

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.816/Del/2021
Assessment Year: 2017-18

Sh. Satbir Singh, Vill. Kamashpur, Sonipat, Haryana	Vs.	ITO, Ward-4, Sonipat, Haryana.
PAN :CWSPS0026C		
(Appellant)		(Respondent)

Assessee by	Sh. Rahul Garg, Advocate
Department by	Sh. Manu Chaurasia, Sr. DR

Date of hearing	13.11.2023
Date of pronouncement	13.11.2023

ORDER

This is an appeal by the assessee against order dated 26.04.2021 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2017-18.

2. Learned counsel appearing for the assessee has filed an application seeking adjournment. However, considering the nature of dispute, request for adjournment was declined and appeal was taken up for hearing. Grounds raised by the assessee are as under:

1. *The action of the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre Delhi in passing the order under section 250 of the Income Tax Act, 1961, against the appellant is one sided, unjust, arbitrary and without proper service of notice of hearing upon the appellant and deserves to be quashed or set-aside.*
2. *That the Ld CIT (A) has erred in law and on facts in confirming the action of the Learned Income Tax Officer for determining the long term capital gain on sale of agriculture land at Rs.82031250, in rural belt of Sonipat District and situated away more than 8 K.M. from MC Sonipat. The addition may kindly be deleted.*
3. *That the Ld. CIT (A) has erred in law and on facts in confirming the ad-hoc addition made by the AO which has been concluded by the AO without afforded opportunity of being heard to the appellant and it is important to note that notice dated 19.12.2019 fixing the case for reply on 22.12.2019 has not been received by the appellant. Hence the appellant deprived from submission of documents of investment of sale proceeds of agriculture land in the purchases of agriculture land.*
4. *That the Ld. CIT (A) has erred in law and on facts in confirming the action of the Learned Income Tax Officer for determining the long term capital gain on sale of agriculture land in rural belt of Sonipat District without asking and allowing benefit of agriculture land and house purchased at Rs.82031250 out of sale consideration. The appellant is entitled exemption under section 54 of the I.T. Act. The addition may kindly be deleted.*
5. *That the Learned CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 722500/- as income of the assessee without considering the reply before AO that the income has been shown agriculture income of the appellant without considering the land holding of the appellant. This may kindly be treated agriculture income*

3. As could be seen from the grounds raised, the primary grievance of the assessee is against the disposal of appeal by learned first appellate authority without providing due and reasonable opportunity of being heard.

4. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his

return of income on 01.08.2017 declaring Nil income. Whereas, he disclosed agricultural income of Rs. 8,58,47,500/-. Assessee's case was selected for limited scrutiny to examine large agricultural income and capital gain/loss on sale of property. In course of assessment proceedings, the Assessing Officer called upon the assessee to furnish necessary information/details as well as his submissions on the issues on which case was selected for limited scrutiny. In response, assessee submitted that in the relevant financial year, he has sold 5.5 acres of agricultural land situated at Village Kishora, Sonipat for sale consideration of Rs.8,51,25,000/-. He further submitted that in addition, he had agricultural income of Rs.7,22,500/-. It was submitted by the assessee that neither the capital gain on sale of agricultural land, nor agricultural incomes are taxable, hence, he offered nil income. The Assessing Officer, however, was not convinced with the submissions of the assessee.

5. After obtaining information under section 133(6) of the Act from the office of Sub-Registrar, Sonipat, the Assessing Officer was of the view that the agricultural land sold by the assessee would come within the meaning of capital asset under section 2(14) of the Act, as, the location of land is within the municipal

limit of Sonipat. Thus, he held that the sale consideration received on sale of land is taxable as long term capital gain. Accordingly, he added an amount of Rs. 8,20,31,250/- as long term capital gain. Further, he held that since the assessee did not furnish any evidence to prove the earning of agricultural income, the income declared from such source has to be treated as income from other sources. Accordingly, he added back the agricultural income of Rs.7,22,500/-. Thus, while completing the assessment, he determined the total income at Rs.8,20,31,250/-. The assessee contested the aforesaid additions by filing an appeal before the first appellate authority. However, the appeal filed by the assessee was dismissed.

6. On perusal of the impugned order of the first appellate authority, it is very much clear that proceedings were conducted through faceless mode. In the appellate order, the first appellate authority has stated that two opportunities of hearing were granted to the assessee on 08.01.2021 and 15.01.2021 to prove his claim that the agricultural land sold is outside the municipal limits, which the assessee failed to avail. However, it is not forthcoming from the said order, whether communication of date of hearing to the assessee was through proper and effective mode

and manner. It is further observed, the first date of hearing was granted on 08.01.2021 and only after a week the second date of hearing was granted on 15.01.2021. In our view, the dates of hearing were given in close proximity and without ensuring whether the assessee has sufficient notice of date of hearing or not. Thus, in our view, the assessee has been deprived of adequate opportunity of being heard before deciding the appeal.

7. In view of the aforesaid, we are inclined to set aside the impugned order of learned first appellate authority and restore the issues back to his file for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 13th November, 2023

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT**

Dated: 13th November, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi