

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.8319/Del./2019  
(ASSESSMENT YEAR : 2016-17)**

Ravinder Kumar Goyal,  
824, Nai Sarak, Chandni Chowk,  
Delhi – 110 006.

vs. ITO, Ward 46 (2),  
New Delhi.

**(PAN : AAKPG8795Q)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri M.P. Rastogi, CA  
Shri P.N. Shastri, CA  
Shri S.M. Gulati, CA

REVENUE BY : Ms. Princy Singla, Senior DR

Date of Hearing : 08.02.2023

Date of Order : 13.02.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-16, New Delhi dated 21.08.2019 pertaining to the Assessment Year 2016-17.

2. The grounds of appeal taken by the assessee read as under :-

“1. The learned CIT (A) has erred in upholding the assessment order passed by the AO by relying on evidences collected by him behind the back and using them without confronting them to the assessee and affording an opportunity to cross examine witnesses and rebut them.

2. The learned CIT (A) has erred in confirming the disallowance of claim of exemption of capital gain of Rs.2,42,38,987/- from agricultural land by holding it to be non-agricultural land and urban land on surmises and conjectures.

3. The following grounds are without prejudice to the above grounds.

3.1 The Id. CIT (A) has erred in upholding the action of the learned AO in not considering the alternate claim of exemption of LTCG u/s 54F of the Act by holding that the claim was not made in the return ignoring the fact that there is no provision or facility for making alternate claims in electronic returns.

3.2 The Id. CIT (A) has erred in not considering the alternate claim of exemption of LTCG u/s 54F of the Act before her when she is empowered by law to do so.

4. The above grounds are independent and without prejudice to each other.”

3. In this case, in the assessment order, AO noted that during the year under consideration, assessee sold four land for a consideration of Rs.28,50,000/-, Rs.70,00,000/- Rs.60,00,000/- & Rs.57,00,000/-. Assessee was asked to furnish details of exempt income, evidence of agricultural activities on the land, evidence of sale proceeds, evidence of agricultural expenses incurred, evidence of consumption of power, books of account if any maintained, name, address & phone number of person in charge of agricultural operation, cash flow statement along with evidence for inflow & outflow, evidence of such deposits in previous & subsequent years, distance of land from the municipal limit with documentary

evidence and land utilization by the purchaser after sold by the assessee.

AO noted that assessee has not filed proper reply. The reply given by the

assessee was reproduced by the AO as under :-

“In response to the show cause notice, the assessee filed his reply vide letter dated 07.12.2018 and stated as under :-

"With regards to the evidence of agricultural activities, please be informed that the said agricultural land was given by me from time to time on contract for Crop Activities and during the year under assessment, I received a sum of Rs.20,000/- as agricultural income. The contractor was bearing all the expenses of seed, cultivation and other expenses relating thereto I also wish to inform you that in the said agricultural land there was no tube well and no regular supply of water and therefore we were fully dependent on the rains for carrying out irrigation activities and also hill storms used to occur at that place very frequently resulting to which not much revenue was able to generate.

In the previous year (i.e. A. Y. 2015-16) I have received & declared a sum of Rs.20,000/- and in the A. Y. 2014-15 I have received & declared a sum of Rs. 30,000/- as agricultural income. Since I am doing my business activity in Delhi, I had given the agricultural land for crop activity to a contractor as it was not feasible for meta look after day to day agricultural activities.

With regards to the evidence of sale proceeds of Agricultural crops it is submitted that the farmer with whom the assessee used to enter into the contract for carrying out agricultural activities, the contractor only used to look after all expenses to be incurred and he was entitled to the entire sale proceeds received on selling the agricultural produce.

With regards to the evidence of consumption of power it is submitted that there was no electricity connection

during the year under assessment, hence no power bill can be produced before you."

3.2 In respect of aerial distance the assessee filed his reply on .. and state as under:

"With regards to your observation that aerial distance between the agricultural land sold in village Malhangrant and Nagar Palika Parishad in Vikas Nagar district as per search made on Google Earth is less than 2K.M., In fact this map does not show the distance from the starting point of village Malhangrant, since the Malhangrant is not mentioned in your map.

As per our search on Google earth we have already submitted the screenshot of map showing distance of more than 8 K.M. from village Malhangrant to Vikasnagar district as against 1.134 k.m. observed by you which appears to be incorrect.

Enclosed also please see extracts from Global India where the air distance between village Malhangrant and Nagar Palika Parishad in Vikasnagar district is 25.11 k.m. in view of the above facts there is no cause for disallowing exemption claimed on sale of agricultural land as per provisions of Section 2(14) of the Income Tax Act."

3.3 The assessee further filed his reply on 13.12.2018 on DAK and stated that Mr. Tabresh Khan who was looking for agricultural activities has died so the assessee is trying to get the confirmation relating to the aforesaid agricultural income from his family members."

4. AO noted that the reply of the assessee is not acceptable as the assessee has failed to furnish the evidence of agricultural activities carried out on the said land. He noted that enquiry was made by the Inspector of this ward and it has been observed that no agricultural activity was there

on the said land. Out of the four plots, on three plots there was mango garden and on one plot/land, residential plotting has been done. He noted that Tehsildar himself in his report has mentioned the same as mentioned above. AO referred to case law in the case of CWT vs. Officer-in-Charge (Court of Wards) (1976) 105 ITR 133 (SC) and Tea Estates India (P) Ltd. vs. CWT (1966) 59 ITR 428 (Cal.) for the proposition of scope of agricultural land. In view of the above, AO held that the land sold by the assessee was not an agricultural land within the meaning of section 2(14) of the Income-tax Act, 1961 (for short 'the Act') and moreover the Mango Garden did not qualify the definition of agricultural activity. That the intention of the seller as well as the purchaser was very clear that land was used for non-agricultural/commercial activities due to plotting of the said land etc. and because of proximity of highways/roads. Hence, AO rejected the entire claim of agricultural income and added the amount of Rs.2,42,38,987/-.

5. Against the above order, assessee appealed before the Id. CIT (A). One of the grounds raised before the Id. CIT (A) was that AO has not considered the alternate claim of exemption of LTCG u/s 54F of the Act. Ld. CIT (A) noted that assessee did not claim the deduction u/s 54F of the Act in his ITR. He noted that it was only at the fag end of the assessment proceedings the same was claimed. Ld. CIT (A) referred to the decision

of Goetze India Ltd. vs. CIT 284 ITR 323 (SC) and proceeded to hold that AO was right in not entertaining the claim of deduction u/s 54F.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel for the assessee submitted that assessee has made a genuine claim and the same should have been considered by the authorities below.

8. Upon careful consideration, we note that in the case of Goetze (India) Ltd. (supra) itself, Hon'ble Apex Court held that the decision in that case will not impinge upon the powers of ITAT to admit and consider the grounds otherwise raised over and above the grounds of appeal. In this view of the matter and in the interest of justice, we admit this ground and direct the AO to adjudicate the same as per law.

9. As regards other aspects, ld. CIT (A) has confirmed the order of AO.

10. In this regard, assessee's plea is that various evidences have been considered by the AO behind the back and without confronting them. In this regard, ld. Counsel for the assessee referred to Tehsildar report and Inspector's report.

11. We note that we have already remanded the matter to the file of AO on the issue of considering the alternative claim of deduction u/s 54F.

Now, in the present ground, assessee is submitting that material collected by the AO were not confronted by the assessee and straightaway taken into the assessment order. In this regard, we accede to the request of the Id. Counsel of the assessee that assessee should be given chance to rebut these evidences and assessee should be permitted to bring the necessary submissions in this regard before the AO. Ld. DR for the Revenue did not have any objection to this proposition. Accordingly, we also remit the merits of addition to the file of AO. AO is directed to consider the issue afresh after giving the assessee an opportunity of making necessary submissions and allowing the assessee to confront with the evidences of Tehsildar and Inspector's report collected by the AO. Needless to add, assessee should be granted an opportunity of being heard.

12. In the result, this appeal by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on this 13<sup>th</sup> day of February, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 13<sup>th</sup> day of February, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.