

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6387/DEL/2019

[Assessment Year: 2010-11

Ranbir Singh, House no. ½, Village and post office HiranKunda, New Delhi-110041. C/o D.D. Gupta & Co. 219-A, 1 st Floor, Rama Market, PitamPura, New Delhi. PAN- BZXPS6097J	<u>Vs</u>	Income Tax Officer, Ward-42(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	10.01.2022	
Date of pronouncement	18.01.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-14, New Delhi, dated 10.12.2018, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1 That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the

contention of the appellant that the assessment order is not sustainable, as the same has been passed without providing proper and reasonable opportunity to the appellant to present its case and the order is at variance with principles of audialterampartem and passed in hot haste to finalize time barring assessment.

2. *That on the facts and in the circumstances of the case, the order passed by the ld. Commissioner of Income tax (Appeals-14, New Delhi is bad both in the eye of law and on facts.*
3. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that initiation of the re-assessment proceedings and re-assessment order are bad both on facts and in law and liable to be quashed, as the statutory conditions and procedure prescribed under the Statute have not been complied with.*
4. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the re-assessment proceedings initiated by the ld. A.O are bad in the eye of law as the reasons recorded for the issue of Notice u/s 148 of the Act are not valid in the eye of law.*
5. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the proceedings u/s 148 of the Act in the case have been initiated contrary to the statutory requirements prescribed u/s 151 of the Act.*
6. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the Notice issued u/s 148 of the Act was illegal as barred by limitation and hence void ab initio.*
7. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the proceedings initiated are bad, as there was no live link between the information in possession of the ld. A.O and the reasons recorded by him u/s 148 of the Act.*

8. (i) *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O. has erred in initiating re-assessment proceedings without having his own reason to believe that income has escaped assessment.*
- 8.(ii) *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O has erred in initiating re-assessment proceedings without any material or basis to form the view that income has escaped assessment.*
- 8(iii) *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O has erred in initiating proceedings simply on the basis of information received from the ITO (I&C1)-1 & 5, New Delhi vide his letter No. F.N.ITO(I&C1)-1&5/AIR-001/Fwdg-A.O) dated 5.10.2015.*
9. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the re-assessment proceedings or the order passed by the ld. A.O are bad and liable to be quashed on account of failure of the ld. A.O to dispose of the objections raised by the appellant against the initiation of proceedings by way of an order and by communicating such order to the appellant.*
10. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the order passed by the ld. A.O is bad and liable to be quashed as the same has been re-opened on the basis of reasons, which are vague and incomplete and further have been recorded without application of mind on the part of the ld. A.O.*
11. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the gain resulting from agricultural*

land was not liable to be considered as income u/s 45 of the Act having regard to provisions of Section 2(14) of the Act.

12. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O has grossly erred in making additions in the declared income u/s 144 of the Act without conducting proper enquiry, basis, material or evidence in support of the additions made by him and further without providing the adequate and sufficient opportunity to the appellant to provide clarifications in support of returned income.*
13. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the Officer was wholly unjustified in not uniformly adopting cost of acquisition and cost of improvement in computing long term capital gains under the hands of all co-owners.*
14. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O failed to provide opportunity to the appellant to claim and explain available deductions u/s 54 of the Act as also other statutory provisions.*
15. *That on the facts and in the circumstances of the case, the ld. CIT(A)-14, New Delhi has erred both on facts and in law in rejecting the contention of the appellant that the ld. A.O has erred in levying interest of Rs. 17,208/- u/s 234A and Rs. 8,00,172/- u/s 234B of the Act, which are not leviable on the facts of the instant case.*

The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.”

2. At the time of hearing none appeared on behalf of the assessee. There is no representation on behalf of the assessee for the last many hearings. The notices

issued to the assessee by speed post are returned back. Therefore, the appeal was taken up for hearing in the absence of the assessee.

3. In this case the assessment was reopened on the basis that the Revenue received information that the assessee had sold immovable property. Therefore, a notice u/s 148 was issued. In response thereto the Authorized Representative of the assessee attended the proceedings. It was stated before the AO that income declared u/s 44AF of the Income-tax Act at Rs. 47,698/- may be treated as return in response to notice u/s 148. Thereafter, the case was fixed for hearing. The Assessing Officer has recorded that case was adjourned to 27th December, 2017 and AR of the assessee filed part submissions. The case was adjourned to 28.12.2017, but none attended. It was further recorded that since the matter was getting time barred on 31.12.2017, the Assessing Officer proceeded to frame the assessment u/s 144 of the Act and made addition of Rs. 42,89,119/- in respect of long term capital gain.

4. Aggrieved against the order of Assessing Officer the assessee preferred appeal before the learned CIT(Appeals). The appeal so filed was dismissed in summarily manner by following the decision in assessee's brother's case for assessment year 2011-12.

5. Aggrieved, against the order of learned CIT(Appeals), the assessee is in appeal before this Tribunal.

6. The contention of the assessee in the form of grounds of appeal, are that the reopening is not valid as per the statutory requirement. The land in question was agricultural land and was not amenable to the capital gain u/s 45 of the Act. The assessment framed u/s 144 is grossly in violation of the principles of natural justice.

7. Learned Sr. DR opposed the contention and supported the orders of authorities below. He submitted that the assessee was given sufficient opportunity to explain his case. However, he chose not to appear before the authorities below. Under these circumstances, the authorities below were justified in dismissing the appeal of the assessee and confirming the addition.

8. I have heard learned DR, perused the material available on record and gone through the orders of authorities below. I find that the Assessing Officer made addition by observing as under:

“Looking to the Time Barring Matter which is getting barred by limitation on 31.12.2017 and the undersigned has no alternative to complete the assessment proceedings u/s 144 of the I.T. Act, 1961 as per material available on record.

Therefore, keeping in view the non-cooperative attitude of the assessee, a final show cause notice was served upon the assessee on 10.11.2017 through speed post fixing the case for hearing on 17.11.2017. Wherein it was made very clear that in case of non-compliance to this notice, his case will be decided ex-parte as per the provision of Income Tax Act, 1961 and on the basis of the material available on record without any further opportunity. The same is reproduced as under:

“From the perusal of details filed by you and information available with this office it is evident that you made a sale deed of a property situated at Mundka during the period 01.04.2009 to 31.03.2010 amounting to Rs. 97,62,499/-. After giving you many opportunities to provide the amounts regarding the sale/purchase, it seems that you have nothing to produce in this case and you are hereby show caused why this amount of Rs. 97,62,499/- shouldn't be added back to your taxable income.”

However, on the given date neither the assessee nor any reply on behalf of the assessee was filed.

Since this is a time barring case and the undersigned is left with no option but to pass the best judgment assessment order u/s 144 of the IT Act guided by judicial pronouncement in the case of CIT Vs. Yamu Industries Ltd. (2008) 306 ITR 309 (Del) and as held by the Supreme Court in the case of BrijBhushanLalPradumankumar Vs. CIT (1978) 115 ITR 524 (SC) and the Calcutta High Court in Anand Rice and Oil Mills Vs. CIT (1977) 108 ITR 372 (Cal.)

As, considering the above the assessee not produced any explanation in this matter. The undersigned have no alternative left but to decide the matter as per documents available on record. From perusal of the sale documents/ sale deeds of agricultural land who had sold Land Khasra No. 692(2-18), 726(4-16), 727(4-16), 728(4-16), 729(6-2), 730(4-3) total area 27 bighas, 11 Biswas situated in the village of Jaffarpur alias HiranKudna, Delhi-110041 being a of 4th part 1/3 share for a consideration of Rs. 8,75,00,000/- on 06.06.2009 and sold land Khasra No. 358/1(1-8), 360(4-16), 451(4-14), 561/3(0-19),603(4-16), 604(4-16), 605(4-16), 455/2(0-12) total area 26 Bighas 17 Biswas situated in the village of Jaffarpur alias HiranKudna, Delhi-110041, being a 4th part 1/3 share for a consideration of Rs.

2,96,95,000/- on 06.06.2009 as per sale deeds of agricultural land in which assessee's share has 4th part 1/3rd of the above amount i.e. Rs. 97,62,499/- in sale of both the lands during the F.Y. 2009-10 relevant to A.Y. 2010-11 taken as total sale consideration of agricultural land while computing Long Term Capital Gain income of the above land. The circle rate per acre of agricultural land in Delhi for the year 1981-82 was Rs. 3,32,152/-. Now long term capital gain is calculated as under:

Sale Consideration = 72,91,667/-

Land:- 27 Bigha 11 Biswa
= (27x20) +11= 540+11=551 Biswas

Share = 1/12= 551/12=45.92 Biswas = 45.92/96=0.48 Acre

Less: ICOA = $\frac{0.48 \text{ Acre} \times 332150 \times 632}{100}$
= 10,07,610

Long Term Capital Gain = 62,84,057/-

Less: Deduction u/s 54F = $\frac{19,94,938/-}{42,89,119/-}$

Therefore, I am satisfied that assessee has concealed his income, penalty u/s 271(1)(c) of the I.T. Act, 1961 is being initiated on this issue by issuing a penalty notice.

(Addition of Rs. 42,89,119/-)"

9. On appeal, the learned CIT(Appeals) dismissed the appeal of the assessee by observing as under:

"The issues raised in the present appeal are common with the Appeal no. 321/17-18(10317) in the case of Shri Azad Singh, assessee's brother for

A.Y. 2010-11 for which an appellate order have been passed on 10th December 2018 by the under signed.”

10. It is seen that both the authorities below have not given adequate opportunity to the assessee to explain his case. Therefore, I set aside the orders of the authorities below and restore the assessment to the file of the Assessing Officer to make afresh assessment after giving adequate opportunity to the assessee. Grounds raised in the appeal are allowed for statistical purposes.

11. Assessee's appeal is allowed for statistical purpose.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Madan Pal Verma

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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