

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1711/Del/2018

[Assessment Year : 2009-10]

Krishna Devi W/o Shri Shish Pal, House No. 138, Village-Meerepur Hindu Loni, Ghaziabad. Uttar Pradesh PAN-EGUPK1008J	vs	ITO Ward-1(3) Ghaziabad Uttar Pradesh
APPELLANT		RESPONDENT
Appellant by	Shri Hifzul Hasnain, AR	
Respondent by	Shri Kumar Padmapani Bora, Sr. DR	
Date of Hearing	29.11.2021	
Date of Pronouncement	16 .12.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-2, Noida dated 26/12/2017 pertaining to Assessment Year 2009-10. The assessee has raised following grounds of appeal:-

“1. *Because the Ld. Assessing Officer has erred in law and on facts in treating the Agriculture land situated beyond the 8 kilometers of any Municipality, cantonment Board or any Development Authority as the capital asset in assessing the sale consideration value of the Agricultural land as*

income of the Appellant.

2. *Because the Ld. Assessing Officer has erred in law and on facts in not allowing the exemption u/s 54 of I.T. Act, 1961.”*

2. The facts given rise to the present appeal are that the Assessing Officer has observed that in this case, AIR Information was received from Income Tax Officer, Ward-3 (4) on 28/1/2016. It was stated that during the year under consideration, the assessee had sold an immovable property for Rs. 38,90,000/-. In order to verify the financial transaction verification letters dated 23/4/2012, 5/5/2015, 06/01/2015 & 28/1/2016 were issued to the assessee on the given address. It was observed that in response thereto no compliance was made. Subsequently, the case was reopened u/s 147 of the Income Tax Act, 1961 (in short “the act”). A notice u/s 148 dated 11/3/2016 was also issued on the given address and duly served upon through Speed Post No. EU490767973IN. In response thereto no one appeared. Therefore, the Assessing Officer proceeded to make assessment in the absence of the assessee. Thereby, the Assessing Officer added an amount of Rs. 38,90,000/- into the income of the assessee.

3. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A).

4. The Ld.CIT(A) after considering the submissions partly allowed the appeal. Thereby, the Ld.CIT(A) held that the appellant failed to prove conclusively that the land in question was located outside 8 kilo meters or more from the outer limit of such municipality etc. as per the Notification issued by the Central Government. Aggrieved against this, the assessee is in appeal before this Tribunal.

5. At the outset Ld. Counsel for the assessee submitted that the land in question falls outside the Municipal Limit as contemplated by the provisions Act. He submitted

that the matter be restored to the Assessing Officer to verify the factum of the distance of the land from the outer limit of the municipality. The Ld. DR opposed the submission. However, he submitted that he has no objection to the extent of verification by the Assessing Officer regarding geographical location of the land in question.

6. We have heard rival submission, we find that the only objection of the Ld. CIT(A) was that the assessee failed to conclusively prove that the land in question was outside 8 kilo meters or more from the outer limit of the municipality. After considering the totality of the fact and in view of the submission made by the Ld. Counsel for the assessee we deem it proper and in the interest of justice to set aside the issue to the file of the Assessing Officer for making verification regarding distance of the land in question from the municipality as per the extant notification. The Assessing Officer is hereby directed to verify the distance/land in question from the nearest Municipality limit and decide the issue afresh after giving reasonable opportunity to the assessee. Therefore, the impugned order is hereby set aside for decision afresh. The ground raised in this appeal is allowed for statistical purpose.

6. In the result, the appeal of the assessee in ITA No. 1711/Del/2018 is allowed for statistical purpose in the terms indicated in para 5 of this order.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 16th December, 2021.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

R. N

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI