

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1664/DEL/2020
Assessment Year 2012-13

Daryab Singh S/o Nathi Village Bhulwana Hodal Palwal	Vs.	The Income Tax Officer Ward-1(2) Faridabad
TAN/PAN: EQDPS5894B		
(Appellant)		(Respondent)

Appellant by:	Shri S.C. Singhal, CA		
Respondent by:	Shri Sanjay Kumar Yadav, Sr.DR		
Date of hearing:	09	05	2023
Date of pronouncement:	09	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Faridabad ('CIT(A)' in short) dated 28.11.2019 arising from the assessment order dated 22.12.2017 passed by the Assessing Officer (AO) under Section 144 r.w.s 147 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

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

“1. The learned ITO and CIT(A) erred in initiating and approving the reassessment proceedings in this case simply on the basis of input of information from DI(I&CI) on 26/03/2015 and the AO had recorded the reasons on 28/07/2016 and sought the approval from JCIT/Pr.CIT. It is not a case of live link. The enquiry before recording of reasons to convert the information into reasons to believe is totally missing in this case making the entire process

bad in law.

2. The show cause notice dt 04/11/2017 issued by the AO mention of approval of reasons from Pr. CIT and not from Addl. CIT. The law require the approval in less than 4 years cases from Addl. CIT only. In view of decisions of courts incl. 345 IT 223(Delhi) etc, the approval is not as per law and be held as no approval as per law us 151. Kindly cancel the entire proceedings without proper approval.

3. The land sold is located in village Bhulwana, Teh. Hodal, Distt. Palwal in Haryana. As per certificate from Hodal Revenue Patwari dt 9/05/2018, it is located 2350 meters from Hodal Nagar Parishad Border and was an agricultural land. As per printout from last census 2011 data available, the populations of village Bhulwana was 7081 persons. The certificate obtained by AO defined the Bhulwana village Border from Hodal Municipal limit and not the distance of plot in question.

4. Section 2(14)(iii) of IT Act, 1961 defines agricultural land. As per clause (a) the assessee fulfil all the conditions noted therein. The Id CIT(A) has referred to a notification applicable for a period prior to 01/04/2014 and he says it specify a distance of 5 km in case of Hodal. It amounts to making a rule over the law as made by the Parliament.

5. The cost of acquisition and its indexing must always be reduced from sale consideration to find out taxable long term capital gain. A land sold for 1.60 Cr/1.44 Cr in 2011 has been found by AO/CIT(A) having zero cost as on 1.1.1984. This shows limitation of their imagination. The CIT(A) has failed to adjudicate this issue in his order. In case older land/property, there are standard procedures/valuers who give fair market price on that dates. Both lower authorities have failed in their duties to find the same and in not allowing a deduction to appellatant.

6. The stamp duty value of Rs.1,60,80,500 is challengeable by the assessee u/s. 50C(2) and the claim for the same was made to the transaction value at Rs. 1,44,80,000. No step was taken by either of lower authorities to verify the claim and has been summarily rejected without opportunity or discussion. This is not justified and bad in law.

7. The sale in this case is not complete as several cheques being a part of sale consideration issued by buyer to seller have bounced and the litigation between seller and buyer for the same is pending in courts. Without sale consideration and particularly when the buyer in denying the balance payment, the sale transaction is not complete. Levying tax on LTGC which has not reached the seller, and is now doubtful, is not correct.”

3. When the matter was called for hearing, the Id. counsel for the assessee *inter alia* submitted that the case of the assessee was reopened under Section 148 r.w. Section 147 of the Act on the ground that assessee has sold certain land parcel to one M/s. Creative Dream Developers Pvt. Ltd. for consideration of Rs.1,44,80,000/-. It is further stated in the aforesaid reasons that the fair market value as per stamp duty valuation stands at Rs.160,87,500/- on such land and the assessee has not filed the return of income and consequently the taxable income has escaped income. In the matter, the Id. counsel submitted that the sale proceeds of the land is exempted under Section 10(37) of the Act and therefore, the sale proceeds are not taxable under the provisions of the Act. Hence, there is no escapement of any chargeable income on the part of the assessee. Consequently, the reasons so recorded are inherently incorrect and without satisfying the requirement of escapement of chargeable income. The Id. counsel thus urged for quashing the reasons recorded. On being inquired by the Bench on the evidence in relation to the exemption claimed, the assessee fairly submitted that such evidences were not placed before the AO.

4. Under the circumstances projected on behalf of the assessee that where the assessee has hoisted a narrative that the income under reference in the reasons are totally exempt from taxation, we consider it just and expedient to remit the matter back to the file of the Assessing Officer. The assessee shall produce all the relevant evidences before the Assessing Officer to assert his claim that the impugned income is exempt from taxation under the provisions of the Act. On consideration of evidences, the Assessing Officer shall proceed in accordance with law and on

being satisfied, shall drop the re-assessment proceedings. It shall be open to AO to make such enquiry as it may consider necessary to appreciate the facts in perspective. However, for any reason the proceedings are continued, proper opportunity shall be given to the assessee to justify his case on merits. Needless to say, the assessee shall assist the Assessing Officer and attend the proceedings without any demur. The Assessing Officer shall provide reasonable opportunity to the assessee and pass order in accordance with law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order was pronounced in the open Court on 09/05/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /05/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**