

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

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

ITA No. 3268/Del/2019 : Asstt. Year : 2010-11

Kartar Singh, C/o S.K. Bansal, CA, 101, First Floor, Kochar Market, Jhajjar Road, Opp. Khanu Mandi, Rohtak, Haryana-12001	Vs	ACIT, Circle-42(1), New Delhi-11
(APPELLANT)		(RESPONDENT)
PAN No. CSKPS5940K		

Assessee by : None

Revenue by : Sh. Amit Katoch, Sr. DR

Date of Hearing: 19.07.2023

Date of Pronouncement: 05.09.2023

ORDER

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

The present appeal has been filed by the assessee against the order of Id. CIT(A)-14, New Delhi dated 01.02.2019.

2. Following grounds have been raised by the assessee:

"1. That the Ld. CIT(A) has erred in law as well as on facts in dismissing the appeal against the addition of Rs. 12,69,03,930/- arbitrarily and haphazardly without adjudicating the Revised grounds of appeal and additional evidences filed under Rule 46A in duplicate on 31.01.2019 and thus there is gross violation of principles of natural justice.

(The assessment order may kindly be set aside with a direction to the Ld. A.O. to pass afresh assessment order after considering all evidences and documents furnished and forwarded as additional evidences under rule 46A and as may be furnished during fresh

assessment proceedings for completion of assessment and for computation of LTCG.)

2. That the Id. CIT(A) has erred in law as well as on facts in dismissing the appeal against the addition of Rs. 12,69,03,930/- arbitrarily and haphazardly without allowing adequate opportunity to both the assessee as well as the Id. A.O. after filing additional evidences under rule 46A in duplicate by the assessee on 31.01.2019, copy of which I was forwarded by the Id. CIT(A) to the Ld. A.O. for her comments but dismissed the appeal prejudiciously the very next day i.e., on 01.02.2019 without waiting for her comments. The assessee was also not provided any opportunity to prove the evidence for cost of acquisition and to rebut the cost of acquisition adopted by the Ld. A.O. Thus there is gross violation of principles of natural justice.

(The assessment order may kindly be set aside with a direction to the Ld. A.O. to pass afresh assessment order after considering all evidences and documents furnished and forwarded as additional evidence under rule 46A and as may be furnished during fresh assessment proceedings for completion of assessment and for computation of LTCG.)

3. That the cost of acquisition without indexation estimated and adopted by the Ld. A.O. at Rs. 41,29,125/- as on 01.04.1981 based on surmises, suspicion and conjectures is wholly unjustified, arbitrary, haphazard, and without any jurisdiction to estimate such valuation as against the Fair Market Value of the land taken at Rs. 2.48 crore as on calculated by the Ld. A.O. at Rs. 12,69,03,930/- on the basis of indexed cost of acquisition is also wholly unjustified as against the NIL calculation of LTCG on the basis of indexed cost of acquisition estimated by the expert Registered Valuer. The valuation made by the Ld. A.O. was also not confronted before the assessee for his comments and rebuttal despite a specific request during inspection of the assessment record. Thus there is gross violation of principles of natural justice. The Ld. CIT(A) has erred in law as well as on facts in dismissing this ground overlooking the additional evidences filed during the course of hearing and without adjudicating the additional evidences.

Alternatively the assessment order may kindly be set aside with a direction to the Ld. A.O. to pass afresh assessment order after considering the Registered Valuer's report before adopting cost of acquisition estimated by the Ld. A.O. on the basis of surmises, suspicion and conjectures.

4. That the Ld. A.O. as well as Ld. CIT(A) both have erred in law as well as on facts in assessing the entire value of sale consideration in the hands of the assessee ignoring the Settlement Deed/ family Arrangement whereas although he is registered owner of entire land but he is beneficial owner of only 1/7th of the entire land as per old family N arrangement/ settlement and consequently 1/7th share of cost of acquisition is also to be allowed and deduction u/s 54B and 54F also to be allowed against 1/7 share.

Alternatively the assessment order may kindly be set aside with a direction to the Ld. A.O. to pass afresh assessment order after considering 1/7th of Sale Proceeds for computation of capital gains.

5. That the Ld. A.O. as well as Ld. CIT(A) both have erred in law as well as on facts in taxing notional capital gain on an asset being land acquired in a mode specified u/s 49(1) of I.T. Act in which case cost of acquisition in the hands of last previous owner is to be taken as per Explanation to section 49(1). But neither the last previous owner nor the date of acquisition in the hands of last previous owner is known, hence no cost of acquisition in the hands of last previous owner can be ascertained. This is the main reason for not filing the return of Income. It is well settled principle of law that where cost of acquisition in case of capital asset acquired in a mode specified u/s 49(1) is either nil or unascertainable then the asset sold is not a Capital Asset and hence LTCG is also nil or unascertainable and not taxable u/s 45 of LT. Act. Provisions of section 45, 48, 55, 55A, 142(2A), etc. are not applicable in such cases because fair market value is not applicable under such circumstances without the option of the assessee.

6. That the Id. A.O. has erred in law as well as on facts in initiating proceedings u/s 147 on the basis of full value of sale consideration without deducting

there from cost of acquisition and investment u/s 54B and 54F and also ignoring the fact that income escaped assessment within the meaning of section 147 here means long term capital gain (not the full value of sale consideration) computed under sections 45 to 55 of the L.T. Act. Thus the reason to believe that income has escaped assessment u/s 147 without computing long term capital gain under sections 45 to 55 is wholly wrong and unjustified. Further it is well settled law that in case of land or building or both if the cost or date of acquisition is nil or unascertainable u/s 55(3), then the asset sold is not a capital asset within the meaning of section 45, hence long term capital gain is also nil or unascertainable and consequently income escaped u/s 147 is also nil or unascertainable.

7. That the notice issued u/s 148 without satisfying requirements of section 147 & 148 of the IT Act is bad in law as well as on facts since there was no escapement of income from Capital Gains if properly computed u/s 45 to 55 of the LT. Act. Reasons have been partly recorded u/s 147 only to satisfy himself that certain income has escaped assessment which has to be reported to the Pr. CIT but no reasons recorded u/s 148(2) to issue notice u/s 148 or to direct that notice u/s 148 be issued to assess or reassess the alleged escaped income, no prior approval obtained from the Pr. CIT that it is a fit case for issue of notice u/s 148 who simply endorsed that 'Yes, I am satisfied. Dt. 28.03.2017' without mentioning that it is a fit case for issue of notice u/s 148."

3. Facts on record reveal that the assessee has not complied to the notices issues u/s 148 of the Income Tax Act, 1961 and hence the assessment was completed u/s 144. As per the information available with the Revenue that the assessee has sold land of 8.53 acres for a consideration of Rs.15.30 Cr. to one M/s Delite Techno Build Pvt. Ltd. The AO computed capital gains of Rs.12.69 Cr. considering the FMV as on 1981 at Rs.100/- per sq. yrds. The assessee submitted in statement of fact that the sale transaction could not be completed as the basic terms and conditions of sale deed were violated by the

vendee by withholding the substantial part of the sale consideration made through cheques.

4. The Id. CIT(A) has also not examined the issue with regard to determination of capital gains and also while considering the value as on 01.04.1981.

5. Hence, in the fitness of things, we deem it justifiable to remand the matter to the file of the AO for *de novo* assessment and compute the capital gains taxable in the hands of the assessee to the extent of the share of the assessee in the property. The AO is hereby directed to take all the necessary precaution for issue of notices to the correct address and see that the notices are served on the right person.

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

Order Pronounced in the Open Court on 05/09/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 05/09/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR