

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA Nos. 126/Jodh/2022  
(ASSESSMENT YEARS- 2016-17)**

Sh. Surender Singh Sidhu Rattanpura, Sargaria-335513.	V s	Addl./Joint/Dy./CIT, NFAC, Delhi Income Tax Department Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AFEPS 8982 G</b>		

**Stay Application Nos. 02/Jodh/2022**

(Arising out of ITA No. 126/Jodh/2022)  
(ASSESSMENT YEARS- 2016-17)

Sh. Surender Singh Sidhu Rattanpura, Sargaria-335513.	V s	Addl./Joint/Dy./CIT, NFAC, Delhi Income Tax Department Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AFEPS 8982 G</b>		

<b>Assessee By</b>	Shri Suresh Ojha (Adv.)
<b>Revenue By</b>	Ms. Nidhi Nair, JCIT-DR
<b>Date of hearing</b>	17/01/2023
<b>Date of Pronouncement</b>	13/03/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

This is an appeal filed by the assessee aggrieved from the order dated 15.07.2022 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi

(herein after referred as “NFAC”] for the assessment years 2016-17. The assessee has also filed stay application seeking stay of collection of outstanding demand.

2. The assessee has raised the following ground:-

*“1. That the order passed by the Commissioner of Income Tax is illegal and against the law.*

*2. That the order of the Commissioner of Income Tax appeals is against the judicial decorum and discipline because none of the grounds was decided and the appeal was treated as withdrawn by taking the shelter that the assessee opted Vivad Se Vishwas Scheme.*

*3. That the Commissioner of Income Tax (Appeal) should have accepted the appeal because the order passed by the Assessing Officer is illegal and against the law.*

*4. That the addition so made by the Income Tax Officer and sustained by the Commissioner of Income Tax of appeal is illegal and against the law.*

*5. The order is unreasoned order and not speaking as such liable for quashing.*

*6. That cost may kindly be awarded in respect of negligence putting the assessee in unnecessary litigation in view of judgment of Rajasthan High Court.”*

3. Briefly the facts of the case are that the return of income for the assessment year 2016-17 was filed by the assessee on 29.03.2017 declaring total income at Rs. 9,39,582/-. The case was selected for complete scrutiny

and assessment was completed on 04.12.2018 at an income of Rs. 14,59,170/-. During the year under reference, the assessee has sold agricultural land for Rs. 1,21,76,000/- at chak No. 3 RTP-II Sangaria, District, Hanumangarh value of which was adopted by the sub Registrar Rs.1,23,17,200/-. During the course of assessment proceedings, the AO failed to examine the sale of land within the ambit of section 2(14) of the Act, as the said land is located within 2 km of the municipal limit of town Sangaria, population of which as per Census 2011 is more than 10,000. The AO is directed to ascertain the ariel distance of the land sold by the assessee from the competent authority of the town and calculate the capital gains accordingly. The AO is also directed to examine the applicability of provisions of Section 56(2)(vii) of the Act in the case of the assessee. The assessee has also sold some part of the land situated at Chak No. 3 RTP-11, Sangaria, District Hanumangarh as residential plots after developing a residential colony named "Shri Guru Nanak Nagar". The assessee accounted for total sale of plots of Rs.11,55,000/- as gross turnover in its P&L account. The AO accepted the turnover/sales of the assessee without examining the sale deeds or DLC value of the plots so sold. The AO is directed to ascertain the DLC value of the plots sold by the assessee from the registered sale deeds or from the Stamp Duty Authority and consider the applicability of

provisions of section 43CA. Further, the AO is also directed to examine the valuation of land shown as stock in trade at Rs 1.17,27,913/- in the return of income viz-a-viz cost of acquisition and expenses incurred thereon. Notice u/s 143(2) of the I. T. Act was issued on 30.03.2021. The notice u/s 142(1) of the Act was issued on 12.08.2021, 20.08.2021, and 12.11.2021 along with a specified questionnaire which was electronically served upon the assessee. The assessee replied to the notice issued u/s 142(1) of the I. T. Act, dtd. 16.08.2021. 23.08.2021 and 05.03.2022. The same was perused but not found tenable. Accordingly, the matter was referred to the District valuation Officer on 17.12.2021.

4. In the aforesaid order, the AO issued notice to the assessee and re-adjudicated the matter. The relevant part of the assessment order is reproduced as under:-

“ 4.2 Considering above, it is presumed that the land so sold by you is situated within 2 km distance of municipal limit of Sangaria. As per Census 2011, the population of Sangaria is more than 10000. Hence, the said land is covered in the definition of "capital asset" as provided u/s 2(14) of the Income-tax Act, 1961. Since cost of acquisition is not available on record, it is difficult to ascertain capital gain on the same. Hence, total sale value amounting to Rs. 1,23,17,200/- is taken as Long Term Capital Gain of the assessee for the year under consideration. Hence, an amount of Rs.1,23,17,200/- is hereby added as Long Term Capital Gain and added back to the total income of the assessee on protective basis. The order may be rectified after receiving report from District Valuation Officer.”

5. Being aggrieved by the AO the assessee preferred an appeal before the ld. CIT(A) and the findings are reproduced as under:-

*“ During the course of the appellate proceedings the appellant opted for DTVSVA 2020 an filed an application/form-1 in this regard before the Designated Authority i.e. PCIT, Bikaner on 02.05.2020. A certificate No. 376237440010720 (Form-3) dated 01.07.2020 was issued by the Designated Authority directing the appellant to pay a sum of Rs. Nil. Further, VSV order u/s 5(2) as per Form-5 has been issued on 08.12.2020 by the Designated Authority.*

*In view of the above, the appeal is dismissed as withdrawn due to DTVSVA 2020.”*

6. Now the assessee is in appeal. The Ld A.R submitted that the assessee has not filed any application under DTVSVA and hence the Ld CIT(A) was not justified in dismissing the appeal under wrong impression. He submitted that the Ld CIT(A) should have adjudicated the appeal on merits.

7. We Ld D.R on this issue. Since the assessee has not filed any application under DTVSV Act, the Ld CIT(A) was wrong in dismissing the appeal of the assessee under wrong impression. Since the Ld CIT(A) has not adjudicated the issues contested before him on merits, we deem it proper to restore all the issues to his file for adjudicating them on merits, after affording adequate opportunity of being heard to the assessee.

8. In view of the above, the Stay application filed by the assessee shall become infructuous.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes and the stay application is dismissed.

Order pronounced on 13/03/2023.

Sd/-

Sd/-

(B. R. BASKARAN)  
ACCOUNTANT MEMBER

(Dr. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 13/03/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench