

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 4376/Del/2017
(for Assessment Year : 2008-09)

Karan Singh C/o. Nidhi & Association, CAs, C-204, Pandav Nagar Delhi, Faridabad PAN No. CSGPS 6202 N (APPELLANT)	Vs.	ITO Ward -1(5), Faridabad (RESPONDENT)
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Assessee by	Shri Avdesh Bhatnagar, Adv.
Revenue by	Shri Atiq Ahmed, Sr. D.R.

Date of hearing:	24.02.2022
Date of Pronouncement:	28.02.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 17.02.2017 passed by the Commissioner of Income Tax (Appeals)-Faridabad relating to Assessment Year 2008-09.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO has noted that information was received from Sub Registrar, Ballabgarh, Faridabad that assessee and others had sold land to M/s. Green Valley Housing & Land Development Pvt. Ltd. for which the total consideration was Rs.15,26,50,000/- and the assessee's share worked out to Rs.2,18,17,708/-. Since the land was situated within the Municipal limits of Faridabad, the land was a capital asset within the meaning of Section 2(14)(iii)(a) of the Act and that assessee had not filed the return of income declaring the said consideration. Accordingly, notice u/s 148 of the Act was issued and served on the assessee. AO has noted that none appeared on behalf of the assessee. He therefore passed the order u/s 144 of the Act vide order dated 29.10.2010 and determined the total taxable income of Rs.2,18,17,708/-.

4. Aggrieved by the order of AO assessee carried the matter before CIT(A) who vide order dated 17.02.2017 in Appeal No.136/2015-16 dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“That the appellant is a small farmer owning small agricultural land who does not know Income Tax Law and blindly trusted on Chartered Accountant Mr. Shy am Sunder Mangla, M/s Shy am Sunder Mangla & Co, having office at Sco - 201 shopping center sector - 8 Faridabad (India) - 121006. The appellant has given all the necessary documents & information to CA Mr. Mangla who has not submitted return of income, all the information & documents*

during the assessment & Appeal proceedings as per the Income Tax Law and did not performed his professional duties and did not give proper advice to appellant. In view of these facts, kindly allow an opportunity to the appellant to explain the case and to submit all the necessary information & documents to the Ld. Assessing Officer.

2. That the Ld. Commissioner of Income Tax (Appeals) is not right in conforming the impugned order framed by the Assessing Officer in treating the whole sales consideration of Agriculture Land and old house on agricultural land amounted to Rs.2,13,17,710/- on estimated basis as taxable income from capital gain where as the appellant has reinvested the sales proceeds in Agriculture Land & Construction of Residential property and no exemption is allowed to the appellant.
3. That the Ld. Commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by assessing officer in treating the indexed cost Rs.5,00,000/- on estimated basis by stating "subject to change" and not considered market value as on 01-04-1981 of agricultural land & old house.
4. That the Ld. Commissioner of Income Tax (Appeals) and the Ld. Assessing Officer have erred in calculating correct taxable income and correct indexed cost of agricultural land and old house inherited from parents.
5. That the Ld. Commissioner of Income Tax (Appeals) is not right in conforming the impugned order framed by the Assessing Officer who has not considered the deductions/exemptions allowable under the head Capital gain.
6. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer under Section 144 without serving mandatory notice.
7. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is

not right in confirming the impugned order framed by the Assessing Officer under Section 144 in serving the notice U/s.142(1) dated 16/03/2009.

8. *That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer without following the provisions u/s.147 and 148. The appellant has not received any notice u/s.148 of Income Tax Act.*
9. *That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) has not complied the provision of section 250(6) to pass a speaking order.*
10. *That the learned commissioner of Income Tax (Appeals) has not afforded proper opportunity to the appellant to explain the matter and whole order is arbitrary and against the principles of natural justice and passed the order in a hurry.*
11. *That the order passed by Learned CIT(A) is bad in law and against the facts & circumstances of the case.*
12. *That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

PRAYER

It is therefore prayed that the appellant may kindly be given an opportunity to present the case with all facts information & documents before the Ld. Assessing Officer.”

6. Before us, Learned AR on Ground No.1 submitted that assessee is a small farmer owning small agricultural land and was not aware about the intricacies of income tax law. He submitted that assessee had submitted all the required documents and information to his Chartered Accountant Mr.

Shyam Sunder Mangla to appear before the authorities on behalf of the assessee. He submitted that the Chartered Accountant did not perform his duties as expected of a professional and therefore there was no proper representation on his behalf. He therefore submitted that one more opportunity be granted to the assessee to plead its case before the AO. He further gave an undertaking that given an opportunity, the assessee would furnish all the required details before the lower authorities. He further submitted that identical issue arose in the case, of his brother Late Shri Ram Swaroop wherein the Co-ordinate Bench of Tribunal in ITA No.4375/Del/2017 order dated 31.03.2021 on identical facts has restored the matter back to the file of AO. He therefore submitted that following the decision in the case of his brother, the matter be remitted back to the AO.

7. Learned DR on the other hand did not controvert the submissions made by Learned AR but however objected to the seeking of second inning by Learned AR.

8. We have heard the rival submissions and perused the materials available on record. Before us, assessee is seeking one more opportunity to present its case before the lower authorities. It is an undisputed fact that order by the AO was an *ex parte* order passed u/s 144 of the Act. It is an established principle of natural justice that a litigant should be heard before a decision is taken and before any addition is made by the AO on information

obtained from third parties/own source, he must confront the assessee with the material so obtained. Considering the totality of the facts and in the interest of justice, we are of the view that assessee deserve one more opportunity. We therefore restore the issue back to the file of AO and direct him to decide the issue afresh considering the submissions of the assessee. Assessee is also directed to promptly furnish all the required details called by the AO. We therefore, restore the issue back to the file of AO and direct him to pass a fresh order after granting adequate opportunity of hearing to the assessee. **Thus the appeal of Assessee is allowed for statistical purposes.**

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.02.2022

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 28.02.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI