

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 3986/DEL/2019  
[Assessment Year: 2009-10]**

Ompal, Village Nagla Tashi, Meerut 282, Boundary Road, Civil Line, Meerut. PAN- ABPPO1191G	<u>Vs</u>	Income-tax Officer, Ward-2(1), Meerut.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	None	
<b>Department represented by</b>	Ms. Maimun Alam, Sr. DR	
<b>Date of hearing</b>	01.02.2023	
<b>Date of pronouncement</b>	28.02.2023	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Meerut, dated 13.07.2018, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

*“1. That on the basis of A.I.R. Information, the assessee has sold the Ag. Land for a sum of Rs. 97,50,000/-. However, share of the assessee was 1/3<sup>rd</sup>.”*

*Hence, reasons recorded by the A.O. on barrowed information and approval given by Pr. CIT without any inquiry and of routine and mechanical manner*

2. *That the A.O. is in error in taking cost of acquisition as on 01-04-1981 @ Rs. 12,000/- per bigha however, the assessee has claimed cost of acquisition @ Rs. 200/- to Rs. 225/- per sq. yd. and CIT(A) confirmed the same without considered the evidence*

3. *That the A.O. is in error in disallowing the Rebate U/s 54B on account of Ag. Land purchased by the assessee and CIT(A) confirmed the same without any basis*

4. *That the assessee rely upon Hon'ble I.T.A.T. Order of his brother Sh. Jai Prakash vide ITA No. 5456/Del/2014 who is having 1/3<sup>rd</sup> share in the property sold. Hence, Order of Hon'ble I.T.A.T. is applicable in this case also*

5. *That the assessee has right to add, delete or modify any ground of appeal during the proceedings."*

2. At the time of hearing no one attended the proceedings on behalf of the assessee. It is transpired from the record that since 19.10.2022 no one is attending the proceedings on behalf of the assessee. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided after hearing the learned DR and on the basis of material available on record.

3. Apropos to the grounds raised by the assessee the learned Authorized Representative of the assessee has filed written submissions. For the sake of clarity

the written submissions of the assessee are reproduced as under:

*“That the A.O. has recorded reason that the assessee sold agriculture land of Rs. 97,00,000/- situated at Village Nagla Tashi, Meerut. However, the assessee is having 1/3<sup>rd</sup> share i.e., Rs. 32,50,000/-. Therefore, reopening of the assessment is against the fact and reason to belief were framed on the basis of incorrect information for which the assessee rely upon the Hon’ble I.T.A.T. Judgment in the case of Priyanka Garg Vs. ITO Ward 2(1) Meerut vide ITA No. 6754/Del/2018 in which Hon’ble Bench Camp at Meerut quashed the order of the A.O. a copy of the judgment is being enclosed herewith.*

*That the A.O. has taken cost of acquisition of the land for Rs. 12,000/- per bigha. However, in the case of assessee’s brother Sh. Jai Prakash who was also a co-owner in the same property was set aside by the Hon’ble Circuit Bench at Meerut to direct the assessee to file the valuation report by the authorized Valuer of the above said property and also direct the A.O. to may take the acquisition of the land as per valuation report by the authorized valuer, which were also placed on page no. 44 of the Paper Book dated 16-01-2022, a copy of the same is being enclosed herewith.*

*That the assessee has purchased agriculture land in the name of his wife Smt. Jagwati Devi out of sale proceeds of agriculture land of Rs. 10,81,410/-, the A.O. denied the exemption 54B of I.T. Act copy of the purchase deed was placed on page no. 30 to 39 of the Paper Book dated 16-01-2022.*

*Further, the similar issue was decided by Hon’ble ITAT, Circuit Bench at Meerut in the case of assessee’s brother Sh. Jai Prakash in favour of the assessee.*

*Considering the above brief facts, Your honour is requested to kindly decide the appeal on the basis of above mentioned facts, paper book and case laws filed by the assessee. As the assessee’s counsel is unable to appear before the Hon’ble Bench due to illness and oblige.*

4. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below.

5. I have heard rival submissions and perused the material available on record. The objections of the assessee in respect of framing of assessment are that – firstly, the reopening of the assessment is unjustified and contrary to the records. The Assessing Officer failed to apply his mind on the facts of the case. It is further submitted that under identical facts in the case of co-owner the Division Bench of this Tribunal in ITA no. 5456/Del/2014 has allowed the claim of the assessee regarding admissibility of deduction u/s 54B and in respect of valuation of the property the matter is restored to the file of the assessing authority. I find that the Division Bench of the Tribunal in ITA no. 5456/Del/2014, after considering the facts directed the Assessing Officer as under:

*“04. We have carefully considered the rival contention. For the purpose of working out capital gains on sale of capital assets, assessee is granted deduction of cost of acquisition of that capital assets from the sale consideration. According to section 55 of the Income tax Act cost of acquisition where the capital asset became the property of the assessee before the 1st day of April,1981, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April, 1981 at the option of the assessee. The fair market value of the assets can be determined u/s 55A of the income tax act according to the option of AO. Therefore assessee has been given an option to get deduction of the cost of acquisition of the assets or the fair market value of the property as at 1-4-1981 in the case assets is acquired before 1-4-1981. In this case assessee has not exercised option to adopt the fair market value of the property as at 1-4- 1981 by substantiating the value as on that date by the report of authorized valuer. Assessee is also adopting hypothetical rates and claiming deduction of that value as the cost of acquisition of the property which is not*

*permissible. Rates adopted by AO cannot be accepted in view of any sanctity attached to them. Valuation report obtained in some other case cannot be relied up on by the assessee for this purpose. Furthermore AO is also not empowered to make valuation himself as it is the job of a person possessing requisite qualification. Therefore the rates adopted by the AO by obtaining the same from the office of District magistrate for 1984 cannot be applied for determining fair market value of property as at 1-4-1981. Therefore we are also not approving the rates adopted by the AO as well as by assessee. Therefore according to the law it is for the assessee to substantiate fair market value of the property by submitting the valuation report obtained from authorized valuer. If the assessee does not exercise this option than AO does not have any option but to adopt the cost of acquisition for the purposes of determining the capital gain in the hands of the assessee. As admittedly assessee has not exercised this option, in the interest of justice one more opportunity is given to assessee to submit before AO the fair market value of the assets as at 1-4-1981 by submitting the valuation report of the property from authorized valuer not later than four months from the date of receipt of this order. After that AO may act according to the provision of section 55A of the Income tax Act and decide the issue on merits. In view of this ground no 1 of the appeal is set aside to the file of AO with above direction to consider the valuation report, if any, submitted by the assessee in above time frame. Needless to say that the AO was required to give proper opportunity of hearing and the assessee is also free to adduce the value claimed by it supported by proper valuation report in accordance with law. In view of this ground No.1 is allowed with above direction.*

*05. Ground No.2 is against the addition of deduction u/s 54B to the assessee whether the assessee has purchased agricultural land in the name of his wife and the payment was made by the assessee from his own source through banking channel. The assessee has purchased this agricultural land by investment of Rs.10 lac on 12.10.2010 which is beyond two years from the date of sale i.e. 05.05.2008 and therefore the AO has disallowed the claim. Regarding the other agricultural land the assessee has purchased same in the name of his wife Smt. Kunta and not in the name of the assessee. Due to this AO disallowed the deduction of Rs. 6 lacs u/s 54B of the act claimed by the assessee. Aggrieved by this the assessee preferred an appeal before learned Commissioner of Income-tax (Appeals), who confirmed the order of the AO by holding that appellant has not been able to produce any evidence that the funds for purchase of the agricultural land was given by*

*assessee.*

*06. The Id AR submitted before us that the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kamal Wahal 30 Taxmann.com 34 (Delhi). Regarding the issue of investments of funds by the assessee he submitted the copy of the bank statement of the assessee with Punjab National Bank. He submitted that cheque no stated in the bank account of the assessee are same as mentioned in the purchase deed of the land, hence the sources of the funds for purchase of agricultural land in the name of the wife of the assessee has come from the bank account of the assessee. Hence he submitted that assessee is eligible for deduction.*

*07. The Id DR relied on the order of lower authorities.*

*08. We have carefully considered the rival contention and found that there is no doubt that the property has been purchased by the assessee in the name of the wife of the assessee and according to the decision relied up on by the LD AR, assessee is eligible for deduction u/s 54B of the Act provided the funds from which this asset is acquired are invested by the assessee. By producing the bank account of the assessee it is apparent the cheque nos mentioned in the sale deed and the bank account are same and same has not be disputed by the Ld. DR. Hence assessee is entitled for the benefit of deduction u/s 54B of the act. In the result ground no. 2 of the appeal is allowed.”*

6. Facts of the present case are identical to the facts as were in ITA no. 5456/Del/2014 in the case of one of the co-owner and brother of the assessee. Therefore, respectfully following the decision of the Division Bench of the Tribunal in ITA no. 5456/Del/2014, I hereby set aside the assessment order and direct the Assessing Officer to make assessment afresh in the light of binding precedent after affording adequate opportunity to the assessee. The grounds raised in this appeal are allowed for statistical purpose only.

7. Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 28<sup>th</sup> February, 2023.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

Draft dictated	24.02.2023
Draft placed before author	24.02.2023
Approved Draft comes to the Sr. PS/PS	
Order signed and pronounced on	
File comes to P.S.	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk	
Date of dispatch of Order	
Date of uploading on the website	