

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.2671/DEL/2023
[Assessment Year: 2012-13]**

Deshraj, S/o Shri Surjee Village: Noornagar, Sehani, Ghaziabad, Uttar Pradesh-201001	Vs	ITO, Ward-2(1) (2), Ghaziabad, Uttar Pradesh-201001
PAN-CDXPD7079Q		
Assessee		Revenue

Assessee by	None
Revenue by	Shri Rajesh Kumar Dhanesta, SR(DR)

Date of Hearing	19.12.2024
Date of Pronouncement	27.12.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 24.07.2023 of the National Faceless Appeal Centre, Delhi/Ld. CIT(A) Delhi, relating to Assessment Year 2012-13 arising out of order u/s 147 r.w.s 144 of the Act dated 09.12.2019 passed by the AO.

2. Grounds of appeal raised by the assessee are as under:-

“The CIT(A) has erred on law and on facts by confirming the A.O's findings which he has taken wrong basis of calculation of cost of acquisition. The A.O. has not got verified the market rate through its

inspector but decided to take circle rate@ 20/-per sq meter without confronting the same to us.

2. That having regards to facts and circumstances of the case the CIT(A) has not allowing exemption to assessee for which same is eligible under section 54F of Income Tax Act, 1961. A.O has denied the exemption u/s 54F w.r.t cost of construction of residential house which assessee is eligible for under an Act due to non-filing of return while the assessee was in process to get all the details to file the return as these were very old details so it tooks time for collecting.

*3. That having regards to facts and circumstances of the case the CIT(A) not allow exemption by Rs. 18,750/-. Total exemption to be allowed Rs.49,04,060 (56,61,040+ 21,59,540 + 19,87,540 = 98,08,120*50%) u/s 54B of the Income Tax Act, 1961.However exemption allowed by A.O. is Rs. 48,85,310/-.*

4. The CIT(A) has erred on law and on facts by confirming that Assessing officer has made addition on ex-parte basis order without considering facts of the case. TheA.O not tried to verify the cost of investment through its ITI or some other sources in constructing the house exemption u/s 54F of the Income Tax Act, 1961 notgranted.

5. The CIT(A) has erred on law and on facts by confirming the proceedings u/s 148 which is wrong and void-ab-initio.

6. The CIT(A) has erred on law and on facts in confirming the additions made by A.O. of Rs. 3,63,96, 160/- without giving proper opportunity of being heard and to adduce evidence and therefore the additions have been made against the principles of natural justice as per law.”

3. This case was fixed for hearing on 19.12.2024. The notice of hearing fixing the case for hearing on 19.12.2024 came back unserved. An adjournment petition dated 18.12.2024 was filed requesting for adjournment by M/s Ashok Raj & Associates, Chartered Accountant, but this CA firm had not filed its Power of Attorney and therefore, the same was rejected. Earlier this case was fixed on 11.01.2024, 13.06.2024 and 17.09.2024. None appeared on behalf of the assessee on 11.01.2024, 13.06.2024 and 17.09.2024 and only adjournment petitions were filed and the case was adjourned

accordingly. The above conduct of the assessee shows that he is not interested in pursuing this appeal. Therefore, we hear this appeal *ex-parte* and decide it on its merits.

4. Brief facts of the case:-The assessee is an individual. The AO received information from the office of the Sub-registrar that the assessee had sold immovable property on 07.09.2011 amounting to Rs.16.77 Crore to M/s High End Infratech Pvt. Ltd. The AO obtained the sale deed of the property which revealed that the land situated at Khata No. 629 and 630, Vill-Noornagar, Ghaziabad was sold by the assessee along with his three brothers. The AO issued notices u/s 133(6) of the Act calling for certain details in order to verify the information and served upon the assessee. However, the assessee remained unresponsive.

4.1. Thereafter, the AO issued notice u/s 148 of the Act on 26.03.2019 after obtaining necessary approval from PCIT, Ghaziabad and served upon the assessee. The assessee did not file his return of income in response to the aforesaid notice. Thereafter, the AO issued statutory notices but the assessee did not file the details in response to statutory notices issued during assessment proceedings. Subsequently, the AO passed the assessment order u/s 144 r.w.s 147 of the Act determining Long Term Capital Gains of Rs.3,63,96,162/- after allowing indexed cost of acquisition of Rs.6,48,018/- and exemption u/s 54B amounting to Rs.48,85,310/-. The relevant discussion by the AO in para no.3 and 4 of the assessment order is reproduced as under:-

The assessee and his three brothers had sold 16510 sqm. Residential land situated in village-Noornagar, Ghaziabad for Rs. 16,77,17,960/- on 7.9.2011 to M/s High End Infratech Pvt. Ltd, Noornagar village falls within 8 kms of border-line of the Ghaziabad Nagar Nigam, and therefore, the said land falls under the definition of capital asset within the meaning of section 2(14)(iii)(b) of I.T. Act, 1961. Therefore, the gain arising on transfer of land (capital asset) on 07.09.2011 is chargeable to tax under the head 'capital gains'.

It was further noted that the land was ancestral land. Therefore, its cost of acquisition as on 01.04.1981 is to be adopted @ Rs.20/- per sqm. (being prevailing circle area) to work out the LTCG. Further the assessee has purchased agricultural land on 26.07.2011, 09.08.2011 and 10.02.2012 jointly with his brothers. In the purchase of land through these purchase deeds the assessee's share was one-half. The admissible exemption /deduction u/s 54B is also being allowed to the assessee at s.48,85,310/- (2824270 + 1073520 + 987520). Vide letter dated 15.11.2019 it was submitted that the assessee has also constructed the house, the details of construction are in process of collection. But no such details were filed till date. Even the return of income has not been furnished in response to notice u/s 148. Therefore, no exemption under section 54F is being allowed to assessee.

Thus LTCG is worked out as under:

Computation of Capital Gain:

- | | | |
|----|-----------------------------------------|------------------|
| 1. | Sale consideration received (25% share) | Rs.4,19,29,490/- |
|----|-----------------------------------------|------------------|

2.	<i>Less: Indexed cost of acquisition</i>	Rs. 6,48,018/-

	<i>(785x16510x20/100) x 25%</i>	Rs.4,12,81,472/-
	1. <i>Less: Exemption u/s 54B</i>	Rs.48,85,310/-
	2. <i>Long Term Capital Gain</i>	Rs.3,63,96,162/-

5. Aggrieved with the assessment order, the assessee preferred an appeal before the ld. CIT(A). The Ld. CIT(A) gave various opportunities as listed below but the assessee failed to appear and also did not file any submissions before the Ld. CIT(A)

a) Notice dated 30.01.2021 asking the assessee to file submission on or before 15.02.2021.

b) Notice dated 26.04.2022 asking the assessee to file submission on or before 11.05.2022.

c) Notice dated 20.03.2023 asking the assessee to file submission on or before 04.04.2023.

d) Notice dated 24.05.2023 asking the assessee to file submission on or before 08.06.2023.

e) Notice dated 11.07.2023 asking the assessee to file submission on or before 20.07.2023.

5.1. The Ld. CIT(A) in absence of any reply from the assessee held that there was no infirmity in the action of the AO in determining Long Term Capital Gains on the consideration received from sale of land amounting to Rs.3,63,96,162/- and dismissed the appeal of the assessee.

6. Against the above order, the assessee is in appeal before us.

7. We have heard the ld. DR and perused the materials available on record. The assessee in its statement of facts has admitted that the assessee alongwith

his three brothers sold immovable property for Rs.16,77,17,960/- in which the share of assessee was 25% amounting to Rs.4,19,29,490/-. The AO considered the sale consideration as admitted by the assessee for computing the capital gains of the assessee and therefore, there is no dispute about the sale consideration adopted by the assessee. In the grounds of appeal, the assessee has disputed about the method of calculation of cost of acquisition, denial of exemption u/s 54F of the Act towards the cost of construction of residential house. Further, he has also submitted that the assessment has been completed without giving proper opportunity of being heard to the assessee to adduce evidence and the additions have been made against the principles of natural justice. Further, the assessee has also challenged that the Ld. CIT(A) erred in law and on facts in confirming the proceedings u/s 148 of the Act which was wrong and void *ab-initio*.

7.1. In this case, the assessee and his three brothers had sold 16510 sqm. Residential land situated in village-Noornagar, Ghaziabad for Rs. 16,77,17,960/- on 7.9.2011 to M/s. High End Infratech Pvt. Ltd, Noornagar. The assessee has not disputed that the land sold in the village does not fall within 8 kms of border-line of the Ghaziabad Nagar Nigam, and therefore, the said land falls under the definition of capital asset within the meaning of section 2(14)(iii)(b) of I.T. Act, 1961. Further, the assessee has also not disputed that the gain arising on transfer of land (capital asset) on 07.09.2011 is chargeable to tax under the head 'capital gains'. Therefore, in the given facts of the case, the action of the AO in taxing the share of receipts of the

assessee amounting to Rs.4,19,29,490/- towards the sale consideration of the said land is justified. Regarding the claim of the assessee towards the incorrect cost of acquisition and denial of deduction u/s 54F of the Act, the onus is on the assessee to establish his claim and to dispute the action of the AO in adopting the indexed cost of acquisition amounting to Rs.6,48,018/-. As noted above, the land was sold on 07.09.2011 but the assessee did not file its return of income despite required as per law. Further, the assessment was completed on 09.12.2019 u/s 144 r.w.s. 147 of the Act as the assessee failed to appear during the assessment proceedings. Similarly, the assessee did not appear before the Ld.CIT(A) despite several opportunities given as mentioned earlier in this order. Moreover, the assessee has failed to furnish any evidence in support of his claims regarding the incorrect indexed cost of acquisition allowed by the AO and denial of deduction u/s 54F of the Act despite lapse of five years after the assessment in this case was completed on 09.12.2019.

7.2. Further, no fact or any argument has been submitted by the assessee towards his ground relating to wrong assumption of jurisdiction u/s 148 of the Act. On perusal of the assessment order, it is seen that upon receipt of the information by the AO from the office of Sub-Registrar in respect of sale of the above property, AO issued notice u/s 133(6) of the Act on 19.02.2018 and again on 01.03.2019 to which there was no compliance from the assessee. Thereafter, the AO issued notice u/s 148 of the Act dated 26.03.2019 after obtaining necessary approval of the Ld.Pr.CIT, Ghaziabad which was delivered to the assessee on 28.03.2019 and also a copy of the notice was served upon

the assessee on 15.04.2019. However, the assessee failed to file his return in response to the said notice. Therefore, in the given facts of the case, we hold that the AO was justified in issuing the notice u/s 148 of the Act dated 26.03.2019 in this case and the same was validly issued.

7.3. Therefore, considering the entire facts, we are of the considered view that the AO was justified in determining long term capital gains amounting to Rs.3,63,96,162/- as the finding of the AO has not been rebutted by the assessee in any manner. Therefore, the same is upheld. Grounds of appeal raised by the assessee are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 27th December, 2024.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 27.12.2024.

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi