

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.2436/DEL/2023  
[Assessment Year: 2012-13]**

Amit Yadav, 39A, Jawala Heri Market, Paschim Vihar, New Delhi-110063	Vs	CIT Appeals Faceless Centre, Govt. of India, Min. Of Finance, I.T. Department, NFAC, Delhi
<b>PAN-AEGPY6302M</b>		
Assessee		Revenue

Assessee by	Sh. Nitin Gulati, Adv. & Ms. Reena Gandhi, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

<b>Date of Hearing</b>	<b>09.05.2024</b>
<b>Date of Pronouncement</b>	<b>07.06.2024</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 05.07.2023 pertaining to Assessment Year 2012-13.

2. The grounds of appeal raised by the assessee reads as under:-

*“1. That the order is null & void and against the principal of natural justice.*

*2. That the assessee has filed return of income on 17.11.2019 declaring a income of Rs. 14,340/-.*

*3. That learned C.I.T. Appeal has not gone into the facts and has passed the order as it was passed by the learned A.O u/s.144 without giving reasonable opportunity.*

*4. That the land was never converted to residential or commercial space.*

*5. That the assessee reserves this right to resort any other ground at the time of hearing of appeal.”*

2.1. All the above grounds are against the addition of Rs.61,37,250/- under the head Long Term Capital Gains on account of sale of an immovable property.

3. Brief facts of the case: In this case, the assessment order dated 13.11.2019 for AY 2012-13 was passed u/s 147/144 making an addition of Rs.61,37,250/- under the head Long Term Capital Gains (in short 'LTCG') in respect of a sale of an immovable property. The AO noted that during the year as per information available with the Department, the assessee had sold an immovable property for a consideration of Rs.29,51,000/- in FY 2011-12 on which stamp duty was paid on Circle rate of Rs.1,41,71,024/-. The AO on this basis, recorded reasons that income had escaped assessment on the LTCG on this transaction and issued notice u/s 148 of the Act dated 29.03.2019. Thereafter, the AO issued further notices as stated on page -1 of the assessment order, to which, there was no compliance. The AO noted that the assessee had 50% share in the said immovable property and that out a part of the land, 1700 sq. mts. was converted to residential use and also on which commercial shops were made as appearing in the photograph

of the site available on the registered deed. The AO further noted that no evidence of agricultural activity on this land was filed by the assessee. According to the AO, the exemption granted by the Act is for benefit of the farmers or persons engaged in the agricultural activity and thus section 2(14) of the Act removes agricultural land from the purview of definition of capital asset. In view of these findings, the AO was of the view that the land had been converted into residential land and on which commercial shops had been constructed and therefore the assessee was not entitled to claim the said land as agricultural land and exempted as capital asset as per section 2(14) of the Act. Accordingly, a final show-cause notice was issued on 11.10.2019 to the assessee on the above lines proposing to tax an amount of Rs.61,37,250/- as per the following calculation.

Date of purchase of property	09.10.1998 {CII-351}
Date of sale of property	11.04.2011 {CII-785}
Total cost of purchase	Rs.8,48,000/-
50% share of Sh. Amit Kumar Yadav	Rs.4,24,000/-
<b>Cost after indexation</b>	<b>Rs.4,24,000 x (785/351) = Rs.9,48,262</b>
<b>Sale consideration on which stamp duty paid as per circle rate: Rs.70,85,512/- [being 50% of Rs.1,41,71,024]</b>	
<b>Long Term Capital Gain</b>	<b>Rs.61,37,250/- (Rs.70,85,512-Rs.9,48,262/-)</b>

3.1. As there was no response from the assessee, the assessment was completed making addition of Rs.61,37,250/- under the head LTCG.

4. Aggrieved with the order, the assessee filed an appeal before the NFAC/Id. CIT(A). During the appellate proceedings also, none appeared on behalf of the assessee, however, a written submission was filed. In the written submission, it was submitted that the agricultural land was not a capital asset u/s 2(14) of the Act and in support, filed a copy of Khatoni dated 26.03.2015 issued by the Patwari of Kotpuli, Rajasthan. In their submission, the assessee submitted that he had applied for conversion of 1700 sq. mts. as residential land but the same was not executed and the land is still an agricultural land. The NFAC did not agree with this submission of the assessee on the ground that from the copy of the sale deed submitted by the assessee, it is observed that the observation and decision of the AO is correct in as much the sale deed consists of having the residential usable area and the same was also registered. Thereafter, the relevant extract of the sale deed was reproduced by NFAC in its order on pages 11 to 15. The NFAC held that in view of the above findings as evident in the registered deed, there was no evidence and logic in support of assessee's claim of AO's order being null and void and against the principle of natural justice. The NFAC further held that rather the submission of the assessee vis-à-vis the grounds of appeal was ambiguous and baseless in as much as the assessee failed to make necessary compliance during the assessment proceedings despite availing multiple opportunities of hearing mentioned in the assessment order. The NFAC, by an order

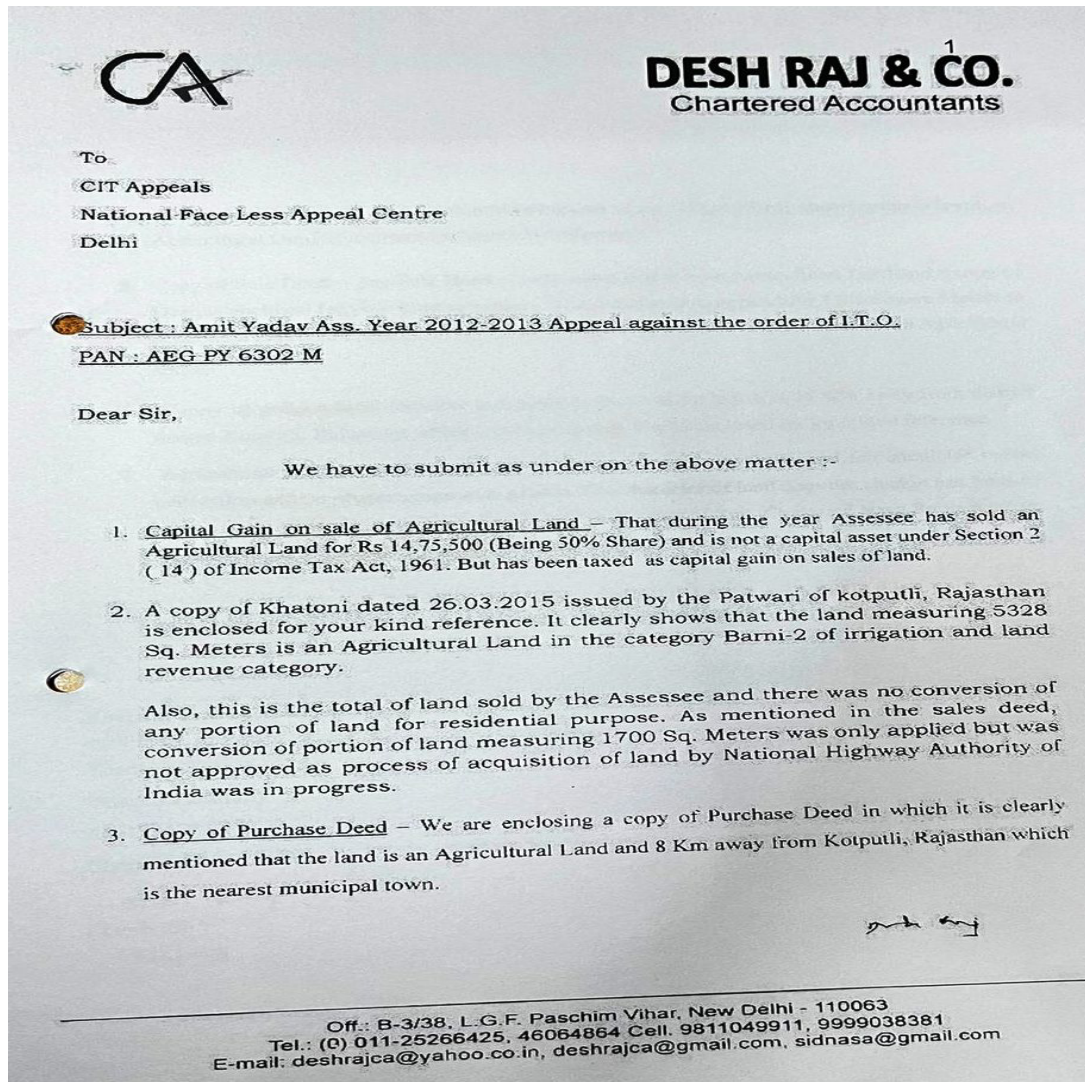
dated 05.07.2023, agreeing with the findings of the AO, dismissed the appeal of the assessee.

5. Against the order of the NFAC/Ld. CIT(A), the assessee is in appeal before us.

6. The ld. AR filed a written submission before us along with a paper book. In the written submission, it was submitted that the finding of the AO and confirmed by the NFAC that the said agricultural land was converted into residential was only applied for, which is clearly evitable from the sale deed submitted in paper book at page-13. It was submitted that the decision of the AO was upheld by the NFAC due to wrong interpretation of facts assuming that out of 5300 sq. mts., 1700 sq. mts. was converted into residential, whereas, it is clearly written in the deed as the said portion is 'प्रयोजनार्थ'. It was further submitted that the NFAC neither commented about the Jamabandi receipt produced and patwari records, according to which the said land holds nature of agricultural land even after three years of sale. It was submitted that NFAC never considered their submission and upheld what was observed by the AO. It was also stated that the NFAC did not consider the provisions of section 2(14) of the Act, which defines a capital asset and it could be seen from the orders of the AO that he was nowhere covered u/s 2(14) of the Act and relied upon following case laws:-

- i. N. Jayamurgan v. Dy. CIT [2016] 70 taxmann.com 24 (Chennai Trib.)
- ii. M.S. Srinivasa Naicker vs ITO [2008] 169 Taxman 255 (Madras)
- iii. ITO vs Nathamuni Krishaswami Balaji [2017] 85 taxmann.com 201 (Chennai-Tib.)
- iv. Smt. Chalasani Naga vs ITO [2017] 79 taxmann.com 104 (Visakhapatnam-Trib.)

6.1. In this regard, the written submission dated 09.06.2023 filed by the assessee before the Ld. CIT(A) is reproduced as under:-



4. A copy of land records confirmation from Patwari of the village clearly showing that it is still an Agricultural Land is enclosed for your kind reference.
5. Copy of Sale Deed – The Sale Deed clearly states that it is an Agricultural Land and a copy of Deed is enclosed for your kind reference. The Assessee has applied for 1700 Square Meters to residential land on the sale deed. However, it was not executed and the land is still an Agricultural Land.
6. A copy of geographical location and survey report stating that it is 11 Km away from district named Kotpulli, Rajasthan which is a municipality city is enclosed for your kind reference.
7. Agricultural Activities –The agricultural land sold was not fertile and too small for proper cultivation and no proper crops were grown. The character of land does not change just because of non-cultivation. This has been clearly held in the case of Smt. Chalasani Naga Ratna Kumari, Visakhapatnam Vs. ITO, Ward-3(2), Visakhapatnam.
8. As per the revenue records, this is still an agriculture land and doesn't fall in the definition of the capital asset and hence the sale proceeds are not subject to tax.


Keeping in view of the above points, we request your good self to consider our reply and delete the additions.

Thanking You

Yours's Faithfully

For Desh Raj & Co.

Chartered Accountants

  
(Desh Raj)

9/6/23

6.2. It was further submitted that the order passed by the AO was ex-parte in spite of the request by the assessee seeking seven days

time to make its submissions. It was also submitted that the last date of passing the assessment order was 31.12.2019 and no proper time was given by the AO. It was also stated that in the last notice, the AO gave only three days time to make the submissions and placed the said show cause notice dated 08.11.2019 on pages 23 of the paper book. In this regard, the AO has placed the adjournment letter filed to the show-cause notice dated 06.11.2019 on page 22 of the paper book, which is reproduced as under:-

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### View Response to Notice ID 100018972664

Proceeding Name  
Assessment Proceeding u/s 147  
PAN  
AEGPY6302M  
Assessee Name  
AMIT YADAV  
Financial Year  
2011-12

Assessment Year  
2012-13  
Document reference ID  
ITBA/AST/F/147(SCN)/2019-20/1019614256(1)  
Notice Section  
147  
Served on  
-

Description  
[ITBA]Show Cause Notice for Proceedings u/s 147of Income Tax Act 1961.

Responses Add New Response

Response/Remarks  
Respected Sir, I have received the show cause notice today and I would like to inform you that I am in the process of compiling the details to be submitted for completion of assessment. I request you to kindly allow me 7 days time for submitting all the required details to your good self. Yours Faithfully, Amit Yadav

Response Submitted On  
06-Nov-2019  
Response Type  
Partial  
Response Filed By  
Self

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6.3 However, the same was rejected by the AO, which is placed on page-24 of the paper book by stating as under:-

*“Please refer to your request for adjournment. At this juncture is not possible to allow you much time. Therefore, you are requested to file your complete submissions including ITR by 11.11.2019.”*

7. The Id. DR strongly relied upon the orders of the authorities below.

8. We have heard both the parties and perused the records material available on record. On perusal of the materials placed on record, it is seen that the AO was not justified in refusing the adjournment sought by the assessee vide adjournment letter as reproduced above in the given facts of the case and thus reasonable opportunity of being heard was denied to the assessee. Thereafter, the NFAC also failed to appreciate the other evidences in the form of Khatauni receipt and Patwari receipt submitted before the NFAC as certified in the paper book by the assessee to have been filed before the NFAC and also did not deal with the submissions of the assessee that the conversion of 1700 sq. mts. Out of 5300 sq. mts. was proposed for ‘प्रयोजनार्थ’ as mentioned in the sale deed and the said land was still an agricultural land even after three years of the sale deed. Further, the NFAC did not deal with the case laws filed in the written submission dated 09.06.2023 before the NFAC claiming that the said land was not a capital asset u/s 2(14) of the Act. Therefore, the order of the NFAC also cannot be sustained in as much as the submissions filed by the assessee including the vital fact about the conversion only being proposed was not considered by him. As can be seen that the assessee was denied a reasonable opportunity to present his

case before the AO. Considering the overall fact that proper opportunity of being heard was not provided by the AO and the learned CIT(A) dismissed the assessee's appeal without considering the submissions of the assessee in entirety, in order to subserve the interests of natural justice and to provide an opportunity to the assessee to effectively represent his case, the order of learned CIT(A) is set aside and the matter is restored to the file of AO for framing of assessment de-novo after providing reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 07<sup>th</sup> June, 2024.

**Sd/-**  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated** 07.06.2024.

*SJK*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi