

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'FRIDAY' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.4214/Del/2016
Assessment Year: 2006-07

ITO, Ward-2, Model Town, Rewari	Vs.	Mool Chand HUF, C/o- Smt. Shanti Devi, w/o- Late Sh. Mool Chand, Near Police Station, Dharuhera, Rewari
PAN : N.A.		
(Appellant)		(Respondent)

Appellant by	Sh. Atiq Ahmed, Sr.DR
Respondent by	Sh. Mahavir Singh, Adv.

Date of hearing	02.07.2021
Date of pronouncement	09.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 16/05/2016 passed by the learned Commissioner of Income Tax (Appeals), Rohtak (Haryana) [in short 'the Ld. CIT(A)'] for assessment year 2006-07 raising following grounds:

- CIT(A) has erred in law in deleting the addition of Rs.8,89,12,500/- made by the AO on account of Long Term Capital Gain, accepting the plea of the assessee that the protective assessment in the name of all co-owners in their individual capacity*

have been made and confirmed by the CIT(A). The CIT(A) has deleted the addition without appreciating the fact that the land sold was ancestral and belongs to Mool Chand, HUF. Appeal against the orders of the CIT(A) in case of co-owners in their individual capacity are also pending before the Hon'ble ITAT.

2. We have heard rival submission of the parties on the issue in dispute, who appeared through Video Conferencing facility and filed various documents electronically.

2.1 Brief facts of the case are that Late Sh. Moolchand owned an agricultural land which was situated in municipal limits of Dharuhera (Haryana). An formation was received by the Income Tax Department that said land was sold by five persons, namely, Smt. Shanti Devi, Sh. Ajit Singh, Sh. Sunil Kumar, Smt. Shashi Bala and Smt. Savita Devi. The Assessing Officer was of the view that after the death of Sh. Moolchand, the land existed in the name of Sh. Moolchand HUF, therefore he reopened the case of the assessee i.e. Moolchand HUF by way of issue of notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') and assessed the capital gain on transfer of the land in the hands of Moolchand HUF on substantive basis. The Assessing Officer also assessed the said capital gain in the hand of five individuals i.e. sons and daughter of late Sh. Moolchand on protective basis. The five individuals along with the assessee filed appeal before the Ld. CIT(A). The Learned CIT(A) treated the income on transfer of land on substantive basis in the hands of five individuals and deleted the addition in the hands of the assessee, holding that no double addition can be made for the same transaction.

2.2 Before us, learned Counsel of the assessee submitted that Revenue has not preferred any appeal against the order of the Learned CIT(A) in the case of the five individuals where income on transfer of the land has been assessed on substantive basis and therefore now the Revenue is not justified in seeking assessment of the same income in the hands of the Moolchand HUF on substantive basis. The learned Counsel also submitted that at the time of the transfer of land, the land was duly recorded in the name of the five individuals in the Land Revenue records and they have transferred their individual share in the land to the buyer and therefore assessment of same transaction in the hands of the assessee, i.e., the Moolchand HUF is without any evidence of ownership in the hands of HUF and merely based on imagination of the Assessing Officer. During the hearing of appeal before us, the learned DR was directed, to confirm this fact and file grounds of appeal, if any such appeals have been preferred by the Revenue in the case of those five individuals. Despite repeated opportunities the Ld. DR failed to provide details of any such appeals filed by the Revenue. These five individuals have only filed appeal challenging the addition of long-term capital gain on merit only and substantive nature has not been challenged. In one such appeal in the case of Smt. Savita D/o Moolchand in ITA No. 2642/Del/2016 for assessment at 2006-07, the Tribunal allowed the ground challenging validity of the re-assessment. The relevant finding of the Tribunal (supra) is reproduced as under:

“9. Be that as it may, the fact remains that in both the sets of reasons, there is a reference to the substantive assessment that was in the hands of Mool Chand, HUF and it is only consequent thereto the protective assessment was said to be made in the hands of the

assessee. It is, therefore, clear that when the fact does not admit of any doubt that the substantive assessment in the hands of Mool Chand, HUF on 28.3.13, it would not have been possible for the AO to record the reasons in this case on 26.03.2013. It suggests that the reasons and the notice u/s 148 of the Act are ante dated or at the lease that they are not properly recorded.

10. In this set of facts and circumstances, it is difficult to say that there was proper issuance of service of notice u/s 148 of the Act and no reliance could be made on the reasons recorded in this matter.

We, therefore, hold that there is no proper issuance and service of notice u/s 148 in this matter and consequently, the assessment order is liable to be quashed. Appeal of the assessee is allowed accordingly. ”

2.3 In the case of another individual Sh. Ajit Singh also, the Tribunal has quashed the re-assessment proceeding in ITA 4042/Del/2016, following the finding in the case of Smt. Savita (supra).

2.4 Thus, we derive that the Revenue has at least accepted income on substantive basis in the hands of those five individuals. In such circumstances, the same income cannot be assessed on substantive basis in the hands of the assessee. Further, on perusal of copy of land revenue record, which is a copy dated 28/03/2006, wherein name of five individuals is recorded as owner of the land. In view of this document also those five individuals are owner of their respective shares, and no evidence of any ownership in the hands of Moolchand HUF has been filed by the Revenue before us.

2.5 In view of the above facts and circumstances, we are of opinion that the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any error in the same. Accordingly, we dismiss the ground raised by the Revenue.

3. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 9th July, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 9th July, 2021.

RK/- (DTDS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi