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

BEFORE SH. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.3030/Del/2017
Assessment Year: 2010-11

Shri Kishan S/o Late Jagmal Singh, H. No.112, Near Shiv Mandir, Village & P.O. Nakhrola, Tehsil, Manesar Distt. Gurgaon – 122001 PAN No. AAACP0165G	**Vs**	**Income Tax Officer Ward- 4 (2) Gurgaon**
(APPELLANT)		**(RESPONDENT)**

ITA No.3029/Del/2017
Assessment Year: 2010-11

Sh. Manoj Kumar S/o Late Sh. Jagdish Chander Village P & O. Nakhrola Tehsil Manesar Gurgaon-122001 PAN No. ATVPM1063B	**Vs**	**Income Tax Officer Ward-2 (4) Gurgaon**
(APPELLANT)		**(RESPONDENT)**

Appellants by	**Sh. K. Sampath, Advocate** **Sh. V. Rajakumar, Advocate**
Respondent by	**Ms. Parul Singh, Sr DR**

Date of hearing:	20/06/2024
Date of Pronouncement:	22/07/2024

ORDER

PER SUDHIR KUMAR, JM:

ITA No.3030/Del/2017 and ITA No. 3029/Del/2017 are filed by the different assessee's are preferred against the order passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred as 'CIT(A)') dated 03.03.2017 pertaining to A.Y. 2010-11 under section 143(3)/147 arises out of the assessment order passed by the Assessing Officer, Ward-2(4), Gurgaon under Section 147/143(3) of the IT Act, 1961 (herein after referred as the "Act")

2. Since common grievance is involved in both these appeals, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Aggrieved by the order of the Ld CIT(A), the assessee's are in appeal before us by raising the following grounds of appeal:-

ITA No.3029/Del/2017 (A.Y.2010-11)

That on the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in confirming the following actions of the Assessing Officer:

1. initiating proceedings u/s 147/148 of the Income-tax Act, 1961 against the Appellant without any reasonable cause;

2. in sustaining and maintaining the proceedings u/s 147/148 of the act in the subject year:

3. in completing the assessment on the basis of such wrong action u/s 143(3) at the Act:

4. in computing the income u/s 143(3) of the Act at Rs.1,93,97,490/ against the returned income of Rs.1,59,490/-;

5. in computing Long Term Capital Gain on transfer of agricultural land done in an earlier year but charged during the year by assuming the cost of acquisition and indexation cost without any material before him:

6. confirming the computation of Long Term Capital Gain and additions made to the returned income to the extent of Rs.1,93,42,271/-;

7. Not allowing claim for deduction u/s. 54B and 54F of the IT Act, 1961;

8. Charging interest U/s.234A and 234B of the Income-tax Act, 1961.

ITA No.3030/Del/2017 (A.Y.2010-11)

That on the facts and in the circumstances of the case and in love the LoC JA erred in confirming the following actions of the Assessing Officer

1. *initiating proceedings u/s 147/148 of the income-tax Act, 1961 against the Appellant without any reasonable cause:*

2 in sustaining and maintaining the proceedings u/s 147/145 of the act in the subject year,

3 in completing the assessment on the basis of such wrong action u/s 143(3) of the Act:

4. in computing the income u/s 143/3) of the Act at Rs. 1,93,97,490/- against the returned income of Rs. 1,59,490/-

5. in computing Long Term Capital Gain on transfer of agricultural land done in an earlier year but charged during the year by assuming the cost of acquisition and indexation cost without any material before him:

6. confirming the computation of Long Term Capital Gain and additions made to the returned income to the extent of Rs. 1.92.38.329/-

7. Not allowing claim for deduction u/s 548 & 54F of the 1.T. Act, 1961;

8. Charging interest u/s 234A and 2348 of the Income-tax Act, 1961.

All the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

4. Brief facts of the case are that assessees along with their brothers, family members and two other co-owners had entered a collaboration agreement dated 14-12-2006 with M/s Bestech India Private Ltd Gurgaon for the development and sale of 26

canals and 17 marias of land situated in Nakhrola Haryana. As per the agreement 35% of total saleable area of constructed property was come to the co-owners of land and 65% of saleable area were to go to the developer. The land owners had right to terminate the collaboration agreement if license was not obtained by the developer in time. The land owners could also terminate the agreement if the project work was delayed and get additional penal compensation from the developer. Possession of land was given only for the limited purposes for obtaining necessary approvals. All the co-owners had jointly sold their lands on 17-11-2009 for a total consideration of Rs.9,66,80000/- to Bestech India private Ltd. Appellant Shri Krishna received Rs.1,93,36,000/-and appellant Manoj Kumar received Rs.1,94,40,422/-for consideration of the land. The assessees have not declared their income in this transaction. On the basis of received information the AO has applied his mind and looked into the records and found that the assessee has not disclosed his income. The AO has initiated the proceedings u/s 147 of the Act and after recording the reasons to believe that income on this transaction has not been disclosed and escaped assessment. Thereafter the notice u/s 148 of the Act was issued on 31-03-2015 to the assessee. In the response of the notice assessees have filed a belated return of income on 23-06-2015 and 29-06-2015 declaring income of

Rs.1,59,450/- and Rs.1,59,394/- separately. The AO held that appellants had earned the business profit of Rs. 1,53,08,500/- and 1,54,12,922/-and longterm gains of Rs.3929829/- each from this transaction. Aggrieved by the order of the AO the assessees have filed the appeals before the Ld CIT(A). The Ld CIT(A) vide order dated 30-03-2017 partly allowed the appeals filed by assessees and directed the AO to assess the income as Long Term Capital Gain instead of under the head of business income. Aggrieved the order of the Ld CIT(A) the appellants filed the appeals before us

5. Before us, at the outset Ld. DR supported the order of the AO and submitted that required details were furnished by the assessee in compliance of the notice. The AO, therefore, for the reasons noted in the order made the additions. The Ld. CIT(A) thereafter for the reasons noted in the order has partly allowed the appeal. Therefore, he submitted that the order of CIT(A) be upheld.

6. We have heard the parties and perused the material available on the record.

7. The Ld. Counsel for both the assessee side has submitted that the AO has recorded the belief for the escapement of income, in a hurry manner without making any enquiry. He has

further submitted that AO Gurugram did not have the jurisdiction to make the assessment of both the assessee. In support of his contention, he has filed a Paper book containing pages 1 to 116 in which he has attached the copy of the submission before CIT(A), copy of letter from CIT(A) dated 18-11-2016, copy of the reply of the letter dated 02-12-2016, copy of application under rule 46A of the Income Tax rules along with copy of sale deed and valuation report, copy of remand report, copy of rejoinder to the remand report, copy of letter from AO dated 21-02-2017, copy of reply along with distance certificate, copy of notice u/s 148 0f the Act, copy of the reasons recorded, copy of the reply of the notice u/s 148 and 142(1) of the Act, copy of the notice u/s142(1) of the Act, copy of income tax return, copy of family member chart and copy of ancestral evidence.

8. The Ld DR has submitted that assessee's have not challenged the jurisdiction of the AO now they could not raise this issue. The reliance has placed on the judgment of Abhishek Jain vs ITO (2018)94 Taxmann.com 355. In the matter Hon'ble Delhi High Court held that Jurisdiction would depend upon the place where the person carries on the business or profession or the areas in which he is residing. The Section 124(3) provides that no person shall be entitled to call in question the

jurisdiction of an Assessing Officer after the expiry of the time allowed by notice u/s 148 of the Act. In the instant case the income arose on the sale of rights in land which was situated in the revenue village Nakhrola, Tehsil Manesar District Gurugram. The assessee sold his rights in proposed space to the developer by registered sale deed dated 17-11-2009. The assessee's have not challenged the jurisdiction of the AO within time allowed u/s. 124(3) of the Act.

9. The AO Gurugram has a jurisdiction to assess the income of the assessees. Secondly jurisdiction of the AO was never challenged by the assessees after receipt the notice u/s 148 of the Act. The AO was issued the notice to the assessees to file the return of income u/s 148 of the Act but assessees have not filed return of income within time. The AO again issued the notice u/s.142(1) of the Act but no compliance was made by assessees. Later on the proceedings were attended by the Ld AR but he has not raised the jurisdictional point before the AO.

10. Perusal of the order of the Ld.CIT(A) reveals that the AO verified the information with the assessment records and noted that no income from these transactions had been shown by the appellants. The AO had applied his mind. At the time of issue notice u/s 148 of the Act the AO had prima-facia reason to

believe that the income in the case of the appellants had escaped assessment.

11. The Ld. Counsel for both the assessee has submitted that the property was belonged the HUF and notice was issued to the individual. The agriculture land had been inherited by the appellant from his predecessors to support the contention; the assessee has filed the paper book pages (103 &105-116). The notice was not issued in the correct status of the assessees.

12. Reliance has placed on the following judicial decisions as under :-

1. ***In the case of Apex Court in Y. Narayana Chetty Vs. ITO, Nellore (1959) 35 ITR 388 as under :-***

"The argument is that the service of the requisite notice on the assessee is a condition precedent to the validity of any reassessment made under section 34; and if a valid notice is not issued as required, the proceedings taken by the Income-tax Officer in pursuance of an invalid notice and consequent orders of reassessment passed by him would be void and inoperative. In our opinion, this contention is well founded. The notice prescribed by section 34 cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the Income-tax Officer would be justified in taking proceedings against him. If no notice is issued or if the

notice issued is shown to be invalid, then the validity of the proceedings taken by the Income-tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."

2. The Hon'ble Delhi High Court in Ravinder Narain Vs. ITO (1974) 96 ITR 612 observed as under :-

"The notices were addressed to the Individuals and although the names of all the persons were mentioned, and copies were served on each one of them, yet there was nothing to indicate that there were intended to relate to the assessee as an association of persons which was distinct from the Individual parties. If the Income-tax Officer had intended to proceed against the association of persons he ought to have made it plain that he proposed to assess the association of persons formed by the nine or ten parties and he would have issued the notice addressed to its principal officer instead of to all the nine or ten parties and would also have indicated its business activity. Since the notices were not directed against any association of persons, the Income-tax Officer could not proceed to assess any association of persons in pursuance of that notice."

3. In the case of Andhra Pradesh High Court in CIT vs. B Ranga Reddy {1979} 118 ITR 897 held as under :-

"Now, the facts above stated that would disclose that the status of the assessee is inextricably mixed up with the question as to who is the assessee. We have already noted that the joint family was never an assessee and it was only the Karta who was all the time the assessee in his individual capacity. Therefore, when s. 148 notice of July 30, 1967 was given to the assessee simply, without clarifying that it was with reference to the joint family, that notice cannot be taken advantage of to start proceedings under s. 148 against the Hindu Joint family."

4. In the case of Allahabad High Court in CIT vs. Ramdas Devakinandan Prasad (2005) 277 ITR 195. held as under :-

"The Supreme Court in the case of CIT v. K. Adinarayan Murty [1967] 65 ITR 607 has considered a parallel controversy and has observed as follows :

"Under the scheme of the Income-tax Act the 'individual' and the 'Hindu' undivided family' are treated as separate units of assessment and if a notice under section 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu' undivided family', the notice is illegal and all the proceedings taken under that notice are ultra vires and without jurisdiction."

13. The property was inherited by the appellants from his predecessors but the land was sold out in individual capacity by all the owners of the land. The Karta of the HUF has the power to transfer the property of the HUF, but in the present case the sale deed was executed by all the family members jointly and not by the manager of the HUF so the notice was correctly issued by the AO to the assessees in the individual capacity. This argument of the Ld. Counsel that property was HUF property is not tenable.

14. The Ld. Counsel for both the assessee has submitted that the land sold was agricultural land and was situated outside the limits of the municipal area and the possession had been handed over to the M/s Bestech India Pvt Ltd. The land in question comes under the definition of the agricultural land u/s section 2(14)(iii)(a) of the Act. He has further submitted that the appellants took the consideration, from the M/s. Bestech India Pvt which fell in the AY 2007-08, the proper assessment year of any alleged capital gain was A.Y.2007-2008. He relied the decision of Vasant Laxman Khandge (2021) 187 ITT 299 in this case Hon'ble ITAT Pune Bench held that :-

> *"12. Reverting to the factual panorama. It is seen that the assessee handed over possession of the property to M/s V.S. Kolbhor & Associates in the year 2000 on receiving*

substantial part of consideration. This, in our opinion, constituted transfer u/s. 2(47)(v) of the Act read with section 53A of the TPA attracting taxability of capital gain in the A.Y, 2001-02. As the 'transfer' took place in the said earlier year, it cannot once again take place in the assessment year 2007- 08 attracting taxation. Setting aside the impugned order, we hold that the transfer took place in the A.Y. 2001-02 and not 2007-08, leading to taxation of capital gain only in the earlier year and not the latter. As the Id. CIT(A) has upheld taxability of the capital gain in the A.Y. 2007-08, we hereby overturn the same. The Revenue is at liberty to examine the taxability of the capital gain, if any, arising from the transaction in the earlier year, subject to the relevant provisions. In view of our favourable decision on the main argument of the Id. AR, the alternate claim of the assessee and the discussion made (supra) has been rendered academic insofar as the instant appeal is concerned. We, therefore, order to delete the addition of Rs. 75,01,926/- made in the hands of the assessee."

15. The agricultural land in India defines under section 2(14)(iii)of the Act Agricultural land in India, not being land situated -

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal

corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand, or

16. Perusal of the order of the Ld CIT(A), reveals that a collaboration agreement for developing the land was executed in December, 2006 between the appellants and the other co-owners with M/s Bestech India Pvt Ltd. The possession of the land was given only for the limited purposes for obtaining the necessary approvals. The purpose was to convert agricultural land use for residential Group Housing Complex, thereafter when the necessary approvals received the sale deed was executed by the appellants and other co-owners on 17-11-2009. When the sale deed was executed after the change of land use for residential housing project, the land in question was no longer agricultural land. At the time of the sale the land in question had been converted for the use of residential housing project hence it does not have any effect that the land was situated within the municipal limit or not. The appellants have received the profits on account of transfer of land vide sale deed dated 17-11-2009 and the income was taxable in the A.Y.2010-11. Ld CIT(A) rightly decided that the income was taxable in the A.Y.2010-11.

17. The appellants have stated that sale deed of agricultural land has been executed on 17-11-2009, whereas, as per

agreement possession of land for developing was given in December, 2006. Hence, it is contended that as per Indian Registration Act, it will be deemed, from 2006 even if registration has been done in 2009.

18. As per section 47 of the Indian Registration Act; Time from which registered document operates;- a registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made ,and not from the time of its registration.

19. In the matter of **Jet Freight logistics ltd Vs CIT(A) the Mumbai Bench** of the ITAI held that :-

> *"5.3 From the perusal of the aforesaid provisions it could be seen that the sale deed has been registered in the name of the assessee before six months from the date of execution of the agreement, hence, effectively the ownership relates back to the date of agreement to the assessee. It is not in dispute that assessee was enjoying the physical possession of the property even prior to the date of agreement as a licensor. Pursuant to entering the agreement the assessee became the beneficial owner of the sold property. In this regard, we have no hesitation in placing reliance on the decision of the Hon'ble Supreme Court in the case of Mysore Minerals Ltd. vs. Cit (1999) 106 Taxman 166/239 ITR 775 wherein it was held that when assessee was in possession of the property exercising and having right to use and occupy property he would be construed as the owner of the building though a formal deed of title could not have been executed and registered by taking possession of the property and making part payment thereon. It was held by the*

Hon'ble Supreme Court that depreciation u/s. 32 of the Act would be eligible to the assessee. Respectfully following the provisions of the Indian Registration Act referred to supra and the decision of the Hon'ble Supreme Court supra, the ground No. 3 raised by the assessee is allowed."

20. This argument of assessees are not tenable because the agreement executed in December 2006 was for development of property which could have been cancelled if the development had not taken place within time. When the sale deed of residential land was executed, the land in question was no longer agriculture land. On the basis of sale deed executed in 2009 the transfer of ownership cannot be deemed in 2006. The ownership of the immovable property may be transferred by only registered deed. The collaboration agreement was unregistered document. Sale deed executed & registered in 2009 cannot give any right of ownership to purchaser in 2006. Hence appellants do not get any benefit of the section 47 of the Indian Registration Act.

21. The Ld. Counsel for both the assessee has submitted that deductions were not allowed u/s 54F or 54B of the Act. From the perusal of the order of the Ld. CIT(A) it is evident that matter of each assessee was discussed separately and assessees were failed to discharge their onus that they have fulfilled the

necessary requirement u/s 54F or 54B of the Act. The agricultural land was not purchased in the name of appellants.

22. From the above discussion we do not find any reasons to interfere the order of the Ld CIT(A). The appeals of the appellants are liable to be dismissed.

23. In the result, the appeals of the assessee are dismissed.

Order pronounced in the open court on 22.07.2024.

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

NEHA, Sr. PS
Date:- 22.07.2024
Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)`
5.DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI