raised in the original appeal memo as well as in the additional ground raised by the assessee.

11. The learned authorised representative raised his arguments as under:-

    a. The learned assessing officer has initiated the reopening of the assessment for the reason that assessee has deposited cash in his savings bank account. He submitted that there is no addition made by the learned assessing officer on that account. The learned assessing officer has made the addition based on the long-term capital gain earned by the assessee, which is not one of the reasons for which the reopening of the assessment has been initiated. He submitted that as per the provisions of section 147, the AO has no power to make any

addition, leaving aside the main issue based on which belief has been entertained that income has escaped assessment. He relied upon the decision of Jet Airways 331 ITR 236 and Ranbaxy laboratory reported in 336 ITR 136 of the honourable Delhi High Court.

b. He referred to the observation of the learned assessing officer that the assessee has not filed any return of income for impugned year. He submitted that it is not automatic under the provisions of section 147 to assume jurisdiction in each and every case where return of income has not been filed. He referred to the decision of the honourable Bombay High Court in case of GENERAL ELECTORAL TRUST vs. INCOME TAX OFFICER & ORS.[289 CTR 284].

c. He further referred to the sanction given by the joint Commissioner on the reasons recorded by the AO stating that yes he is satisfied and it is a fit case of issue of notice under section 148 of the income tax act. He submitted that such satisfaction is not a valid satisfaction as there is no application of mind by the sanctioning authority.

d. He further submitted that assessee has not received nor sold any property in the capacity of individual. He submitted that assessee and his brother received the property from the ancestors as is evident from page number seven of the paper book. He further stated that assessee has explained before the lower authorities that the character of the property was of Hindu undivided family property and not an individual property. He thus submitted that assessee has earned capital gain, even if, it is in the hands of in his HUF and not in his individual capacity. Therefore, according to him the assessing officer should have dropped the proceedings in the assessee's case and or to have commenced proceedings in the hands of his HUF . However, the learned assessing officer has not done anything and assessed the property in the hands of the assessee in his individual capacity and

therefore the assessment order passed by the AO is bad in law. He submitted the family tree of the assessee and is forefathers which shows that the there was a coparcenary of assessee and his brothers. He referred to the copy of the land records which shows that originally the land was owned by the great-grandfather of the assessee and later on devolved on assessee and his four brothers. He further referred to the court decree in the suit of declaration that father of the assessee has declared his four sons as the owner of the property.

e. On the issue that even otherwise the impugned land sold by the assessee is not a capital assets as it is situated beyond specified distances from the municipal area of Samalkha,, He referred to the notification of the government of India clarifying that land was situated beyond specified distances therefore the land was rural agricultural land and has no capital gain.

f. He further referred to the certificate issued by the tehsildar clarifying that the land was situated at 5.5 km from Municipality which has been discarded by the learned CIT – A. He further referred to page number 35 which shows that the land was situated outside municipal area and stated that lower authorities have conveniently ignored the fact. He submitted that certificate is signed by Tehsildar under his seal and signature on the application of the assessee. He submitted that n the first page signature is of assessee as it is his application and second page is signature of Tehsildar which is his certificate. He also submitted that there are seal of his office etc. In view of this he submitted that what has been sold by the assessee is not at all a capital asset under section 2 (14) of the income tax act.

12. In view of above facts, it was submitted that

a. the reopening of the assessment is bad in law, as it is a borrowed satisfaction
b. the sanction granted by the approving authority of the reopening of the assessment is bad in law
c. the assessment passed on the individual assessee instead of Hindu undivided family of the assessee is bad in law,
d. Over above the assessing officer has not made any addition for which the reopening of the assessment has taken place but addition has been made on altogether a different income and therefore because of the jurisdictional High Court's decision the assessment order is bad in law.

13. The learned departmental representative vehemently objected to the fact and argument of the learned authorized representative as under :-

a. On the ground of sanction is invalid, reliance was placed on the decision of Sonia Gandhi versus a CIT 407 ITR 594 and Principal Commissioner Of Income Tax Versus Meenakshi Overseas Private Limited inn ITA Number 651/del/2015 dated 11/1/2016. Therefore, it was submitted that there is no infirmity in the sanction given by the authority.
b. The learned senior departmental representative on the merits of the case relied upon the orders of the lower authorities.
c. With respect the argument that the above land situated beyond 5.5 km from the Samalkha, he submitted that the learned CIT – A has raised certain issues about the signature, therefore such argument does not stand.
d. With respect to the claim of the assessee that the above land belongs to HUF of the assessee he submitted that the learned assessing officer has dealt with the issue at para number seven of his order relying on the decision of the honourable Supreme Court, the learned

assessing officer has a held that it cannot be said that the land inherited by the assessee from his forefathers was the property of Hindu undivided family of the assessee.

e. With respect to the argument of the learned authorised representative that the learned assessing officer has not made any addition on the issue for which the case of the assessee was reopened that as deposit of cash in his bank account. The learned departmental representative submitted that when it was found that cash deposit has a source of sale of an agricultural land, naturally the addition could not have been made on that account but it was interlinked with the computation of capital gain in the hands of the assessee and therefore the addition has been made by the learned assessing officer only on the reason for which it was reopened.

f. In view of this, it was submitted that order passed by the lower authorities be sustained.

14. We have carefully considered the rival contentions and perused the orders of the lower authorities.

15. Admittedly, the learned assessing officer has recorded the reasons for reopening of the assessment stating that assessee has deposited cash in his bank account. At the cost of repetition, it is important to note the facts. The assessee is an agriculturist. He did not file his return of income. The assessee was served a notice under section 148 of the income tax act to explain the source of cash deposited in his savings bank account with state bank of Patiala of Rs 16 lakhs. The learned assessing officer considered the explanation of the assessee that cash was generated out of sale of agricultural land by the assessee as well as his four brothers jointly. So he did not make any addition on cash deposit as sources were explained. He proceeded to examine the chargeability of capital gain on assets sold through which cash is generated and deposited in the bank account. satisfied

with the explanation of e assessee, he did not make any addition on that account. During the course of assessment proceedings the learned assessing officer noted that assessee has sold property jointly owned by the assessee along with his four brothers to Shri Sureshkumar and by one document and Sri Jagpal by three documents for 4888500/- admeasuring 21865 yd². The AO questioned about the taxability of the long-term capital gain on the same. The assessee explained that long-term capital gain on sale of the above agricultural land is nil as assessee has also purchased agricultural land which is eligible for exemption under section 54B of the act. Thus, it was nil. The ld AO computed the capital gain in the hands of the assessee at 876186 and made the addition. The impugned land was originally belonging to Mr. Shoyaram, Great grandfather of the assessee, from him it devolved upon to his two sons, Mr. Goverdhan and Kedara. From that it passed on to Mr. Dayaram who is the only son of Kedara. Dayaram transferred it in the name of his five sons by a court decree in 1992. This land was sold by the assessee along with his four brothers, which is subject matter of dispute in this appeal.

16. First we decide whether the sanction of reopening given by the learned approving authority is proper or not. The learned authorised representative has placed before us the 'form of recording of the reasons for initiating proceedings under section 148 of the income tax act 1961 and for obtaining approval of the principal Commissioner of income tax, Karnal under section 151 (1) of the income tax act'. On looking at the form , it is apparent that at serial number seven the question asked is

    a. whether the provisions of section 147 (a) or 147 (b)/147 (C) are applicable. The answer given by the assessing officer is 147 (a) of the IT act.

b. In serial number 11 reasons for the belief that income has escaped assessment , the assessing officer has attached annexure A being 'reasons recorded for reopening' of the assessment.

c. The serial number 12 of the above form asked that whether the principal joint Commissioner of income tax is satisfied on the reasons recorded by the AO that it is a fit case for issue of notice under section 148 of the income tax act, 1961. The learned joint Commissioner of income tax has stated that ' yes satisfied, it is a fit case for issue of notice under section 148.

This is said to be not a proper satisfaction by ld AR. The identical issue arose in before honourable Delhi High Court in case of Sonia Gandhi V The Asst Commissioner of income tax [2018] 97 taxmann.com 150 (Delhi)/[2018] 257 Taxman 515 (Delhi)/[2018] 407 ITR 594 (Delhi) wherein it was held as under:-

> "**49.** As far as the question of satisfaction recorded by the Principal Commissioner, under Section 151 (1) is concerned, the legal requirements were spelt out by the Division bench ruling in *Meenakshi Overseas (P.) Ltd.* (*supra*), in the following terms:
>
> *"For the purpose of Section 151(1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151(1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled."*
>
> In the present case, the PCIT recorded, on reassessment proposal on the file of each assessee, that *inter alia,* the "lifting of veil" over the tripartite *"arrangement"* between AICC (i.e. INC), AJL and YI to tax the assessee under Section 56(2)(vii) (c)(ii) of the Act, the sum of Rs. 48,93, 64,896/-. The PCIT, after stating this also recorded that *"I am satisfied that the AO i.e. ACIT…has sufficient information in her possession which leads to reasons to believe that the assessee would have income which had escaped*

> *assessment which exceeds Rs. 1 lakh"*. In view of the ruling in *Meenakshi Overseas (supra),* therefore, the satisfaction recorded by the PCIT was adequate and in accordance with legal requirements."

In view of this, we dismiss the argument of the assessee that there is no proper sanction recorded by the approving authority while sanctioning the action of the learned assessing officer under section 147 of the act.

17. The second ground of argument of the learned authorised representative is that the learned assessing officer has reopened the case of the assessee for the purpose of verification of the cash deposited in the savings bank account as income escaped. The learned assessing officer has not made any addition on the account of cash deposited in the bank account. However, the learned assessing officer has made an altogether different addition of the long-term capital gain chargeable to tax on sale of an agricultural land of the assessee. Therefore, if the AO has not made any addition because of cash deposited in reopened assessment, according to the learned authorised representative, it is not open for the AO to make any addition in absence of that addition. Looking at this aspect of the argument, it is apparent that assessee has deposited cash in the savings bank account. The AO wanted to examine the source of this cash deposited in the bank account. Therefore, in absence of any other detail, the AO recorded the reason that the case of the assessee is reopened as income chargeable to tax because of cash deposit with the bank has escaped the assessment. During the course of assessment proceedings the AO came to know that source of cash deposit in the bank account of the assessee is arising out of the sale of an agricultural land. Naturally, when the assessing officer has come to know that the source of cash deposited in the bank account of the assessee is a sale of an agricultural land, AO could not have added the cash deposited in the bank account but the nature of income comprising in such bank deposits. Therefore after examining the facts of the case, ld AO made addition on account of

chargeability of long term capital gain on sale of that assets. We do not find any infirmity in the action of the learned assessing officer when the source of the cash deposit in the bank account is found to be the sale of land, which was not offered for capital gain. Therefore there is a live, direct and solid connection - nexus between the reasons for which the case of the assessee is reopened and the addition made by the ld AO . Honourable Delhi High Court in ***RANBAXY LABORATORIES LTD. Vs. COMMISSIONER OF INCOME TAX*** *2011) 79 CCH 0445 Del HC (2011) 57 DTR 0281, (2011) 242 CTR 0117 (2011) 336 ITR 0136, (2011) 200 TAXMAN 242 has held that :-*

> **"10.** The ratio of both the aforecited cases was that upon the issuance of notice under s. 148(2), when proceedings were initiated by the AO on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the AO to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated. To put it differently, once the AO has reason to believe that income chargeable to tax has escaped assessment and proceeds to issue a notice under s. 148, it is not open to him to assess or reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment."

(Underline supplied by us)

In the impugned case before us, cash deposit and consequent assessment of sale of agricultural land through which cash has been generated by the assessee is not an independent and unconnected issue. Therefore, respectfully following the ratio laid down by the Honourable Delhi High Court as above, we do not find any infirmity in the reopening of the

assessment by the learned assessing officer. Therefore, this argument of the learned authorized representative is rejected.

18. In view of this we do not find any infirmity in the action of the Ao in reopening of the case as well as the action of approving authority in granting approval u/s 151 (1) of the act.

19. Now coming to the issues on merit, the first issue that arises is whether the agricultural land sold by the assessee or his HUF is a 'capital asset' . The assessee has placed before us the notification number (SO 9447) (File number 164/3/87 – ITA.I) dated 6-1-1994 which shows that in the state of Haryana at serial number 9- 53, Samalkha (dist Panipat) is mentioned and the details of the areas falling outside the local limits of municipality it is mentioned that areas up to a distance of 5 kms from the municipal limits in all directions are covered into the definition of a 'capital asset', thereby it means that if the property is situated beyond 5 km from the municipal limits of that particular municipality then the impugned land cannot be considered as a 'capital asset'. Before us, the assessee has submitted a certificate of the tehsildar of village Bhapra dated 29th of December 2017 which certifies that the impugned land sold by the assessee is situated approximately 5.5 km from the municipal limits of Samalkha. The above certificate produced by the assessee before the lower authorities have been rejected for the reason that the tehsildar has mentioned the distance in 'approximation' and further there is difference in signature. This issue if examined on verification of the certificate issued by that particular authority, they have stated that the distance is approximately 5.5 km. Definitely the property is not situated within 5 km of the municipality limits of that particular region. Otherwise, that authority would not have certified so. Further merely because the authority has mentioned 'approximately" , that does not mean that property is situated within the 5 km of the municipal limits of that

particular municipality. It may be possible that distance is higher than 5.5 km. there is no reason to presume that as the distance is certifying in approximation it is definitely within 5 Km of Municipal limits. It is one of the ways of certifying the distance because same is not measured up to last meter. Therefore for this reason rejection of the above certificate is devoid of any merit.

20. The second reason why the certificate is rejected is that the signature on the first page and on the second page are not similar as held by the learned CIT Appeal. We have carefully considered this aspect and find that on the first page the assessee has made an application in Hindi language to the tehsildar wherein the proper stamp duty is a fixed for making an application and obtaining a particular information. On that letter, tehsildar has stamped and noted that he has received the application of the assessee on 29-12 -2017. He has put an initial with a direction to the Patwari to take necessary action. Therefore, on the first page there was no signature of Tehsildar, naturally but only intials. On the second page, Tehsildar has signed and certified approximate distance of the impugned land from the municipal limit of Samalkha. On the second page of the certificate, there is a stamp of 'Tashdique Shuda" which means "issued". Therefore, doubting the veracity of the certificate was not proper by the learned CIT Appeal. In fact , if he has any doubt about that he should issue direction to the ld AO to ascertain veracity of the same. In view of this, we hold that the impugned property is situated beyond 5.5 km of the municipal limit of Samlakha (Dist. Panipat) , therefore the impugned property is not a capital asset. The sale of such land will not make any capital gain liable to be taxed in the hands of the assessee. Therefore on this reason itself, we reverse the orders of the lower authorities and direct the assessing officer to delete the addition.

21. In view of finding that the above impugned land sold by the assessee is not at all a 'capital asset' , therefore whether it is to be taxed in the hands of an

Hindu undivided family of the assessee or in individual status of the assessee or whether the assessee is eligible for deduction/exemption under section 54B of the act or not, these issues becomes irrelevant. Therefore, they are not decided. Thus, all the grounds of the assessee on the reopening of the assessment are dismissed, however, on the merits of the addition, reversing the orders of the lower authorities, the AO is directed to delete the addition.

22. In the result, appeal of the assessee is partly allowed.

23. Coming to the **ITA number 8212/Del/2018 in case of Mr. Sultan Singh**, who is also one of the sellers of the impugned property and also the brother of Mr. Surat Singh, the identical transaction was questioned by the revenue and the addition was made. We have already given our reasons and decided the appeal in case of Surat Singh by this order above. For the similar reasons we uphold the reopening of the assessment however, direct the learned assessing officer to delete the additions on the merits of the case. Accordingly, the appeal in case of this assessee also is partly allowed.

24. In the result both the appeals of Mr. Surat Singh and Mr. sultan Singh in ITA number 8211/del/2018 and ITA number 8212 del 2018 for assessment year 2010 – 11 are partly allowed.

Order pronounced in the open court on **26/ 05 /2020.**

Sd/-	**-Sd/-**
(SUCHITRA KAMBLE)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MEHTA

Date: **26/ 05 /2020.**

Copy forwarded to:

1. Appellants;
2. Respondent;

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT

REGISTRAR

ITAT NEW DELHI