

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2547/Del/2017, A.Y. 2008-09

Income Tax Officer Ward-4, Hisar	Vs.	Sh. Sant Singh, Prop. M/s. Haryana Hathkarga Khadi Bhandar, Outside Nagori Gate, Hisar (Haryana) PAN : AJFPM9012Q
Appellant		Respondent

C.O. No. 165/Del/2022

(Arising out of ITA No. 2547/Del/2017, A.Y. 2008-09)

Sh. Sant Singh, Prop. M/s. Haryana Hathkarga Khadi Bhandar, Outside Nagori Gate, Hisar (Haryana) PAN : AJFPM9012Q	Vs.	Income Tax Officer Ward-4, Hisar
Appellant		Respondent

Assessee by	Shri Kuldip Khara, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	04.10.2023
Date of Pronouncement:	11.10.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Revenue against the order dated 03.02.2017 of Commissioner of Income Tax (Appeals)-Hisar (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no.

269/HSR/2014-15 arising out of an appeal before it against the order dated 24.02.2015 passed u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-4, Hisar (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. Facts in brief are that assessee had filed a return of income on 30.09.2008 and the assessment completed u/s 143(3) of the Act on 23.12.2010. The assessee had reflected the transaction of sale of land subsequently, there was a survey u/s 133A at the business of Smt. Bhawna Jain Props. M/s. Aakash Metal Industries, Hansi from where copy of registration deed no. 5381 dated 21.02.2008 was found and impounded. The deed disclosed the sale of 16 Kanal 5 marlas i.e. 9831 square yards land by assessee to M/s. Amazon Enterprises Pvt. Ltd. for Rs. 4,81,73,125/- . Ld. AO observed that while claiming exemption u/s 54B of the Act benefit was also taken in respect of advance Rs. 55 lakhs made for purchase of a piece of land. It is also observed that in the sale deed executed by the vendor Sh. Balwant Singh advance Rs. 55 lakhs is not mentioned, the same is not correct. Ld. AO further observed that the assessee has claimed exemption of 2.22 crores u/s 54B(2) of the Act on the ground that the said amount of Rs. 2.22 crores has been deposited in a capital gain scheme account. But no proof of same was furnished and accordingly notice u/s 148 was issued on 18.10.2014 for the assessment year 2008-09 after recording the reasons and obtaining necessary approval. The assessee submitted that return originally filed be treated for the purpose of reassessment. Assessee filed objection to reopening which were dismissed by order dated 09.12.2014. The assessee gave a detailed explanation of the transaction and the exemption however, Ld. AO being unsatisfied made the addition and passed order u/s 143C/ 147 of the Act on 24.02.2015 which was challenged by the assessee before Id. CIT(A) where apart from other grounds assessee had raised the

validity of exercising jurisdiction u/s 147 and ld. CIT(A) after examining the records concluded as below :

“This is not substantiated by facts as the appellant has proved as under :-

- a) Rs 5500000/- has been given as advance to Sh. Balwant Singh for purchase of land is duly shown in the Income Tax return computation. In the Annotated report sent by learned Dy. Commissioner of Income Tax on 13.08.2012 it is clearly mentioned in the reply submitted by learned Dy. Commissioner of Income Tax that assessee Has given advance of Rs 5500000/- to Sh. Balwant Singh s/o Pehlad on 06.08.2008 after withdrawing Rs 50,00,000.00 from cash Book.*
- b) Copy of date wise capital A/c of the assessee clearly depicts Rs 5500000/- given as advance to Sh. Balwant Singh had been submitted and placed on file.*
- c) Copy of bank certificates for deposit Rs 22000000/- in capital gain a/c in PNB clearly shown in computation of income and Bank Certificate was submitted at the time assessment.*
- d) This fact is also supported by the office note of Learned ACIT and from the notice issued under 154 of the Income Tax Act in which Capital Gain account No. are clearly mentioned.*
- e) Before disposing of objections to the initiation of proceedings u/s 147, assessee again submitted copy of capital gain a/c in response to notice clearly mentioning the fact that this has been submitted at the time of assessment and duly considered by AO at the time of assessment.*

*That in para no. 5 Learned AO has stated that no order u/s 154 was passed by the department. In this regard it is submitted that assessee was issued notice u/s 154 and after considering clarification given by the assessee, it was clear to AO that all the information is already on file and there is no mistake in the order passed by the AO on 23.12.2010, so there is no need to pass any **rectification u/s 154**. This stand taken by the AO clearly shown that there was no mistake in the order passed by AO on 23.12.2010 and so there was no need to pass the proposed rectification order u/s 154.*

In Para 3.2 the Learned AO has mentioned that in the sale deed there is no specific mention of advance received by Sh. Balwant Singh and there is no mention of adjustment of Rs_50,00,000.00.

In this regard it is submitted that in the sale deed it is clearly mentioned that assessee had already received the full payment at home and now nothing is due.

In my view therefore, the proceedings u/s 147 were not justified and this is not a case where new material was found or came to the notice of the AO. I, therefore, quash the order passed u/s 143(3)/147 in this case.”

4. The Revenue is in appeal raising following grounds :

“1. On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in quashing the order dt. 24.02.2015 passed u/s 143(3)/147 of the

Income Tax Act, 1961 without appreciating the facts that the AO has mentioned the detailed facts in assessment order itself.

2. *On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in accepting the version of assessee filed ' before the Ld. CIT(A) without appreciating the facts that the facts has been discussed in length in assessment order itself.*

3. *The A. O has rightly disallowed the deduction claimed u/s 54 B of the Income Tax Act, 1961 and the facts has not been appreciated by the Ld. CIT (Appeal) while deciding the appeal.*

4. *On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in quashing the order u/s 143(3)/ 147 of the Income Tax Act. 1961 without appreciating the provisions of section 54B of the Income Tax Act, 1961 which are discussed in the assessment order itself and rightly been disallowed.*

5. *On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in quashing the order u/s 143(3)/ 147 of the Income Tax Act. 1961 without appreciating that the case of assessee is not fit to avail exemption in view of the provisions of section 54B of the Income Tax Act, 1961 which are discussed in the assessment order itself and disallowance has rightly been made.*

6. *On the facts and in the circumstances of the case, the Ld. CIT (Appeal) has erred in quashing the order u/s 143(3)/ 147 of the Income Tax Act. 1961 without appreciating that the assessee has not deposited unutilized funds into capital gain scheme which is not invested in purchasing the new asset within stipulated time and has also not provided the proof during the assessment proceedings. The Bank has also not provided any proof in this regard.*

7. *The A. O has rightly rejected the objection to issuance of notice u/s 148 of the Income Tax Act, 1961 vide order dt. 09-12-2014 which has not been appreciated by the Ld. CIT (Appeal) while deciding the appeal.*

8. *The CIT(A) has failed to appreciate that the AO in this case has reopened the case after following the due procedure/ provisions of the Income Tax Act, 1961.*

9. *The Appellant craves leave to add, amend or modify the grounds of appeal subsequently, before the appeal is disposed off."*

4.1 The assessee has also filed cross objections supporting the findings of ld. CIT(A).

5. Heard and perused the record.

6. Ld. DR primarily submitted that Ld. CIT(A) has failed to appreciate the fact that under original assessment u/s 143(3) the issue of allowability of exemption was not duly examined and Ld. CIT(A) has heavily relied Annotated Report of DCIT dated 13.08.2012 which was a mere internal document. Ld. AR however, supported the findings of Ld. CIT(A).

7. Giving thoughtful consideration to the matter on record and submissions it comes up that in the computation of income filed at the time of original assessment available at page no. 100-102 of the paper book, the assessee had given the detail of the capital gains calculation. As the reasons of reopening available on record and also examined from the assessment record made available by the Id. DR, are considered, it is apparent that the failure has been attributed to the assessee for not disclosing fully and truly all material facts. Ld. CIT(A) during the first appellate proceedings observed that the issue has arisen only out of audit objections and in regard to which even there was an office note from the Additional CIT wherein nothing adverse was noticed so requiring no action. It appears that merely on the basis of borrowed satisfaction the reopening was initiated.

8. Ld. CIT(A) has also taken into consideration the fact that even there were rectification proceedings u/s 154 of the Act, initiated by the Ld. AO in which too the information provided by the assessee was duly taken into consideration and no mistake was found in the order dated 23.12.2010.

9. The factual findings given by Ld. CIT(A) could not be disputed by Ld. DR. The fact of payment of Rs. 55 lakhs to Sh. Balwant Singh stand establish as the same was through a banking channels and the bank certificate of deposit of Rs. 2.22 crores in the capital bank account is duly established. Ld. AR has also canvassed before us as to how the amount deposited in the capital gains account was used for purchase of the land.

10. The Bench is of considered opinion that the Annotated Report dated 19.03.2012 of DCIT, Hisar, as made available to us in the paper book at page no. 46 to 49, was not a mere internal document but formed the basis for the reopening and which Ld. CIT(A) has rightly held to be a case of change of

opinion. The grounds raised by Revenue have no substance so **the appeal of Revenue is dismissed and consequently the C.O stand allowed.**

Order pronounced in the open court on 11th October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Date:-11.10.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**