

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH**  
**(VIRTUAL COURT)**

**श्री एन.के.सैनी, उपाध्यक्ष**

**BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT**

आयकर अपील सं./ ITA No.1275/Chd/2019

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Joginder Singh S/o Soran Lal Village: Jaroda, Tehsil Jagadhri Yamuna Nagar	बनाम	The ITO Ward No. 5, Yamuna Nagar
स्थायी लेखा सं./PAN NO: BEBPS6785N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Goel, CA

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 18/08/2021

उद्घोषणा की तारीख/Date of Pronouncement : 26/08/2021

**आदेश/Order**

**PER N.K. SAINI, VICE PRESIDENT**

This is an appeal by the assessee against the order dt. 18/06/2019 of Ld. CIT(A)-4, Ludhiana.

2. Following grounds have been raised in this appeal:

1. *The learned CIT(Appeals) has erred in law and facts in confirming the action of learned A.O. in reopening the assessment 147.*

*(Tax Effect: 14,08,050/-)*

2. *The learned CIT(Appeals) has erred in law and facts in confirming the action of learned A.O. whereby a HUF property is assessed in Individual hands of Assessee.*

*(Tax Effect: 14,08,050/-)*

3. *The learned CIT(Appeals) has erred in law and facts in confirming the action of learned A.O. in making addition of Rs. 22,67,610/- being long term capital gain.*

*(Tax Effect: 14,08,050/-)*

4. *The learned CIT (Appeals) has erred in law and facts in not allowing the correct value of indexed cost of acquisition of land as on 1-4-1981 claimed at Rs. 1,42,825/- against allowed at Rs. 8,318/-.*

*(Tax Effect: 2,22,339/-)*

5. *That appellant craves leave to add, alter, amend or to substitute the above grounds of appeal either before or at the time of hearing of case.*

2.1 Assessee also raised an additional ground which read as under:

1. *The following additional ground is prayed to be admitted:*

*"That authorities below have erred in facts and law in holding that capital gain against sale of agriculture land is taxable in AY 2008-09 in place of AY 2009-10."*

2. *The attention of Hon'ble bench is invited to the fact that Land in question was sold on 28-6-2007 (AY 2008-09) but possession of land and sale consideration received on 1-10-2008 (AY 2009-10). Land in question is sold to Zodiac Housing and Infrastructure Private Limited on 28-6-2007 but the possession of land was handed over only after receipt of full and final payment. This is the same company where Punjab and Haryana High Court in CRM 3672-M/2007 wherein under exactly same circumstances jurisdictional HC has directed local administration of Jagadhri-Yamuna Nagar that these company be not allowed to take physical possession of the land without full payment and also ordered that though the appeal has been filed by Tajinder Kumar and held that the order will apply to other farmers and they are not required to approach the Court for getting relief.*

**However,** *the issue involved in this additional ground is a legal ground on the facts to be decided as per the provisions of law. The same goes to the root of the matter and clearly transpires from the proceedings before the lower authorities with complete facts on record and reliance is placed on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Limited vs. CIT - 229 ITR 383 (SC).*

*In the light of above, Hon'ble bench is requested to admit the additional ground of appeal under rule 11 of Income Tax Appellate Tribunal Rules 1963.*

3. During the course of hearing the Ld. Counsel for the assessee submitted that although the aforesaid additional ground is embedded in Ground No. 3. However precautionary it has been raised as an additional ground for which no new fact are required as the same are available on the record. Therefore this additional ground may be admitted in view of the ratio laid down by the Hon'ble Supreme Court in the case of National Thermal Power Company Limited Vs. CIT 229 ITR 383.

4. In her rival submissions the Ld. DR opposed the admission of the additional ground and submitted that this ground was not raised by the assessee before the Ld. CIT(A), therefore, it may not be admitted.

5. After considering the submissions of both the parties, it is noticed that the additional ground raised by the assessee is purely a legal ground which goes to the root of the matter and no new facts are required which are already available on the record. Therefore by keeping in view the ratio laid down by the Hon'ble Apex Court in the case of National Thermal Power Company Ltd. Vs. CIT(supra), this ground is admitted.

6. In the present case, the assessee has challenged the sustenance of addition made by the A.O. and that as to whether the capital gain (if any) from sale of agriculture land was taxable in the assessment year under consideration i.e; A.Y. 2008-09 or the A.Y. 2009-10.

7. Facts of the case in brief are that the A.O. on the basis of the information that the assessee alongwith co-owners had sold land measuring 8 kanal 16 marlas to M/s Zodiac Housing And Infrastructure Pvt. Ltd. Dilshad Garden, New Delhi for Rs. 60,50,000/- on 28/06/2007 and since the assessee had not discharged the tax liability, the A.O. reopened the case by initiating the proceedings under section 147 of the Income Tax Act, 1961 (for short the 'Act'). As the assessee did not comply the notice issued under section 148 of the Act the A.O. issued several other notices. The assessee furnished the written submissions dt. 25/01/2016 which has been incorporated by the A.O. in para 3 of the assessment order dt. 09/03/2016. The Assessee again filed the written submission on 26/02/2016 which has been incorporated in para 3.1 of the aforesaid assessment order, for the cost of repetition the same is not reproduced herein. Since the assessee did not comply with the notices issued under section 148 of the Act and did not furnish the Income Tax Return, the A.O. proceeded under section 144 of the Act and framed the assessment exparte by considering the income of Rs. 22,67,610/- as taxable under the head Long Term Capital Gain.

8. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submissions dt. 22/02/2019 which have been incorporated in para 4.4 of the impugned order by the Ld. CIT(A), for the cost of repetition the same is not reproduced herein.

9. After considering the submissions of the assessee, the Ld. CIT(A) observed that during the appellate proceedings the assessee had filed the additional evidences regarding the cost of acquisition which were admitted and comments of the A.O. were sought. However inspite of the reminder issued on 22/02/2019, 19/03/2019 and 16/04/2019 to the A.O. comments were not received. However, the Ld. CIT(A) sustained the addition made by the A.O. and confirmed the view taken by the A.O. in adopting the Fair Market Value of the property as on 01/04/1981.

10. Now the assessee is in appeal.

11. The Ld. Counsel for the Assessee drew our attention towards page no. 21 of the assessee's paper book which is the copy of the bank statement and submitted that the amount in lieu of sale of the agriculture land was credited in the bank account of the assessee as on 01/10/2008 therefore the transactions took place in the F.Y. 2008-09 pertaining to the A.Y. 2009-10 and not the A.Y. 2008-09.

11.1 He further submitted that the Hon'ble Jurisdictional High Court vide judgment dt. 05/02/2009 in CWP No. 1908 of 2009 in the case of Tejinder Kumar and another Vs. State of Haryana and others, directed the Collector, Yamuna Nagar to make immediate remedial measures to prevent creation of third party rights, change of the nature of the land or dispossession of the farmers to whom full sale consideration has not been paid so far. Our attention was drawn towards page nos. 24 to 26 of the assessee's paper book which is the copy of the aforesaid judgment. It was accordingly submitted that the purchaser was not in possession of the land till the cheque was cleared on 01/10/2008 and the possession was already with the assessee, therefore this transaction was pertaining to the A.Y. 2009-10 and not to the A.Y. under consideration i.e; A.Y. 2008-09.

12. In her rival submissions the Ld. DR strongly supported the orders of the authorities below and further submitted that the judgment dt. 05/02/2009 was not brought to the notice of the A.O. or to the Ld. CIT(A) by the assessee and that the transaction pertained to the year under consideration as the assessee executed the registered sale deed on 28/06/2007 and received the cheque no. 10951 dt. 27/06/2007 for Rs. 21,03,125/-. Therefore the transaction was pertaining to the A.Y. under consideration and rightly considered by the A.O. in the said assessment year.

13. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the bank statement now furnished by the assessee showing that the amount of Rs. 21,03,125/- vide Cheque no. 10951 was credited in the account of the assessee on 01/10/2008 was neither before the A.O. who passed the assessment order *ex parte* nor before the Ld. CIT(A). It is also not clear as to whether the judgment of the Hon'ble Jurisdictional High Court now relied by the Ld. Counsel for the assessee was brought to the notice of the Ld. CIT(A). I, therefore, by considering the totality of the facts, deem it appropriate to set aside this issue back to the file of the A.O. to be

adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard and by considering the documents now furnished by the assessee before this Bench of the Tribunal.

14. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open court on 26/08/2021 )

**Sd/-**  
**एन.के.सैनी,**  
**( N.K. SAINI)**  
**उपाध्यक्ष / VICE PRESIDENT**

**AG**

**Date: 26/08/2021**

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

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