

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

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

ITA No.1071/Del/2018
Assessment Year: 2009-10

Ramesh Singh L/H of Late Shri Pitam Singh C/o Shri Sandeep Sapra, Advocate, C-763, New Friends Colony, New Delhi PAN No.GMGPS9615M	Vs.	ITO Ward-2 (1) Ghaziabad
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rakesh Gupta, Advocate Sh. Somil Agarwal, Advocate
Respondent by	Sh. P.N. Baranwal, CIT DR

Date of hearing:	28/03/2024
Date of Pronouncement:	05/06/2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has filed the present appeal against the order dated 05.02.2017 under Section 250 of the Income Tax Act, 1961 (hereinafter referred as the "Act") passed by Commissioner of Income Tax (Appeals)-2, Noida (here in after referred as 'CIT(A)') arising out of Assessment order passed by the ITO, Ward-2(1), Ghaziabad

(hereinafter referred as the "AO") under Section 147/144 dated 20.12.2016.

2. Heard and perused the record. On the basis of AIR information that the assessee late Peetam Singh had sold agricultural land worth Rs.15 crores. The assessment was opened under Section 147 and as no return was filed ex-parte assessment under Section 144 of the Act was passed by making a long term capital gain addition of Rs.14,76,43,005/- which is sustained by the CIT(A) and challenged in this appeal.

3. At the time of hearing Ld. AR had pointed out that apart from raising issues grounds questioning the assessment order on merits, grounds have been raised on the basis that the impugned assessment order is not legally sustainable as notice under Section 148 of the Act was not issued against all the legal heirs and in the impugned assessment order and demand notice under Section 156 of the Act, the names of all legal heirs were not mentioned. In the submissions made to CIT(A), it was specifically pleaded by submission dated 14.11.2017 available at page No.8 -10 of the paper book that during assessment the AO had issued notice u/s. 133 (6) of the Act seeking information about all legal heirs of late Peetam Singh but without waiting for require assessment was completed.

4. In the course of hearing additional evidences have also been filed under Rule 29 of the Income Tax Appellate Tribunal Rules 1963

which touch the merits of the additions establishing that the agricultural land sold by assessee was situated beyond 11 Kms from the limit nearest municipality and accordingly the land was not capital asset.

5. During hearing, the Bench had also directed the Ld. AR to ensure the filing of affidavit of one of the legal heirs of late Peetam Singh, who is contesting the appeal, containing details of all legal heirs, accordingly an affidavit is filed by Ramesh S/o Sh. Peetam Singh deposing that Peetam Singh expired on 12.03.2009 and as on 28.03.2016 there are following legal heirs :-

- a. Smt. Urmila Devi W/o Late Sh. Vijay Pal Singh (Elder son of Sh. Pitam Singh, expired in 1999) and
Sh. Vikas Kumar S/o Late Sh. Vijay Pal Singh (Elder son of Sh. Peetam Singh expired in 1999)
- b. Ramesh S/o Late Sh. Pitam Singh; and
- c. Smt. Santosh D/o late Sh. Peetam Singh.

6. After the Ld. CIT(A) has refused to show intelligence to the objection of not impleading all legal heirs on the basis that once legal heir in whose name the proceedings was initiated did not raise objection before the AO and no other legal heir had come forward with such plea, assessment order cannot be questioned. The order of the CIT(A) also shows that during the appellate proceedings also complete details of rest of legal heirs were called but not provided

and thus, relying on the Judgment of Hon'ble Supreme Court in the case of CIT Vs. Jayprakash Singh (1996) 219 ITR 737 (SC), this objection was rejected and the appeal was dismissed without entering on merits.

7. We are of the considered view that plea that due to lack of impleading all the legal heirs, the case of deceased assessee was not properly represented for which now additional evidences are also filed before us claiming that the land which deceased had sold was not a capital asset, require that the ends of justice will be met by giving all the legal heirs an opportunity to contest on merits.

8. In the light of aforesaid discussion we admit the additional evidences and consider it appropriate case to set aside the assessment and restore back the issue on merits to the files of the AO, who shall give further opportunity of hearing to all the legal heirs and pass an order afresh.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05.06.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:-05.06.2024