

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 4926/DEL/2019 [A.Y. 2014-15]

Smt. Sushila Devi  
House No. 1302,  
New Janta Colony  
NIT, Faridabad

Vs.

The I.T.O  
Ward 1(5)  
Gurgaon

PAN: BUCPD 5115 Q

(Applicant)

(Respondent)

Assessee By : Smt. Sushila Devi, Assessee

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 04.12.2023

Date of Pronouncement : 06.12.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A), Faridabad dated 31.03.2019 pertaining to A.Y. 2014-15.

2. The grievances of the assessee read as under:

"1. That the Ld. AO erred in law and on facts in passing the assessment order making a substantive addition of Rs.30184566/- as long term capital gains and addition of Rs. 30430210/- as agricultural income for rate purposes to the income of the assessee 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 a substantive addition of Rs.30184566/- and addition of Rs. 30430210/- as agricultural income for rate purposes 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 substantive addition of Rs.30184566/- as LTCG by adopting miniscule market value as on 01.04.1981 of land sold by the appeilant 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 in the absence of any award (compensation on acquisition by Govt.) in respect of agricultural land in village where the appellant's Land was located.

4. That the Ld. AO erred in law and on facts in making and Ld. CIT(A) in confirming the addition of Rs.30184566/- as LTCG by adopting market value of land under consideration as on 01.04.1981 on the basis of non comparable instances of Awards (compensation on acquisition by Govt.) in respect of lands located in distant villages whereas the land sold by the appellant was located in the Village of Daulatpur, Teh: Kapashera, Distt: South West Delhi and was better located. 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. 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.

6. *Without prejudice to above, the Ld. AO and CIT(A) erred in law and on facts in not considering the case of the assessee for entitlement to deduction u/s 54 of the Income Tax Act.*

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

3. The peculiar facts of the case are that the assessee is an illiterate villager, who appeared in person before us and tried to explain the impugned facts, from which we gather that the assessee

along with other family members, inherited some agricultural land in village Daulatpur, New Delhi, in which the assessee had 1/5<sup>th</sup> share. The total land area was 16 Bigas, 7 Biswas and 10 Biswani which was sold for Rs. 15,21,51,042/- by five family members.

4. Return of the assessee was selected for scrutiny through CASS and on finding that the said agricultural land is situated within the limits of Municipal Corporation Delhi, sale is exigible to capital gain tax and accordingly, the assessee was asked to furnish documentary evidence for the value of land as on 01.04.1981, which has been sold on 11.09.2013.

5. The illiterate lady could not explain nor attend the proceedings. The Assessing Officer computed the capital gains in respect of the entire land holding and added 1/5<sup>th</sup> share of the assessee amounting to Rs. 3,01,84,566/- along with interest earned on savings account Rs. 29,907/-.

6. Appeal was filed before the Id. CIT(A) but without any success.

7. We have carefully considered the orders of the authorities below and tried our best to understand from the assessee herself who was present before us. What we understand is that the family sold the impugned land. Being the daughter of the family, the assessee also received 1/5<sup>th</sup> share, but out of sheer love and affection, she gave her share to her brother Shri Shamsheer. The fact of payment of Rs. 2.49 crores to Shri Shamsheer has also been mentioned by the Assessing Officer in the assessment order.

8. Rs. 47 lakhs was given to Anshu. The lady says that her brother has since deceased and, therefore, she has no evidence with her, as her sister-in-law does not allow her to enter the house. Although the Assessing Officer has mentioned the names of all the co-owners and has computed the capital gains on the total land holding and attributed 1/5<sup>th</sup> share to the assessee, but nowhere he has mentioned the status of assessment in the hands of the co-owners.

9. The appellant lady before us stated that her brother has purchased some agricultural land out of the consideration given by her but showed her inability to furnish documents as the same are available with her sister-in-law who does not allow her to enter into the house.

10. On such peculiar facts of the case, bank account of the assessee has been freezed by the officers, making her life more miserable. We do not want the illiterate lady to suffer in the hands of the revenue but at the same time we also feel helpless as we cannot do anything for this illiterate lady.

11. In the interest of justice and humanity, we restore the issue to the file of the Assessing Officer. The Assessing Officer is directed to verify the status of the assessment/appeal of the co-owners as mentioned by him in his assessment order. The Assessing Officer is also directed to verify from the sister in law [wife of the deceased brother of the assessee] whether the deceased had purchased agricultural land out of consideration received from the assessee, Smt. Sushila Devi.

12. The Assessing Officer must exercise all his powers to get information from that lady and if he finds that the brother had purchased agricultural land from the sale consideration given by the assessee, then allow claim of exemption u/s 54 of the Act and decide the issue fresh as per provisions of law and as far as possible/practical, be sympathetic to the assesses.

13. In the result the appeal of the assessee in ITA No. 4926/DEL/2019 is allowed for statistical purposes.

The order is pronounced in the open court on 06.12.2023.

Sd/-

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 06<sup>th</sup> December, 2023.

VL/

Copy forwarded to:

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

Asst. 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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	