

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE**

**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5108/Del/2019  
Asstt. Year: 2013-14

Om Singh, 67, Gwal Pahari, Gurgaon Haryana Pin 122001 PAN ECPPS5466H	Vs.	ITO, Ward 3(2) Gurgaon
(Appellant)		(Respondent)

ITA No. 5109/Del/2019  
Asstt. Year: 2013-14

Karam Singh Tanwar, H.No.9, Gwal Pahari, Gurgaon Haryana Pin 122001 PAN ACXPT6897R	Vs.	ITO, Ward 2(3) Gurgaon
(Appellant)		(Respondent)

Assessee by:	Ms. Gayatri Gulati, Advocate
Department by:	Ms. Jyoti Verma, Sr. DR
Date of Hearing:	11.09.2023
Date of pronouncement:	11.09.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeals filed by both the assessee arise out of consolidated order dated 12.03.2019 of the Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2013-14.

2. Since the issue is common and the assessment in the case of Shri Om Singh was completed ex-parte, we take up the case of Shri Karam Singh Tanwar as the lead case.

3. The assessee has taken the following grounds of appeal:-

- “1. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) - 1, Gurgaon has erred in sustaining the notice issued u/s 148. It is urged that the assessing officer had reason to suspect and not reason to believe. Reasons for reopening is nothing but copy, paste of the order of the Assessing Officer of Delhi. Hence the 148 is bad in law.*
2. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) 1, Gurgaon has erred in sustaining the Notice u/s 148 when the Notice u/s 143(2) was not issued by the Assessing Officer and on remand, the assessing officer remains quite to the specifically raised query.*
3. *That, on the facts and circumstances of the case, the learned Commissioner of Income tax (Appeals) erred in sustaining the proceedings u/s 148 when despite specially alleging that the reasons for reopening was asked and was never communicated to the Appellant to which effect the CA gave two affidavits of the CA as required by the learned CIT(A) and further specific request by the counsel of the Appellant to record the statement of the CA of the Appellant.*
4. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) 1, Gurgaon has erred in not appreciating the fact that the Assessing Officer did not apply his independent mind in issuing. notice u/s 148.*
5. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) 1, Gurgaon has erred in not appreciating the fact that where there is difference of opinion, 148 cannot be invoked.*
6. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) 1, Gurgaon has erred in sustaining the assessment order dated 12.03.2019 and have failed to appreciate that the appellant is a farmer and was cultivating the land for decades and had sold its agricultural land, which is outside the scope of Section 2(14) and hence cannot be treated as capital asset and hence the same is to be treated as exempt from capital gains.*
7. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals)-1, Gurgaon has failed to appreciate the evidence placed before him as the Sale Deed of the*

*agricultural land sold by the Appellant duly registered with the office of the Registrar, which is a Government Document categorically states that the land sold is 'outside MC area' and have rather opined that 'there is nothing in the Sale Deed to show that the land under reference was situated at a distance of more than 8 kms from the municipal limits'*

8. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) - 1, Gurgaon has further erred in not appreciating the fact there is letter from Patwari and the Tehsildar which said that the land of the appellant is outside the limits of the municipal corporation. The Commissioner of Income tax (Appeals) did not even consider the submission of the Assessee regarding the Google Map image, which also categorically states that the said land is 16 kms from the Municipality limits of Sohna and Gurgaon.*
9. *That, on the facts and in the circumstances of the case, whether the learned Commissioner of Income-tax (Appeals) was justified in not giving weightage to the Tehsildar's/ Sub Registrar's judgment, being the authority on land and stamp duty rates who valued the stamp duty on the sold land as applicable to rural land.*
10. *That, on the facts and circumstances of the case, whether the learned Commissioner of Income- tax was justified in ignoring the notification of CBDT dated 06.01.1994, which still holds good till date.*
11. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) 1, Gurgaon only relied upon one letter received by the Assessing officer, which is reproduced in the Assessment Order and failed to appreciate any other evidence produced before him and also failed to appreciate the notification giving the boundaries of the municipal limits of the area covering Gwal Pahari only notified in 2015.*
12. *That without prejudice to the above grounds that the said land sold is an agricultural land and hence exempt u/s 2(14), in the alternative even when the said land considered to be a capital asset, the learned Commissioner of Income tax (Appeals) despite specifically pointing out failed to take the valuation report to ascertain the cost price or the FMV of the land or/and building in 1981 and even did not accept the valuation report given by the Assessee without giving any reasons thereto.*
13. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals)-1, Gurgaon arbitrarily has taken the FMV on an estimation basis on the basis of the other assessment order passed by the Assessing officer in Delhi, which has now been referred to the DVO for ascertaining the FMV as on 01.04.1981. The assessee craves leave to put on record the report of the DVO as and when received during the pendency of the appeal before the Hon'ble Tribunal.*

14. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) despite providing evidence and claiming exemption u/s 54F erred in observing that no evidence is provided regarding the source of construction expenses incurred, whereas the complete bank account statement and cash withdrawal statement was provided and the Valuation Report by the Govt. Approved Valuer was also provided of the construction done.*
15. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in not allowing exemption to the assessee u/s 54B on the ground that the investment was made in the assessee's wife name ignoring the law laid down in favor of the assessee in umpteen number of cases including:*
  - (i) *(2018) 402 ITR 117 (Rajasthan);*
  - (ii) *CIT-XII vs. Kamal Wahal (2013) 351 ITR 4 (Delhi)*
  - (iii) *CIT vs. Ravinder Kumar Bhat (2012) 342 ITR 38 (Delhi);*
  - (iv) *CIT vs. Gurnam Singh (2008) 170 Taxman 160 (P&H).*
  - (v) *Bant Singh vs. ITO (2015) 67 SOT 205 (Chandigarh Trib)*

*The learned Commissioner of Income tax (Appeals) failed to appreciate the fact that exemption u/s 54B is a beneficial legislation and in case there are two views, then in case of beneficial legislation, the view in favor of the assessee should be taken.*

16. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) despite allowing a sum of Rs. 44,77,500/- still did not give the exemption of the full amount.*
17. *That, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) did not allow exemption u/s 54B on the ground that the area of the land is small and less than half acre and hence the same cannot be used for agricultural purposes without appreciating the fact that the said land is agricultural in nature and the assessee is cultivating the said land and also that the area of land is large enough and is jointly purchased with other relatives and the assessee has claimed exemption only for his share in the said land.*
18. *That, on the facts and in the circumstances of the case, whether the learned Commissioner of Income-tax (Appeals) has erred in not applying the Jurisdictional High Court judgments on determination of cost price.*
19. *That, on the facts and in the circumstances of the case, whether the learned Commissioner of Income-tax (Appeals) has erred in not applying the Jurisdictional High Court judgments on determination of cost price.”*

4. Briefly stated, it is a case of re-assessment. Original return declaring income of Rs. 7,72,140/- for AY 2013-14 filed on 5.8.2013 was processed

under section 143(1) of the Income Tax Act, 1961 (**the “Act”**) on 18.07.2016. Subsequently, the information was received from the office of the ACIT Circle-30 (1), New Delhi that the assessee along with his four brothers had sold property vide two sale deeds dated 12.04.2012 for total consideration of Rs. 37,92,50,000/- out of which the assessee received his share of Rs. 7,58.50,000/- but no capital gain was shown by the assessee in his return for AY 2013-14. Notice under section 148 of the Act was therefore issued on 30.03.2017 after getting approval from JCIT, Range-2, Gurgaon to tax escaped income of Rs. 7,48,54,383/- being long term capital gain arising out of the transfer of said property. In response, the assessee filed written submission dated 27.09.2017 along with copy of return already filed.

5. During the course of re-assessment proceedings, the assessee filed written submission which has been reproduced in the re-assessment order at pages 5-21 thereof. At page 22 of the re-assessment order the Ld. Assessing Officer (**“AO”**) rejected all the contentions raised saying “have not weight at all” and proceeded to complete the re-assessment. The Ld. AO adopted the cost of acquisition at Rs. 9,95,617/- as taken in the case of one of the assessee’s brother and calculated escaped long term capital gain at Rs. 7,48,54,383/-. Accordingly, the Ld. AO completed the re-assessment on total income of Rs. 7,56,26,520/- vide order dated 19.12.2017 under section 147/143(3) of the Act.

6. Aggrieved thereby, the assessee carried the matter in appeal before the Ld. CIT(A). In addition to merits, the re-assessment was challenged, inter alia on the ground that the reasons for re-opening was asked and was never communicated to the assessee; that the re-assessment is bad in law as notice under section 143(2) was never issued to the assessee after notice under section 148 was issued and hence the order itself is a nullity and void-ab-initio. The Ld. CIT(A), however, dismissed the appeal of the assessee by observing that the assessee had not made request before the Ld. AO to

provide reasons recorded by him and that notice under section 143(2) was issued and duly served relying on the report of the Ld. AO and the provisions of section 292BB of the Act. The contentions raised by the assessee on merits were also rejected. The impugned addition was confirmed.

7. Dissatisfied, the assessee is in appeal before the Tribunal.

8. We have heard the Ld. Representative of the parties and perused the records. The Ld. AR emphatically submitted that reasons for re-opening were never provided to the assessee. The Ld. AR and Ld. DR agreed that both the appeals be sent back and restored to the file of the Ld. AO with a direction to him to provide copy of reasons and decide the appeals afresh.

9. In the course of hearing it was emphasised on behalf of the assessee that the reasons recorded in writing under section 148(2) was never provided to the assessee despite specific oral requests to the Ld. AO. The assessee was thus prevented from filing objections thereto, if any and bring the correct facts before the Ld. AO. The re-assessment order has been framed without supply of reasons and thus such order rendered without reasons made available to the assessee is bad in law.

10. On perusal of record, it is noticed that the assessee has taken specific ground before the Ld. CIT(A) that reasons under section 148 was never communicated to the assessee and therefore the consequent proceedings cannot be countenanced. It is further observed from para 4.7 of the first appellate order wherein the written submissions filed in the course of first appellate proceedings are reproduced. The assessee vide its written submissions has pointed out before the Ld. CIT(A) that reasons were demanded orally by the Chartered Accountant of the assessee. To this effect, two affidavits of Chartered Accountants were also placed. The CIT(A) has rejected the plea of the assessee holding such affidavits to be self-serving in

nature. However, despite a specific issue raised the Ld. CIT(A) has not attempted to provide the reasons recorded even at the first appellate stage. The assessment order is also bereft of the reasons recorded for assuming jurisdiction under section 147 of the Act. Under the circumstances the decision relied upon by the Ld. CIT(A) in the case of CIT vs. Safetag International India (P) Ltd. 332 ITR 622 (Del) has no application. In that case the reasons were not supplied as the assessee did not ask for it whereas in the instant case the assessee has made all efforts to procure the reasons recorded which has granted the vital jurisdiction under section 147 of the Act. Neither has the assessment order nor the first appellate order has shown the reasons for reopening the concluded assessment. Under these circumstances, it is evident that the assessee has been deprived of its rights to challenge the assumption of jurisdiction as laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs ITO 259 ITR 19. In the circumstances narrated above, refusal to supply reasons are wholly unwarranted. Consequently, we consider it expedient to set aside the first appellate order and restore the matter back to the file of the Ld. AO. The Ld. AO shall supply the reasons recorded under section 148(2) of the Act and underlying material in support of such reasons to enable the assessee to defend its stance on law of jurisdiction if he so desires. It shall be open to the assessee to raise his objection to such reasons and adduce such evidences as may be considered necessary. The Ld. AO shall dispose off the objections in writing and follow the course thereafter in accordance with law while framing the fresh reassessment order.

11. The decision (supra) in the case of Shri Karam Singh Tanwar in ITA No. 5019/Del/2019 will apply mutatis mutandis to the case of Shri Om Singh as well.

12. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

**Order pronounced in the open court on 11<sup>th</sup> September, 2023.**

**sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 11/09/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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