

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

**BEFORE,
SHRI G. S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.372/Del/2020
(ASSESSMENT YEAR 2010-11)**

Sh. Ravi Shishodia L/H of Sh. Nannu C/o Sanjeev Anand & Associates 77, Navyug Market Ghaziabad-201001 PAN-AYAPN3411G	Vs.	Income Tax Officer Ward-2(5) Ghaziabad
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Amit Katoch, Sr. DR
Date of Hearing	18/03/2024
Date of Pronouncement	21/05/2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Ghaziabad [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.103/2017-18/Gzb, dated 30/09/2019 against the order passed by Income Tax Officer, Ward-2(5), Ghaziabad (hereinafter referred to as the

'Ld. AO') u/s 147/144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 30/09/2019.

2. Heard and perused the record. At the time of hearing, none appeared for the assessee and the record shows that notices have been issued repeatedly including by RPAD and Email. The Postal Department has reported that assessee does not reside at the given address so no more opportunity is justified.

3. The Ld. DR was heard.

4. The brief facts of the case are that the notice u/s 148 was issued with the prior approval of Principal Commissioner of Income Tax, Ghaziabad in this case on 30/03/2016 on the ground that, as per AIR information available assessee has sold immovable property for Rs.1,42,55,199/- registered at SRO-4, Ghaziabad during the F.Y. 2009-10 relevant to the A.Y.2010-11. In response to notice Assessing Officer found that in Financial Year 2009-10 immovable property was sold for a sum of Rs.1,42,55,199/- which was not disclosed the same and was added in the income of the assessee by complete assessment u/s 144 of the Act.

5. Aggrieved by the order of the Assessing Officer, the appellant assessee preferred appeal before CIT(A) with the grounds that the assessment order was without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax. The Income Tax Officer erred in facts and law in completing assessment u/s 144/147 of the I.T. Act while issuing notice u/ 148 which was never served on the assessee. Assessment Order was against law. The Income Tax Officer erred in calculating entire sale consideration as short term capital gain on the sale of ancestral agricultural land without allowing statutory deductions/exemptions.

6. The appellant assessee preferred written submission dated 16/01/2019 and 23/09/2021 *inter alia* mentioning that Assessing Officer assumed jurisdiction u/s 147 and reopened assessment even though statutory conditions were not met. It was submitted by the appellant that he sold his ancestral agricultural land bearing Khata No.905, Khasra No.2623 measuring 0.6410 hectares at Village Dasna, Ghaziabad vide sale deed dated 23/02/2010 for sale consideration of Rs.1,10,00,000/- however the stamp duty value

was 1,42,55,199/- (Page no.11-52 of the paper Book). The appellant submits that the sale proceeds of agricultural land was invested for purchase of agricultural land and residential house property. The appellant has purchased agricultural land of Rs.43,55,150/- through 5 registered purchase deeds and is thus entitled for exemption under section 54B of the Income Tax Act, 1961. The appellant has invested a sum of Rs.45,33,000/- for construction of new residential house located at house no.1288, ward no.12, village Bhoorgarhi, Dasna Ghaziabad and is entitled for exemption under section 54F of the Income Tax Act. The copy of report of approval valuer was enclosed. The appellant assessee prayed for admission of additional evidence and allowing the appeal as the agricultural sold was not capital asset within the meaning of section 54B and 54F of the Act. The appellant assessee filed application u/s 46A along with copy of sale deed and purchase deeds in respect of land and property.

7. On appreciating the order of the Ld. CIT(A) it comes up that the additional evidences which were filed by the assessee to establish the fact that agricultural land at the time of sale was not a

capital assets and that otherwise the sale consideration was invested in accordance with provisions of section 54F was rejected for the reason that the same were not placed before the Assessing Officer. At the same time CIT(A) has directed the Assessing Officer to compute the capital gain after giving benefit of costs of acquisition/index costs of acquisition. We are of considered view that same certainly would require taking into consideration the evidences which were filed as additional evidences by invoking provisions of Rule 46A. We are of considered view, that CIT(A) has fallen in error in not admitting the additional evidence and the additional grounds by relying on the decision of the Hon'ble Supreme Court judgment in *Goetze (India) Ltd. vs. CIT [1996] 284 ITR 323 (SC)*. There is no justification to deny the additional ground and additional evidences for mere failure to take the same before the Assessing Officer. The settled proposition of law being that powers of CIT(A) are co-terminus to Assessing Officer. There is no prohibition under law that as CIT(A) cannot accept additional claim without assessee revising the return. Accordingly, we considered it

to be an appropriate case to allow the appeal for statistical purposes only.

8. Accordingly, the appeal is allowed for statistical purposes and CIT(A) is directed to admit the additional claim and additional evidences of the assessee and to pass an order afresh after giving an opportunity of hearing to the appellant.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 21/05/2024.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Dated: 21/05/2024

PK/Ps

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