

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 5338/Del/2017: Asstt. Year:2010-11

Smt. Aruna Chaudhary, 39, Gadai Pul, Mehrauli, New Delhi	Vs.	ACIT, Central Circle-26, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAEP0681R		

Assessee by : Sh. C. S. Anand, Adv

Revenue by : Sh. P. Praveen Sidharth, CIT DR

Date of Hearing: 22.02.2023

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id CIT(A)-31, New Delhi dated 26.05.2017 for Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:-

"1. That the order of the Ld. CIT (A) passed u/s 250 of the Income Tax Act, 1961 is bad in law and on facts.

2. That the Ld. CIT(A) has erred in not admitting the additional grounds taken u/s 250 (5) of the 1. T Act.

2.1 That the Ld. CIT (A) failed to appreciate that the additional grounds taken were the legal grounds which according to Hon'ble Apex court in case of NTPC 229 ITR 383 can be raised at any stage of the proceedings.

2.2 That the Ld. CIT(A) has erred in ignoring the judgement of jurisdictional Hon'ble Delhi High Court in the case of CIT v Kabul Chawla [2016] 380 ITR 573 (Delhi) whereby it was held that completed assessments can be interfered with by the Ld. AO while making addition u/s 153A only on the basis of some incriminating material found during search.

3. That the Ld. CIT(A) has erred in sustaining the addition of Rs. 2,00,000/- on account of agricultural income which is otherwise treated as exempt income under the Income Tax Act.

3.1 That the addition was sustained despite the fact that numerous submissions were filed and sufficient evidences in form of certified Khasra Girdawari and certificate of farmer were provided to establish that the impugned agricultural income was earned.

3.2 That the Ld. AO as well as Ld. CIT (A) overlooked the fact that the appellant was disclosing the agricultural income in her returns from past years.

3.3 That no show cause notice was issued by the Id. AO before making aforesaid addition.

4. That the Id. CIT(A) has erred in directing the Id. AO to make enhancement of the income of the appellant by an amount of Rs. 7,32,79,132/- being long term capital gain on sale of Punjab Khor land claimed it exempt u/s 54B of the Income Tax Act.

4.1 That the Id. CIT (A) has wrongly invoked the powers u/s 251 of the Act to enhance the assessment without appreciating the fact that the said section cannot be pressed to substitute the view/decision of the assessing officer.

4.2 That the Id. CIT (A) has wrongly disallowed the claim of exemption u/s 54B of the Act despite the fact that the assessee had sufficiently met the conditions laid in the section 54B to claim exemption.

4.3 That the Id. CIT(A) was wrong in holding that no sale/purchase deeds were filed by the appellant at the time of assessment to justify the claim u/s 54B.

4.4 That the Id. CIT(A) has erred in holding that the Punjab Khor land as well as the land of Anangpur in which the sale proceeds were invested, were not used for agricultural purposes.

4.5 That the Id. CIT (A) has made an unwarranted observation and confirming decision on the same issue by holding in para 5.8.1 of his order that the receipt of Rs. 10,35,00,000/- should be taxed in the hands of seller of Anangpur land u/s 56 of the Income Tax Act.

5. That the order passed by the Ld. CIT(A) is against the principles of natural justice.

6. That the appellant prays the Hon'ble Tribunal to award suitable cost of appeal under sub-section 2B of section 254 of the Income Tax Act, 1961.

7. That the appellant craves leave to add, alter, amend, substitute, delete and modify any or all the grounds of appeal,

which are without prejudice to one another, before or at the time of hearing of the appeal."

3. A Search and seizure operation was conducted u/s 132 of the Act at the CDR Group of cases on 11.09.2013 and 17.09.2013, wherein the residential premises of the appellant were also covered. Accordingly, proceedings u/s 153A were initiated. In response thereto, the return of income was filed u/s 153A showing total income of Rs 1.78,490/- which was the same as declared in the original return. The assessment was completed u/s 153A/143(3) vide order dated 31.03.2016 by the Id. AO, at an income of Rs 3,78.490/-, making an addition of Rs 2,00,000/- on account of agriculture income.

4. Aggrieved the assessee filed appeal before the Id CIT(A), who confirmed the order of the AO and treated the addition of Rs. 2 lac as income from non-agricultural activities. Further, the Id CIT(A) enhanced the income of the assessee by Rs. 7.32 crores by disallowing the deduction claimed u/s 54B of the Act on the grounds that the land purchased by the assessee was hitherto a non-agricultural land. During the year

5. The provision of section 54B is as under:-

"54B. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

6. The reasons given by the Id CIT(A) are as under:-

"5. Enhancement of Income

5.1 A perusal of the pleadings and the assessment records showed that the appellant had inter alia claimed deduction u/s 54B of the Act, amounting to Rs.7,32,79,132/-. The gains are found to have arisen on sale of land at Punjab Khor. Delhi (acquired by the appellant through gift from her brother in 2001). It was also seen that the appellant filed a revised Computation of income during the assessment proceedings on 16.03.2016, including therein agricultural income from said Punjab Khor land which she said to have omitted while filing the original return of income.

5.1.1 The aforesaid land at Punjab Khor, was sold by her resulting in the capital gains as narrated and the sale consideration is said to have been invested in purchasing a land at Village Anangpur, District Faridabad (through agreement to sale) for a sum of Rs.10.35 crores. The appellant averred before the Id. AO that since the land was purchased within the statutory period of 2 years, exemption u/s 54B was claimed on the LTCG on sale of said land at Punjab Khor in December, 2009

5.2. In order to verify as to whether the impugned lands were agricultural land and as to whether the land was actually purchased and if so, exactly on which date and when it got transferred to the appellant, the AO directed the appellant inter alia, to file a copy of the Sale/Purchase deed, but at no stage of assessment proceedings, a compliance to the above was made. Precisely to adjudge the correctness or otherwise of the exemption claimed u/s 54B. Id. AO in her letter dated 18.03 2016, further observed and informed the appellant that she had failed to prove that the land sold was being used for the agricultural purposes in the immediately preceding two years.

5.3 Thus, the facts in the case are that

(1) the appellant had failed to prove that there was any agricultural income as a result of which Id AO treated the agricultural income of Rs.2,00,000/- as offered in the revised computation filed during the course of assessment proceedings, as income from other sources;

(i) neither the return of income filed originally showed any agricultural income nor there were evidences available with the AO at the time of assessment proving the factum that the impugned land was actually being used for agricultural purposes,

(iii) there was non-compliance on appellant's part to file Sale/Purchase Deed which would have proved the factum of purchase of the alleged agricultural land which was another indispensable requirement to be satisfied u/s 54B of the Act,

5.3.1 It becomes abundantly clear from the above facts that the Id AQ erred in not disallowing the claim for exemption u/s 54B Resultantly, a show cause notice u/s 251(1) was issued to the appellant on 24 04 2017, proposing to make enhancement inter alia pointing out that she had failed to prove before the AO the genuineness of the agricultural income of Rs 2 lacs finally brought to tax as income from other sources and that the factum of the two lands under reference being used for agricultural purposes was also not proved and hence the AO was in error in not disallowing claim for deduction w/s 54B of the Act

5.4 Before adverting to the issue of enhancement further, I would liketo observe that the approach of the AO in the assessment proceedings on this issue was casual which apart from being erroneous also caused serious prejudice to the interests of Revenue. Apart from the issue of agricultural land purchased in Faridabad which has been dealt with later in this order, it is-observed that even in the context of the sale of Punjab Khor land it is seen that the Id. AO has accepted the factum of sale without verifying the availability of funds with the buyer In other words, Id. AO has accepted the claim of the appellant without peeping into as to whether the buyer had explained sources of income or not.

5.5 In exercise of powers vested us 251, to enhance the assessment by withdrawing the exemption u/s 549 erroneously allowed by the AO, the appellant was, vide notice for enhancement dated 24.04.2017, called upon to file submissions showing as to how the conditions as stipulated u/s 548 get satisfied in her case. The said notice is reproduced as under:

"This is in connection with the aforesaid appeal for the AY 2010-11 filed by you against the assessment order dated 31.03.2016 passed by the ACIT, CC-26, New Delhi u/s 153A/143(3) 2 In this regard, please refer to the additional ground (relating to the addition of agricultural income) taken you e. "That the assessment made u/s 153A of the Act is bad in law as no incriminating evidences were found during the course of search concerning the addition of Rs.2,00,000/- made for the impugned AY" and also the evidences filed (including the additional evidences requested to be admitted w/r 46A) thereon.

3 In the context of the aforesaid issue, the assessment records were gone through and it was noticed that you had inter alia claimed a deduction u/s 54B of the Income Tax Act, 1961, amounting to Rs.7,32,79,132/- on the capital gains which we found to have arisen on sale of a land at Punat canoe De acquired by g from your brother in 2001) It is also see that on 16 03 2016 you nac filed a revised Computation before the AO including therein the agricultural income (from the said

land at Punjab Khor which you said to have omitted while filing the return of income originally or even subsequently in response to the notice u/s 153A of the Income Tax Act, 1961.

3.1 The aforesaid land at Punjab Khor Delhi was sold by you resulting in the capital gains as narrated and the sale consideration/capital gains are said to have been invested by you in purchasing an agricultural land at Village Anangpur District Fandabad (through agreement to sale) for a sum of Rs 10.35 crores. You averred before the AO that since the land was purchased within the statutory period of 2 years, exemption u/s 548 was claimed on the LTCG on sale of Punjab Khor land in December 2009

3.2 To see that the impugned lands were agricultural land or whether the land was actually purchased by you and if so exactly on which date the land got transferred to you the AO had directed you to inter a file copy of the Sire Purchase deed but it is seen that at no stage of assessment proceedings this Compliance was made by you. Further, precisely to adjudge the correctness or otherwise of the exemption claimed u/s 548, the AO as per letter dated 18.03.2016 further observed that "you have failed to prove that the sold land was being used by you for the agricultural purposes in immediately preceding two years

4 Since, you had failed to prove that there was any agricultural income, the AO was had no choice but to treat the agricultural income of Rs.2,00,000/-as offered by you in the revised computation filed during the course of the assessment proceedings, as income from other sources. Since, neither the return of income filed originally nor the same filed in response to the notice u/s 153A showed any agricultural income nor there were evidences available with the AO at the time of assessment proving the factum that the impugned land was actually being used for agricultural purposes, it is clear that the AO inadvertently erred in not disallowing the claim for deduction u/s 548 especially when she had not accepted the very agricultural income which was germane to the allowance of such deduction.

5 Under the circumstances, in exercise of powers vested in me u/s 251. I propose to enhance the assessment by withdrawing the deduction u/s 548 inadvertently allowed by the AO, You are hereby given the opportunity to file submissions showing as to how the conditions as stipulated u/s 548 get satisfied in ne your your case 6 Your reply, if any, should reach to the undersigned on or before. 17.05 2017 at 11.00AM Failing the above, it shall be presumed that you have no objection to the proposed enhancement."

5.6 In response to the above said show cause notice, the Id. AR appeared and filed written submissions as under

"We have filed our reply on 17.05.2017 to the show cause notice dated 24.04.2017 issued by Your Honour in respect of enhancement of income by withdrawal of exemption of Rs. 7,32,79,132/- u/s 548 of the Income Tax Act, 1961 claimed by the assessee on capital gain on sale of land at Punjab Khor, Delhi during the year under consideration is During the hearing. Your Honour has raised certain queries, the response of which as under 1. Whether Anangpur land is registered not and what is its present status?

In this regard, it is submitted that assessee purchased this land through agreement to sell dated 11th Jan 2010 for a total consideration of Rs. 10,00,35,000/ The payment was made fully to the seller, Mr. Brij Bhan Bhadana and on the day of last payment ie on 10th March 2010, the possession of land was transferred to the assessee. We have filed all the supportive documents vide letter dated 17.05.2017 b. Section 2(47)(v) of the Income Tax Act defines the transfer of capital asset as under "2(47) 5 transfer", in relation to a capital asset, includes,-

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882), or As per section 2(47) (v)(supra). The immovable property is said to be transferred when possession of immovable property has been transferred to the assessee in part performance of a contract in view if this section possession of Anagpur land was transferred to the assessee on the date of full payment of amount of sales consideration. Therefore Anangpur and qualifies the condition of transfer as per section 2(47) of the Income Tax Act.

Further, Departmental circular no. 495 dated 23.09.1987 also supports the claim of the assessee. The Finance Act 1987-Section 2(47) has been amendment wef 01-04-1988) by section 3(g) of Act 11 of 1987. The scope and effect of the amendments have been elaborated in the following portion of the departmental circular No 495, dated 23-9-1987, as under-

"Definition of "transfer widened to include certain transactions 11.1 The existing definition of the word "transfer in section 2(47) does not include transfer of certain rights accruing to a purchaser by way of becoming member of or acquiring shares in a co-operative society company, or association of person or by way of any agreement in a co-operative society company or association of persons or by way of any agreement or any arrangement whereby such person acquires any

right in any building which is either being constructed or which is to be constructed Transactions of the nature referred to above are not required under the registration Act, 1908. Such arrangements confer the privileges of ownership without transfer of title in the building and are a common mode of acquiring flats particularly in multi-storeyed constructions in big cities. The definition also does cover cases where possession is allowed to be taken or retained in part performance of a contract, of the nature referred in section 53A of the Transfer of Property Act, 1882 New sub clauses (v) and (vi) have been inserted in section 2(47) to prevent avoidance of the capital gain liability by recourse to transfer of rights in the manner referred to above.

The newly inserted sub-clause (vi) of section 2(47) has brought into the ambit of "transfer, the practice of enjoyment of property rights through what is commonly known as power of attorney arrangements. The practice in such cases is adopted normally where transfer of ownership is legally not permitted A person holding the power of attorney is authorized the power of owner, including that of making construction. The legal ownership in such cases continues to be with the transferor

II. Whether Gift deed signed by Mr. Rajender Prakash Chaudhary, brother in law of the assessee in favour of assessee was registered or not?

In this regard, it is submitted that the agriculture land at village Punjab Khor was gifted by Mr. Rajender Prakash Chaudhary who is brother in law of the assessee by way of declaration cum memorandum of gift on 23.01.2001 This declaration of gift was not registered However the possession of land was given to the assessee on the same day and a General Power of Attorney (GPA) executed on 23 01 2001 which was subsequently registered on 20 02 2001 it may be stated that this agricultural land at Punjab Khor measuring 42 bighas, 10 biswas was duly transferred in the name of assessee vide registered deed executed on 7th March 2006 and on which stamp duty of Rs. 9,35,000/- was duly paid (Copy of deed already furnished vide reply dated 17.05 2017) Hence it can be stated that the gift was duly registered

III. Give a note explaining sequence of events of Punjab Khor Land The agricultural land at Punjab Khor measuring 42 bighas, 10 biswas was originally purchased by Sh. Rajender Prakash Chaudhary in the FY 1994-95 and the same was gifted to the assessee on 23.01 2001 by signing the declaration cum memorandum of gift on 23.01.2001. The said land was continuously in the possession of the assessee till it was sold in AY 2010-11 The property was registered through purchase

deed executed on 07 03 2006 wherein the consideration of Rs 55 83 300-s adopted for stamp duty purpose and the stamp duty of Rs 9.35 000 was paid The land was finally sold to M/s Elevators Promoters Pvt. Lid on 18th December, 2009 vide registered deeds dated 1st December 2009 and 12th Dec 2009 (Copy of deeds furnished vide letter dated 17.05.2017)

b. Further, the agricultural land at Punjab Khor measuring 49 bigha was purchased by the assessee from Mr. Ved Chaudhary through sale deed executed on 7th March 2006 for a sale consideration of Rs 1,79,66,500/- which was also sold to M/s Elevators Promoters Pvt. Ltd. on 18th December, 2009 vide registered deeds dated 1st December 2009 and 12th Dec 2009 (Copy of deeds furnished vide letter dated 17.05.2017)

IV. Whether Mr. Ved Chaudhary is related to Mr Trilok Chaudhary

Yes, Mr. Ved Chaudhary is also the brother in law of the assessee and elder brother of Mr. Trilok Chaudhary 2 Without prejudice to the above, it is submitted that your good-self is seeking to invoke powers u/s 251 of the Income Tax Act to enhance the assessment by withdrawing exemption u/s 548 of Rs 7,32,79,132/- inadvertently allowed by the Ld. AO on capital gain on sale of land at Punjab Khor. Your Honour will appreciate that sec 251 of the Act cannot be praised into the service to substitute the view/decision of the assessing officer

3 At para 32 of the notice dated 24.04.2017, your goodsell has stated that on the directions of the Id. AO, copy of sale/purchase deed of Anangpur land was not filed during assessment proceedings. Respectfully submitting, this is not correct The Id AO vide letter dated 18.03.2016 asked to substantiate the claim of exemption u/s 548 In response thereto, the assessee filed her reply dated 28.03.2016 (copy of which was furnished vide letter dated 17.05.2017). Copy of purchase deed/Agreement to sell of Anangpur land was also furnished to prove the title. (Kindly) refer page no. 26 to 36 of reply dated 17.05.2017)

4 The Ld AO was satisfied with the explanation and granted claim u/s 54B. This clearly shows that she correctly applied her mind by perusing the deeds of Punjab Khor Land and Agreement to Sell of purchase of Anangpur land

5. Agreement to sell coupled with possession and transmission of substantial consideration tantamount to valid purchase/sale which is covered under definition of section 2(47) of the Income Tax Act Hence both sale as well as purchase were duly evidenced with documentary evidences and met with id. AO's requirements 7.3 In view of the

enhancement notice and the appellant's having no objection to the proposed enhancement I direct an enhancement on account of deemed rent u/s 23 of the Act to the income of the appellant as under

5.61 The Id. AR filed submission dated 26.05.2017, opposing the enhancement proposed and submitting that the total consideration was towards the purchase of land and that possession of the land too was handed over to her. The observation made in the notice of enhancement about failure to file a copy of the Sale/Purchase deed has been questioned by the appellant by saying that it is not correct and that present exercise being undertaken is nothing but substitution of some view for that of the AO

5.7 The reply filed by the appellant is duly considered. The observation made in the show cause notice that when the AO had not accepted the genuineness of the agricultural income she was clearly in error in not disallowing the deduction u/s 54B of the Act' stands un-rebutted which alone is enough to conclude the issue against the appellant. This apart, the assessment records, as also indicated in the show cause notice issued for enhancement, were examined and it is very clear from them that the Id. AO's requirement of filing of the copy of the Purchase/Sale Deed was not satisfied and hence it is patently incorrect on the appellant's part to say that this was filed. It is not understood as to what prompted the Id. AR to argue that 'copy of the Sale deed was filed' when as clearly admitted in the later portion of the very same submissions, the Sale/Purchase Deed was not even executed. This submission is clearly an act of purgery aimed at putting blinkers on the eyes of justice. The argument of 'substitution of the AO's view' also does not hold good on the ground that for the various reasons mentioned above, Id. AO had clearly viewed filing of the Purchase/Sale Deed as clinching and indispensable for the purpose of allowing deduction u/s 54B. However, disregarding her own insisted upon requirement, she apparently inadvertently, allowed the said deduction, thus committing a patent error

5.8 Before concluding the issue, it is considered relevant and important to note that the entire sale consideration (towards the purchase of agricultural land at Faridabad) is found paid by the appellant in cash. Another important aspect in purchase of the above said land at Faridabad to be taken note of is that despite having paid entire purchase consideration, the appellant does not take care to get the property registered in her name despite knowing full well that as per law (e.g. under the Registration Act etc.) for getting the legal ownership, registration is must. Entire conduct of the appellant is incomprehensible and against the prudence and human probabilities. Therefore, the impugned transaction fails to qualify as a genuine

transaction when tested on the anvil of the test of 'human probability as propounded by the Supreme Court judgment in Sumati Dayal (214 ITR 801) When these important aspects are taken into account, it becomes very obvious thatentire attempt on appellant's part was to somehow get exemption u/s 548 and that the transaction of land purchase was more of accommodation in nature. Obviously, what was apparent in it (showing it to be towards purchase of agricultural land) was clearly not real.

5.8.1 On careful consideration of the facts and circumstances of the case, especially going by the confirmation filed by the seller of the land, it is clear that even if the transaction was of accommodation nature, money has changed hands (ie. received by the Seller), but clearly it was not on account of sale of land as had it been so, the land too would have got transferred and registered in the buyer's name. While viewing that the impugned transaction is short of a genuine purchase transaction of land, it is obvious that the receipt of the sum of Rs.10,35,00,000/- duly acknowledged by the alleged seller is required to be considered in his hands of (ie. the alleged seller) not towards sale but taxable u/s 56 of the Act

5.9 As discussed earlier in detail in para 4, the appellant has failed to establish earning of agricultural income and that the land sold was agricultural land, whereas the deduction u/s 548 as claimed by the appellant, is available only on the capital gains arising on of the sale of an agricultural land which is invested in another land which is used for agricultural purposes. The relevant portion of section 54B is reproduced as under:

"54B (1) [Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by [the assessee being an individual or his parent, or a Hindu undivided family] for a agricultural purposes [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-

- i.*
- ii*

5.9.1 In the result, inter alia as shown above, it is held that the appellant is not entitled to deduction u/s 54B of the Act because

neither the agricultural income nor the purchase of agricultural land is proved and further that the appellant has failed to satisfy the mandatory condition of 'purchase of any other land for being used for agricultural purposes' as enunciated u/s 54B of the Act.

5.8.4 Accordingly, I hold that the appellant is not entitled for the deduction claimed and direct enhancement of the income of the appellant by an amount of Rs.7,32,79,132/-. The AO is accordingly, directed to give effect to the above findings and raise the additional demand. Penalty proceedings u/s 271(1)(c) are separately initiated for furnishing inaccurate particulars of income to the extent of Rs.7,32,79,132/-as mentioned supra."

7. The submission of the assessee before the Tribunal are as under:-

"7. Nowhere in the assessment order, there was any reference or mention about the exemption claimed by the assessee u/s 54B. However, the Ld CIT (A) had made enhancement by disallowing exemption claimed u/s 54B.

8. Since the Ld CIT (A) had refused to admit the Girdawari as an additional evidence, he had made up his mind to uphold the addition made by the Ld AO and also to disallow the exemption claimed u/s 54B (which was allowed by the Ld AO).

9. In Para 5.4 of the appeal order, the Ld CIT (A) had recorded " the approach of the AO in the assessment proceedings on this issue was casual which apart from being erroneous also caused serious prejudice to the interest of Revenue". In this context, the assessee's respectful submission is that the income assessed by the AO vide an assessment order which according to the Ld CIT (A) was erroneous and prejudicial to the interest of Revenue, can not be the enhanced by the learned CIT(A) u/s 251(1)(a).

10. The words enhance the assessment' are confined to the assessment reached through a particular process. It can not be extended in a way the Ld CIT (A) had done it. Hon'ble Kerala High Court in B.P. Sherafudin (399 ITR 524) in Para 51 recorded-

"the powers under section 251 are, indeed, very wide; but, wide as they are, they do not go to the extent of displacing powers under, say section 147,148 and 263 of the Act".

11. As regards the Ld CIT (A)'s remark relating to purchase of agricultural land at Village Anangpur, Distt. Faridabad through Agreement to Sell (with full payment), without getting the registered sale deed, kind attention of this Hon'ble Bench is invited towards the judgement of Hon'ble Delhi High Court in Ram Gopal (372 ITR 498)."

8. Heard the arguments of both the parties and perused the material available on record.

9. The reasons for declining the exemption u/s 54B by the Id CIT(A) are as under:-

- It is not in dispute that the assessee sold land at Punjab, Khor which resulted in taxable capital gains.
- The assessee has purchased land at Village Anangpur, Distt. Faridabad for a sum of Rs. 10.35 croeres.
- It is not in dispute that the said land was purchased within the statutory period of two years allowed under the Act for claim of exemption u/s 54B.
- The Id CIT(A) held that the assessee failed to prove that the land purchased was used for agriculture purpose in the immediate preceding two years.
- The Id CIT(A) held that neither the agricultural income nor the purchase of agricultural land is proved and further that the appellant has failed to satisfy the mandatory condition of purchase of any other land for being used for agricultural purposes.

10. Before us the assessee submitted the documents with regard to purchase of land on the payments thereof. We have gone through the certificate of Tehsildar also. With regard to mode of transfer of property reliance is placed on the order of the ITAT

Delhi Bench in case of Babita Gupta Vs. CIT 100 ITR(T) 252 and judgment of jurisdictional High Court in the case of Ram Gopal 372 ITR 498. We also gone through the Khara Girdawari which was submitted before the Id CIT(A) reflecting the crops grown in Kharif and Rabi.

11. Since the land sold has been proven to be used for agriculture purpose in the preceding two years and the land purchased by the assessee has been proved to be agriculture land and the purchase has taken place within the stipulated period allowed by the Income Tax Act, 1961, we hold that the assessee is eligible for claim of exemption u/s 54B of the Act and also the receipt of Rs. 2 lacs be treated as income from agriculture.

12. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR