

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.606/Ind/2024
Assessment Year:2012-13

Najma Siddiqui 131, Housing Board Colony Kohe Fiza Bhopal	<u>बनाम/</u> Vs.	ITO 3(1) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ANEPB8802G		
Assessee by	Shri Ashish Goyal & N.D. Patwa, Ars	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.01.2025	
Date of Pronouncement	.02.2025	

आदेश/O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee against the order of the Ld CIT (A) NFAC passed u/s 250 of the Act 61 , dated 29/06/2024, which has arisen from the Assessment order of the ITO 3(1), Bhopal, dated 30/12/2019, passed u/s 147 of the Act.

2. The grounds of appeal taken by the assessee are as follows:

“1. The ld AO was not justified in passing the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The ld CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

3. The ld CIT(A) was not justified in ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.

4.The Id CIT(A) was not justified in confirming the addition of Rs. 40,05,500/- without considering the facts and circumstances of the case.”

3. The facts of the case are that the AO based on the information that the assessee along with her husband had sold immovable property on 21.03.2012 for consideration of Rs. 80,11,000/- (during the FY year 2011-12) without quoting PAN on registered sale deed, reopened the case of the assessee by issuance of notice u/s 148 on 28.09.2019. Accordingly, the assessment was completed u/s 143(3)/147 by determining the total income at Rs.41,95,500/- (including an addition of Rs.40,05,500/-) , as long term capital gain.

4. The matter was carried in first appeal and the Ld CIT (A) NFAC, in absence of any representation from the assessee and in absence of any explanation and submission regarding the addition of Rs.40,05,500/- on account of long term capital gain, dismissed the appeal in *limine* , because in absence of any documentary evidences or written submissions or explanations , being filed before him he never had the opportunity to adjudicate on merits of case .

5. Now the assessee is before the tribunal on the grounds contained in the memorandum of appeal. The Ld AR of the assessee submitted that land sold was not a capital asset but the same is a **rural agricultural land** i.e. not a capital asset as per section 2(14)(iii) of the Act and secondly the AO had not considered the *index cost of acquisition* of agricultural land sold. Further the Ld AR of the assessee submitted that Ld. CIT(A) was not justified in passing ex-parte order without discussion on merits and it was also submitted that the Ld. CIT(A) did not provide a fair and meaningful opportunity of being heard to the assessee.

6. The Ld DR relied on the order of the Ld CIT(A) , but admitted that the order has been passed ex-parte before Ld. CIT(A), and the assessee , due to various reasons might have gone unrepresented

7. We have heard the rival submission and considered the materials on record , and we are of the opinion , that considering the submission of Ld. Counsel for assessee, the issue of long term capital gain amounting to Rs.40,05,500/- , (*which as claimed by the assessee is arising out of sales of agricultural land*), needs to be verified and satisfactorily explained, with reference to documentary evidences, to the full satisfaction of the A.O. In the instant case no explanation or documentary evidences , has been filed by the assessee before the Ld. CIT(A).

However, the Ld AR of the assessee appeared and requested for one more opportunity to explain his case , and as such in the interest of justice , we are of the opinion that another opportunity should be allowed to the assessee , to explain the issue of long term capital gain determined at Rs.40,05,500/-, and as such we remand the matter back to the A.O. for fresh adjudication on merits of the case after allowing opportunity of being heard to the assessee and the assessee is also directed to file all necessary documentary evidences and submissions to explain the issue of long term capital gain vis a vis sale of agricultural lands, to the satisfaction of the AO.

Order pronounced in the open court on 28.02.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore

दिनांक/Dated : 28/02/2025
Patel/Sr. PS

Sd/-

(UDAYAN DASGUPTA)
JUDICIAL MEMBER

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Najma Siddiqui
ITA No. 606/Ind/2024 – AY 2012-13,

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore