

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI****BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 9549/DEL/2019 (A.Y 2009-10)**

ITO Ward-1(2) Room No. 230, CGO-1, Hapur Chungi, Ghaziabad Uttar Pradesh (APPELLANT)	Vs.	Vikas (L/H of Late Dharampal) House No. 152, Village-Afzalpur, Pos Nistoli, Ghaziabad, Uttar Pradesh PAN: AYSPV7390J (RESPONDENT)
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Assessee by :	Sh. K. Sampath, Adv and Sh. V. Rajakumar, Adv
Department by:	Sh. S. L. Anuragi, Sr. DR

Date of Hearing	14.07.2022
Date of Pronouncement	18.07.2022

ORDER**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Revenue against the order dated 30/09/2019 passed by Commissioner of Income Tax, (Appeals), Ghaziabad for Assessment Year 2009-10.

2. Brief facts of the case are that, the case of the assessee was selected u/s 148 of the Act, assessment order u/s 144/147 of IT Act came to be passed on 31/03/2019 by making addition with regard to cash credit entry of Rs. 4,28,53,054/- in the bank account maintained by the assessee with Canara Bank. The total income of the assessee was assessed at Rs. 4,28,53,054/- as

against the NIL return of income filed by the assessee. As against the assessment order dated 31/10/2016, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT(A) has allowed the appeal on 30/09/2019 based on the remand report submitted by the A.O.

3. Aggrieved by the same, the Department has filed the present Appeal on following grounds:-

“1. The Ld. CIT(A), Ghaziabad has erred in law and in facts in not bringing to tax the capital gain arising on acquisition of land, claimed by assesses to be agricultural land, on which compensation of Rs. 1,67,43,671/- was received by the assessee, although there was no evidence on record that such land was situated beyond the municipal limits as laid down by Income Tax Law and hence was agricultural land.

2. That the Ld. CI.T(A), Ghaziabad has believed the version that the balance deposits in the bank account of the assessee were on account of FDRs credited, without examining the dates of making FDRs and their sources.

3. Appellant craves leave to modify/amend or add any one or more grounds of appeal.”

4. The Ld. DR has relied on the assessment order and submitted that the CIT(A) has committed an error in allowing the Appeal and sought for interference by the Tribunal.

5. Per contra, the Ld. Counsel for the assessee submitted that, the Grounds raised in the present Appeal is neither emerges from the order of the A.O nor from the order of the CIT(A). The order passed by the CIT(A) is in accordance with law which requires no interference.

6. We have heard the parties, perused the material on record and gave our thoughtful consideration. It is evident from the records that, the assessment order has been passed on the grounds that the assessee has no plausible explanation to offer with regard to credit entry of Rs. 4,28,53,054/- in the saving bank account with Canara Bank. During the appellate proceedings before CIT(A), the Ld.CIT(A) has called for remand report from the A.O which has been reproduced in Para 8.2 in page No. 11 of the order of CIT(A). The conclusion of the remand report submitted by the A.O is as under:-

“5. In view of these facts of the case it appears that the land acquired was ancestral being used by the assessee for agricultural purpose before its acquisition, and therefore, the compensation .received on its compulsory acquisition by the Government is exempt under sec. 10(37) of the Income- tax Act, 1961. Further no interest component was paid and included in the amount of compensation paid at Rs. 1.67 crore.”

7. Thus, it is clear from the remand report that, the land in question being used by the assessee for agriculture purpose before its acquisition. Therefore, compensation received on compulsory acquisition by the Government is exempt u/s 10(37) of the IT Act. Further, no interest component was paid and included in the amount of compensation paid at Rs. 1.67 crore. Thus, in our opinion, the Grounds of Appeal raised by the Revenue is contrary to the remand report of the A.O. Therefore, the Grounds of Appeal raised in the present Appeal deserves to be dismissed. Accordingly, we dismissed the Revenue’s Grounds of Appeal. Consequently, we dismiss the Appeal filed by the Revenue.

Order pronounced in the open court on 18th July, 2022.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 18/07/2022

R.N

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI