

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 796/DEL/2024
Assessment Year: 2011-12

Vinod Rana, A-116, Shradha Puri, Phase-I, Mankar Khera, Meerut-250001. PAN- AKOPK 7676 A	<u>Vs</u>	Income-tax Officer, Ward-1(2)(4), Meerut.
APPELLANT		RESPONDENT
Appellant by	Shri Devashish Bhadoria, Adv.	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	12.08.2024	
Date of pronouncement	22.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 19.12.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

- 1. Under the facts and circumstances of the case, the Ld. CIT (Appelas), NFAC-Delhi has erred in sustaining the addition of Rs. 746000/- made by the A.O. under the head Short Term Capital Gain.*
- 2. Under the facts and circumstances of the case, the Ld. CIT (Appelas), NFAC-Delhi has erred in not considering the assessee's explanation filed*

before him during the course of appeal proceedings and ignored the vital evidence i.e. Google Map for ascertaining the distance between the Land in question and nearby Tehsil Mawana, Distt-Meerut.

3. Under the facts and circumstances of the case, the Ld. CIT (Appelas), NFAC-Delhi has completely ignored the provisions of section 2(14)(iii) (b) of the I.T Act, which is applicable in the case of the assessee.

4. Under the facts and circumstances of the case, the Ld. CIT (Appelas), NFAC- Delhi has erred in disallowing the expenses viz. Stamp Duty cost etc. for an amount of Rs. which is Rs. 146000/-, which is depicted clearly on the Sale Deed.

5. The assessee may crave to add, delete or modify any grounds of appeal during the course of appeal proceedings.

2. Facts, in brief, are that for A.Y. 2011-12 the assessee filed its return of income on 30.08.2011 at Rs. 3,00,824/- which was processed u/s 143(1) of the Income-tax Act, 1961 (the "Act") at the returned income. Subsequently, on receipt of information that during A.Y. 2011-12 the assessee had sold immovable property for Rs.34,46,000/-, which was not shown in the return filed by the assessee, the case was reopened u/s 147 of the Act. In response to notice issued u/s 148 the assessee filed its return at the same figure of Rs.3,00,824/-. In response to statutory notices issued, it was submitted on behalf of assessee that the sold property was agricultural land situated beyond ten kilometers from Mawana. The AO rejected the assessee's contention by observing that assessee was not able to produce the required certificate from Tehsildar, certifying that the sold property was agricultural land and not a capital asset. The AO completed the assessment u/s

147/144 of the Act at Rs. 10,46,824/- by adding Rs. 7,46,000/- as short term capital gain on sale of immovable property to the returned income. Aggrieved against it the assessee preferred appeal to the learned CIT(A) who also dismissed the appeal and upheld action of the AO. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Learned Counsel for the assessee vehemently argued that assessee's explanation before authorities below was that the impugned immovable property was agricultural land, beyond municipal limits, and was not a capital asset, therefore, the assessee was not required to declare short term capital gain received on sale of this agricultural land in his return of income. He submitted that without verifying the veracity of assessee's explanation from the concerned authorities the authorities below were not justified in rejecting the assessee's claim. Learned counsel prayed that orders passed by the authorities below may be set aside and the matter may be restored to the file of Assessing Officer for decision afresh after verifying the veracity of assessee's claim and affording reasonable opportunity of being heard to the assessee.

4. On the other hand, learned DR supported the orders of authorities below.

5. I have heard rival submissions and perused the material available on record. It is noticed that the Assessing Officer has rejected the assessee's explanation solely on the ground that he could not produce the certificate from Tehsildar

certifying that the immovable property in question was agricultural land and not a capital asset. In my considered view this fact could be verified by the AO himself from the concerned authority. Therefore, considering the totality of facts of the present case and to be fair to both the parties and in order to sub serve the interests of natural justice, I hereby set aside the orders of authorities below and restore the matter to the file of Assessing Officer for afresh assessment, after verifying the veracity of assessee's stand and affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 22nd August, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI