

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

**BEFORE,
SHRI G.S.PANNU, PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.4925/Del/2019
(ASSESSMENT YEAR 2014-15)**

Geeta W/o Shri Harender Village Bhangrola Near LIC Office Kankrola Bus Stand Gurugram-122 001 Haryana PAN-BCKPG 3135R (Appellant)	Vs.	Income Tax Officer Ward-1(5) Grugram (Respondent)
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Appellant by	None
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	18/09/2023
Date of Pronouncement	20/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-1, Gurgaon ["Ld. CIT(A)", for short], dated 27/03/2019 for Assessment Year 2014-15.

2. Grounds taken in this appeal are as under:

“1. That the Ld. AO erred in law and on facts in passing the assessment order making an addition of Rs.28892596/- to the income of the assessee as long term capital gains without proper application of mind and Ld.CIT(A) erred in law and on facts in confirming the said addition in the facts and circumstances of the case.

2. That the Ld. AO erred in law and on facts in passing an invalid, arbitrary and unreasonable assessment order making an addition of Rs28892596/- to the income of the assessee and Ld. CIT(A) erred in law and on facts in upholding the assessment made by Ld. AO in the facts and circumstances of the case.

3. That the Ld. AO erred in law and on facts in making and Ld. CIT(A) in confirming the addition of Rs.28892596/- as LTCG by adopting miniscule market value as on 01.04.1981 of land sold by the appellant in the facts and circumstances of the case. That the Ld. AO and CIT(A) erred in not determining Fair Market Value of the land as on 01.04.1981 in accordance with evolved principles for the valuation.

4. That the Ld. AO erred in law and on facts in making and Ld. CIT(A) in confirming the addition of Rs.28892596/- as LTCG by adopting market value of land under consideration as on 01.04.1981 on the basis of Supreme Court decision pertaining to land in the village of Shahibabad Daulatpur in North West Delhi whereas the land sold by the appellant was located in the Village of Daulatpur, Teh: Kapashera, Distt: South West Delhi. That the distance between the two lands was about 38 Kms, land of the appellant was better located and they were not at all comparable in value. The Ld. AO and CIT(A) should have taken the Fair Market Value of some similarly located land in the vicinity.

5. That the Ld. CIT(A) erred in law and on facts in not properly appreciating the explanation and evidence furnished by the appellant during appellate proceedings more particularly with respect to better location of the land sold vis-à-vis land considered by the Ld. AO.

6. That the Ld. AO and CIT (A) erred in law and on facts in not following the principles of natural justice as per settled law in the facts and circumstances of the case.

7. *Without prejudice to above, the La AO and CITA) erred in law and on facts in not considering the case of the assessee for entitlement to deduction u/s 54B of the Income Tax Act in the alternative.*

8. *The appellant craves leave to amend or alter all or any of the aforesaid grounds of appeal and amend, alter or add any other ground of appeal.”*

3. None appeared for the assessee. The Power of Attorney has been filed on behalf of the assessee but even the representative of the assessee has not appeared though the assessee has been served with notice issued by the Registry, therefore, we are constrained to hear the Ld. Departmental Representative, verify the materials available on record and decide the matter.

4. Brief facts of the case as per the assessment order are as under:-

“As per the documents submitted, it was noticed. that vide sale deed bearing Certificate No. IN-DL93631704997977L dated 2.12.2013, the assessee, Smt. Geeta alongwith others namely Smt. Sushila, Smt. Sumitra, Sh. Shamsher all children of Late Sh. Khemchand and Smt. Bharpai w/o Late Sh. Khem Chand, had sold land 16 Bigha 7 Biswa 10 Biswansi situated in the revenue estate of Village Daulatpur, New Delhi for a sale consideration of Rs. 15,21,51,042/- to IOCL Officers Welfare Society, Delhi. The sale amount of Rs. 3,04,30,208/-in respect of 20% share as per the sale deed of the land was received by the assessee. The assessee had claimed this amount of Rs. 3,04,30,208/- as agricultural income in the Income Tax Return filed for the year under consideration.

The Counsel of the assessee explained that the land in consideration was sold at Village Daulatpur, New Delhi to a Group Housing

Society on which residential colony was constructed by Indian Oil Corporation Limited. The assessee reinvested the sale consideration towards purchase of land in the name of Smt. Sudesh Wife of Sh. Shamsher Singh, brother of the assessee. Further, the money received as sale proceeds was also transferred to Sh. Shamsher Singh, the brother of the assessee. However, no evidence supporting the above has been filed. Therefore, the assessee was asked vide show cause noticed dated 2.12.2016, "As per information available with this office you have sold property amounting to Rs. 3,04,30,208/- and not offered any capital gain on the sale of land. Please show cause as to why the.....as income from capital gain".

The assessee did not furnish any information w.r.t. the cost of acquisition/cost price to her of the land at Village Daulatpur, New Delhi. As per the order of the Hon'ble Supreme Court in the case of Premwati v. Union of India & Ors. in Civil Appeal No. 949 of 2005 and in the case of Rajinder Singh (D) by Lrs. v. Delhi College of Engineering in Civil Appeal No. 2443 of 2005, the value of land in the Village Shahibababd, Daulatpur was fixed at Rs. 50,000/- per bigha. Thus, the fair market value of the land in question is taken as Rs. 50,000/- per bigha for computation of Long Term Capital Gain in the hands of assessee by the undersigned.

In view of above discussion, the long term capital gain in the hands of assessee is computed as under :-

The assessee has not furnished any satisfactory explanation / documents/justification. The onus to prove the genuineness of each and every entry recorded in the books of assessee lies with the assessee. The assessee has failed to

discharge her onus. Thus, in absence of any explanation/documents/justification and in view of the discussion held above, an amount of Rs. 2,88,92,596/- as computed above is chargeable to tax in the hands of the assessee under the head income from Long Term Capital Gain on the sale proceeds of the land situated at Vill. Daulatpur received by her as per her share and is added to the taxable income of assessee.

(Addition: Rs. 2,88,92,596/-)”

5. Aggrieved by the assessment order dated 27/12/2106, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) while deciding the Appeal adjudicated the issue as under:-

“3.5 I have carefully considered the facts on record and the submissions of the appellant. It is an undisputed fact on record that the appellant had sold immovable property for an amount of Rs. 3,04,30,208/- during the year under consideration. Further, there is no dispute that the Capital Gains arising from this transaction were taxable. The only issue under dispute is the cost of acquisition adopted by the A.O for the purpose of computing Capital Gains. The A.O has taken the fair market value as on 01.04.1981@ Rs. 50,000/- per bigha based on the decision of the Hon'ble Supreme Court in the case of Premwati v. Union of India & Ors. In Civil Appeal No. 949 of 2005 and in the case of Rajinder Singh (D) by Lrs. v. Delhi College of Engineering in Civil Appeal No. 2443 of 2005. The

appellant has contended that the value of the land sold by her could not be compared with the value adopted by the Hon'ble Supreme Court in the case referred above and in this regard had contended that the land sold by her was better located and was not agriculture land. It was in this background that vide letter dated 17.10.2018 the appellant was asked to furnish the details so as to verify the genuineness of the contentions of the appellant. As pointed out above inspite of repeated opportunities no satisfactory reply was furnished by the appellant. The appellant merely contended that the land sold by the appellant was better located. However, in-spite of specific query being raised by me regarding the difference in the location of the appellant's land and the land for which the Hon'ble Supreme Court had decided the fair market value @ 50,000/- per bigha, no specific difference was pointed out by the appellant. The appellant did not furnish the details of distance between the land sold by the appellant and the land referred to by the Hon'ble Supreme Court in the aforesaid order. As such the contentions of the appellant are without any supporting evidence and are therefore held to be mere self serving statements. In the facts and circumstances of the case it is held that the A.O was fully justified in adopting the fair market value on the basis of the decisions of the Hon'ble Supreme Court referred to above. The addition made by the A.O is confirmed.”

6. The Ld. Departmental Representative submitted that as the Ld. A.O. had taken fair market value as on 01/04/1981 as Rs. 50,000/- per bigha based on the Judgment of the Hon'ble Supreme Court in the case of Premwati Vs. Union of India and Ors. in Civil Appeal No. 949/2005 and in the case of Rajender Singh (D) by LRs Vs. Delhi College of Engineering in Civil Appeal No. 2443/2005 and submitted that the present Appeal of the assessee is liable to be dismissed.

7. We have heard the Ld. Departmental Representative and perused the material available on record. The assessee sold immovable property for a consideration of Rs. 3,04,30,208/- during the year under consideration. The capital gains arising from the said transaction were undisputedly taxable, the A.O. has taken fair market value as on 01/04/1981 at Rs. 50,000/- per bigha based on the Judgments of the Hon'ble Supreme Court of India in the case of Premawati Vs. Union of India and Ors. in Civil Appeal No. 949/2005 and also in the case of Rajender Singh (D) by LRs Vs. Delhi College of Engineering in Civil Appeal No. 2443/2005.

8. It was the case of the assessee that the land sold by her could not be compared with the value adopted by the Hon'ble Supreme Court in the case referred above and contended that her land was better located and was not an agriculture land. The assessee except making the above assertions that the land sold by the assessee was in a better position, not produced any evidence

before the Lower Authorities to prove that the Assessee's land that of the Hon'ble Supreme Court of India had decided the fair market and no specific difference has been pointed out by the assessee. Therefore, in our opinion, in the absence of any material to prove that the land of the assessee and the land for which the Hon'ble Supreme Court has decided the fair market value at Rs. 50,000/- per Bigha are different and in the absence of any supporting evidence in support of the contention of the assessee, we find no error or infirmity in the orders of the Lower Authorities in adopting fair market value on the basis of the decisions of Hon'ble Supreme Court of India. Accordingly, we find no merit in the Grounds of Appeal of the assessee.

9. In the result, Appeal filed by the assessee is dismissed.

Order pronounced in open Court on 20th September, 2023

Sd/-

(G.S.PANNU)
PRESIDENT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 20/09/2023

Pk/R.N, Sr ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

