

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 146/Asr/2018
Assessment Year: 2009-10

Sh. Sukhdev Singh
S/o Sh. Kehar Singh,
Gali No. 14, Lal Singh Basti,
Bathinda

Vs.

Income Tax Officer,
Ward 1(2), Bathinda

[PAN: EDNPS 4631H]
(Appellant)

(Respondent)

Appellant by : None

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 18.07.2023

Date of Pronouncement: 26.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the
Ld. Commissioner of Income Tax (Appeals), Bathinda dated 24.01.2018 in

respect of Assessment Year 2009-10 wherein the assessee has raised the following grounds of appeal:

- “1. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-opening the assessment on the basis of vague information.*
2. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-opening assessment as the reasons recorded to re-open the case are no reasons in the eye of law.*
3. *That the learned Pr. CIT, Bathinda erred in giving sanction to re-open the case mechanically and without application of mind on the facts of the case. So, the re-opening is liable to be quashed.*
4. *That on the facts and in the circumstances of the case and in law, the notice issued u/s 148 was not served upon the assessee. So, the re-assessment is liable to be quashed.*
5. *That on the facts and in the circumstances of the case and in law, as the learned AO has not considered the relevant documents supplied during the course of assessment proceedings. So, the re-opening as well as re-assessment is liable to be quashed.*
6. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not giving the deduction of indexed cost of improvement of the agricultural land as per law on Rs. 600000/-. The department should have kept in view the time gap of 30 years when the expenditure was made.*
7. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not allowing the claim u/s 54F for the construction of house within time for Rs. 1700000/- as per law in the name of wife Amarjit Kaur. Even the income is assessable u/s 64 of the Act in the hands of the assessee.*
8. *That the assessee has purchased the plot of residential house in the name of wife Smt. Amarjit Kaur benami with his own money and*

construction of the residential house on this benami plot with his own money out of the sale proceeds of the agricultural land. So, the assessee is entitled to deduction u/s 54F of the Act. This is further supported by the fact that the assessee was present in the Tehsil for the registration of purchase deed not the wife.

9. *That in any case, the sale proceeds of agricultural land sold in financial year 2008-09 in question is agricultural income. So, it is tax free income. Accordingly, the addition made as income from other sources u/s 69A is liable to be deleted.*
10. *That as the agricultural land sold belongs to the HUF of the assessee, so the assessment should have been made in the hands of the HUF of the assessee not in individual status. So, the assessment is liable to be quashed.*
11. *That any other relief may kindly be granted to the assessee to whom she is found entitled at the time of hearing of appeal."*

2. This appeal is 5 years old and the Ld. AR for the appellant has taken adjournments either by filing adjournment application for seeking adjournment on request or non-attendance at the time of hearing without any valid reasons on various dates viz~a~viz 11.12.2018; 05.03.2019; 06.05.2019; 20.08.2019; 16.06.2022; 14/07/2022; 19/10/2022; 01.03.2023; 11.04.2023 (Adjourned Sine die); The case has been adjourned sine die to prepare and submit the synopsis if any in support of the grounds of appeal but again. Again, on the date of hearing, he filed adjournment application without adequate reasons. Hence, same is rejected being devoid of merits.

3. The Ground No. 1 to 5 are inter linked to each other wherein the appellant challenged validity of reopening of assessment u/s 147 of the Act on account of non-service of notice and non-application of mind by the AO.

4. From the record, it is seen that for the assessment year under consideration, 2009-10 the Appellant assessee has not filed return of income. The AO was in possession of the information that assessee along with his brother Sri Koka Singh for Joginder Singh has sold immovable property for a consideration of Rs. 85,65,000 including registration charges to M/s Shaina promoters and developers Pvt. Ltd. Bathinda and Royal Enclave Ltd Bathinda on 01.07.2008 through registered deed dated 02.07.2008. The AO stated that since the land sold by the Assessee and his brother was capital asset and the assessee has not declared any capital gains to the department. Accordingly, The AO has specific information/reason to believe that capital gains tax has escaped assessment in the present case. He accordingly issued a notice under section 148 of the Income Tax Act 1961 to the assessee on 18 03 2016 after seeking payer approval of the worthy principal commissioner income tax Bathinda which was duly served up on the Assembly on 19 03 2016. The assessee file is returned of income in response to notice under section

148 of the act declaring nail income on 23.05 .2016 wide at number 176217050230516 and also file reply duly signed by his counsel requiring there in the copy of Regions recorded under section 147 of the Act. A copy of reasons recorded was supplied to the assessee. Subsequently, in compliance to notices, the Ld. Council Sri Jk Gupta Advocate attended from time to time and filed the information as called for during the course of assessment proceedings.

5. The appellant contended in the grounds of appeal that on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-opening the assessment on the basis of vague information as such reasons are no reasons in the eye of law; that the Pr. CIT, Bathinda erred in giving sanction to re-open the case mechanically and without application of mind on the facts of the case; that the notice issued u/s 148 was not served upon the assessee and that the learned AO has not considered the relevant documents supplied during the course of assessment proceedings, so, the re-opening as well as re-assessment is liable to be quashed.

6. The Legal issue raised in the grounds by the appellant is not emerging out of the impugned appellate order. However, it is noted from

the grounds of appeal filed before the CIT(A) that the appellant has raised the legal issue challenging validity of reopening the assessment on facts of the case. At the same time, the appellant alleged that the Ld. CIT(A) erred on facts and law in upholding the re-opening the assessment on the basis of vague information as such reasons are no reasons in the eye of law; that the Pr. CIT, Bathinda erred in giving sanction to re-open the case mechanically and without application of mind on the facts of the case; that the notice issued u/s 148 was not served upon the assessee and that the learned AO has not considered the relevant documents supplied during the course of assessment proceedings, so, the re-opening as well as re-assessment is liable to be quashed. In view of that matter, we are of the considered view, that this case is remanded back to the file of the Ld. CIT(A) to adjudicate the legal issue and quantum appeal by passing a speaking order on merits of the case by addressing the objection of the appellant assessee on the legal issue of validity of reopening considering the validity of reason mentioning wrong PAN, Prior Approval by the Pr. CIT for reopening, objection raised by the assessee to reasons of reopening before the AO and that nature of capital for capital gains being claimed as

agricultural land etc. after considering the written submission of the assessee and granting sufficient opportunity of being heard.

7. Accordingly, in view of the principle of natural justice, the case is restored to the CIT, to decide the appeal afresh by speaking order on merits of the case as per law. No doubt, the assessee shall cooperate in the fresh proceedings before the Ld. CIT(A).

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order