

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.49/Agra/2019
(ASSESSMENT YEAR-2010-11)**

Shri Lakhan Lal S/o. late Shri Devi Ram 31, Prabhu Nagar nar Jai Gurudev Temple Mathura – 281004 PAN No.AEAPL1039C (Assessee)	Vs.	ITO-1(3)(2), Mathura (Revenue)
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Assessee by	Sh. Vishnu Kumar, C.A.& Sh. Abhishek Agrawal, C.A.
Revenue by	Mazhar Akram, Sr. D.R.

Date of Hearing	02.02.2021
Date of Pronouncement	02.02.2021

ORDER

Per LALIET KUMAR, J.M.

Present appeal is being filed by the assessee feeling aggrieved by the order passed by the CIT Appeal against the order dated 30/11/2018 following grounds:

Grounds of Appeals

- I. That the appellant denies his liability of Rs. 5,77,556,.00 imposed vide Assessment order dated 24.11.2017 passed U/s. 147/144 of Income Tax Act, 1961.
- II. That the Ld. CIT(A)-1, Agra erred both on law and also on that facts and circumstances of the case in confirming the share of the appellant as 1/4th instead of 1/6th in the sale of Agricultural land. The conclusion drawn by the Ld. CIT(A)-I, Agra regarding the share of the appellant is erroneous and incorrect based on facts and circumstances of the case. the same deserves to be quashed.
- III. That the conclusion drawn by Ld. CIT(A)-I, Agra denying Exemption U/s. 54F of the Income Tax Act, 1961 to the appellant in respect of Construction of Residential House is erroneous and incorrect based on facts and circumstances of the case.
- IV. That the appellant reserves the right to add, amend, modify, delete any of ground(s) of appeal before or at the time of hearing.

1. In this case, as per the AR the assessment was completed under section 144/147 of the Act by the assessing officer by determining the total assessing the assessee to the an amount of ₹ 11,61,310/- it was the case of the assessing officer that the capital gain I was earned by the assessee from the sale of his share in immovable property. Notice under section 148 was issued to the assessee for 30 March

2017, no compliance was made by the assessee and therefore the assessing officer had made the reassessment proceedings by proceeding ex parte and had taxed the long-term capital gain amount ₹ 11,61,310/-

2. feeling aggrieved by the order passed by the assessing officer the assessee preferred an appeal before the Commissioner Howard the Commissioner had partly granted the relief to the assessee and had sustained the addition of ₹ 5,77,556/-.
3. Now the assessee is before us on the grounds mentioned hereinabove. At the outset during the virtual hearing it was pleaded by the Id. AR that the assessing officer had wrongly proceeded ex parte against the assessee and even the first appellate authority has not considered the documents filed by the assessee in to and had relied upon the remand report received from the assessing officer. It was submitted that the matter is required to be remanded back to the file of the assessing officer for the purpose of the appreciation of fact and deciding the issue on merit afresh.
4. The above said proposition was confronted to the Id. Dr, he had submitted that though the assessing officer had passed the order ex-parte order however an opportunity was granted to the assessee before the learned CIT Appeal. It was submitted that the assessee is

not entitled to 2nd inning before the assessing officer. Further, the learned DR had fairly submitted that, that the matter may kindly be remanded back to the file of the Commissioner Appeal /AO for a fresh adjudication.

6. We have heard the rival contention of the parties and perused the material available on record. As laid down by the honorable Supreme Court in Catena of judgement that the purpose of tax administration is to collect just and fair tax from the citizen and it should not be an endeavor of the revenue authority to take benefit of ignorance of the citizen or absence of appellant in the proceedings. In the present case the individual assessee are before us who had plead that the absence of AR/ assessee was on account of sufficient reasons.
7. In our considered opinion the interest of justice, requires that the matters be sent back to the file of the learned AO for a fresh adjudication on merit. We expect the learned AO to decide the matter expeditiously after issuing the sufficient notice to the assessee and he shall grant the assessee sufficient opportunity to produce the evidence/document as may be advised.
8. The assessee is also directed to present on each and every date fixed by the AO and shall not take undue date/adjournment in the matter. It

is expected that the appeal shall be decided by the AO preferably within a period of 6 months from the receipt of this order.

9. Needless to say that we have not adjudicated and decided all the grounds raised before us and have only remanded back the matter to the file of the AO for deciding the assessment denovo, the learned AO shall decide the matter without being influenced by any of the observation made herein above in accordance with law.

10. In the result the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 02/02/2021.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Dated 02/02/2021

Sd/-

**(LALIET KUMAR)
JUDICIAL MEMBER**

Copy forwarded to:

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

Sr. PRIVATE SECRETARY