

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'G' NEW DELHI)**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER
ITA No. 1088/DEL/2024 (A.Y. 2011-12)**

Sharvan Kumar S/o. Sh. Attar Singh, VPO Gudhan, Tehsil and P.O. Kalanaur, Rohtak, Haryana PAN: CBJPK8102M	Vs.	ITO Ward-4, Income Tax office, Rohtak Haryana
Appellant		Respondent
Assessee by	Sh. Navin Gupta, Adv	
Revenue by	Sh.Sahil Kumar Bansal, Sr. DR	
Date of Hearing	06/03/2025	
Date of Pronouncement	21/03/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of the Commissioner of Income Tax (Appeal)/National Faceless Appeal Centre [‘NFAC’ for short] dated 26/02/2024 for the Assessment Year 2011-12.

2. The grounds of Appeal are as under:-

“1. That the order of the Ld. CIT (Appeals) is against law and facts.

2. That the Ld. CIT (Appeals) erred in confirming the action of Ld. AO is issuing notice u/s 148, although the notice issued was invalid, illegal and without jurisdiction.

3 That the Ld. CIT (Appeals) erred in not giving a copy of reasons recorded u/s 148 to the appellant inspite of specific request by the appellant to the CIT (Appeals) in this regard.

4. That the Ld. CIT (Appeals) erred in not considering the reply and arguments taken by the appellant and erred in passing a non-speaking order.

5. That the Ld. CIT (Appeals) erred in confirming the addition of Rs. 1,00,00,000/- made by the Ld. AO by treating the cost of agricultural land purchased by the appellant at Rs. 1,03,28,400/-, although the appellant had purchased the land for only Rs. 40,80,000/-.

6. That the Ld. CIT (Appeals) erred in not accepting the source of land purchased of Rs. 40,,80,000/-, although the appellant had filed all the details & documents before the Ld. AO as well as before Ld. CIT (Appeals)

7. That the Ld. CIT (Appeals) as well as Ld. AO erred in not referring the matter to valuation cell inspite of specific claim by the appellant that the market rate of the property purchased was much less than the circle rate of property

8. That the Ld. CIT (Appeals) erred in confirming the action of Ld. AO in making addition of Rs. 1,00,00,000/-, although Ld. AO vide his Show Cause Notice dt. 06.12.2018 had show caused appellant for total addition of only Rs. 40,60,900/-, but actually made addition of Rs. 1,06,22,100/- while passing assessment order.

9. That the Ld. CIT (Appeals) erred in confirming the addition of Rs. 1,00,000/-out of total addition of Rs. 6,22,100/- made by the Ld. AO by treating the agriculture income of the appellant as income from other sources.

10. That the Ld. CIT (Appeals) erred in not giving relief of returned income and of the income of Rs. 1,00,000/- treated as income from other sources, out of addition made of Rs. 1,00,00,000/- on account of property purchased by the appellant.

11. That the Ld. CIT (Appeals) erred in not confronting to the appellant the remand report submitted by the Ld. AO during

assessment proceedings and also erred in not giving an opportunity to file his rejoinder.

12. That the Ld. CIT (Appeals) erred in not giving a personal hearing to the appellant through Video Conferencing inspite of specific request in this regard and thus violated the principles of natural justice.

13. That the appellant craves leave to add, alter, amend, modify or withdraw any of the ground of appeal at the time of hearing.”

3. Brief facts of the case are that, the Assessee purchased an agriculture land measuring 47Kanal 12 Marla in village Anwal, District Rohtak vide sale deed dated 08/04/2010, registered as Document No. 4 in the Office of the Sub-Registrar Khalanaur District Rohtak for sum of Rs. 35,70,000/- as against the circle rate of property of Rs. 98,17,500/- and paid stamp duty of Rs. 4,90,900/-, registration fee of Rs. 15,000/- and miscellaneous expenses of Rs. 5000/-. An assessment proceedings have been initiated against the Assessee and the Ld. A.O. treated the total sale consideration of the property at Rs. 98,17,000/- + stamp duty paid of Rs. 4,90,900/- + Registration fee at Rs. 1,50,000/- + Miscellaneous expenses at Rs. 5,000/-, totaling to Rs. 1,03,28,400/-. Further, the Ld. A.O. allowed the benefit of Rs. 3,28,400/- as agriculture income against the claim of the Assessee at Rs. 9,50,000/- and treated sum of Rs. 6,22,100/- as undisclosed income of the Assessee invested in the purchase of land. Accordingly, computed the income of the Assessee at Rs. 1,07,47,600/- as against returned income of Rs. 1,25,500/-.

4. Aggrieved by the assessment order dated 27/12/2018, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 26/12/2024, upheld the addition made by the A.O. by observing that that *'the A.O. has rightly assessed the income u/s 56(2)(vii) of the Act.'* In the first appeal, the Ld. CIT(A) upheld the addition of Rs. 98,77,500/- and further confirmed the partial addition of Rs. 1,00,000/- by granting relief of Rs. 5,22,100/- in respect of the claim of the agriculture income. Aggrieved by the order of the Ld. CIT(A), the Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee submitted that Ground No. 1 to 4 and 10 to 13 are not pressed, accordingly, prayed for dismissal of the same as not pressed. Recording the submission of the ld. Assessee's Representative, Ground No. 1 to 4 and 10 to 13 are dismissed as not pressed.

6. Ground No. 5 to 7 are regarding confirmation of addition of Rs. 1,00,00,000/- made by the A.O. by treating the cost of agriculture land purchased by the Assessee at Rs. 1,03,28,400/-. The Ld. Counsel for the Assessee submitted that the total cost incurred by the Assessee for purchase of agriculture land is only Rs. 40,80,000/- and the Ld. A.O. has committed error in invoking provision of Section 56(2)(vii) of the Act

as the said provision is not applicable for the year under consideration. Further submitted that there was no such bar on the Assessee to purchase the property below the circle rate in the year under consideration i.e Assessment Year 2011-12, therefore, submitted that the order of the Lower Authorities are erroneous. The Ld. Counsel further submitted that even in the show cause notice issued by the A.O. to the Assessee, an amount of Rs. 40,60,900/- has been mentioned and contrary to the same, the Ld. A.O. made addition of Rs. 1,00,00,000/- which is against to the principals of natural justice. Further submitted that the Assessee had proved the source of the investment for Rs. 40,80,000/-, contending that a sum of Rs. 13,50,000/- has been paid out of agriculture income earned during past years and current years as the Assessee and his family members are owning 18 acres of agriculture land. The balance payment was out of the amount received from family members who are also the co-owners of the property. The Ld. Counsel further submitted that the source for purchasing the agriculture land is out of the proceeds/contribution of the Joint Family /co-owners, thus, submitted that the Lower Authorities have failed to consider the same and proceeded to make the erroneous addition. Thus, sought for deletion of the addition made by the A.O. which has been upheld by the Ld. CIT(A).

7. Per contra, the Ld. Departmental Representative submitted that though the provisions of Section 56(2)(vii) of the Act is not applicable for the year underconsideration, wrong mentioning of the Section cannot be a ground for deletion of the addition. The Ld. Departmental Representative submitted that the Tribunal has the power to rectify the error/mistake committed in mentioning the wrong Section by the Revenue Authorities. Further submitted that, in so far as source of income is concerned, the Assessee had failed to prove the same by producing the cogent documents, therefore, sought for dismissal of the Ground No. 5 to 7.

8. We have heard both the parties and perused the material available on record. Admittedly the A.O. has invoked the provision of Section 56(1)(vii) of the Act on the ground that an immovable property has been purchased by the Assessee below the Circle rate and considered the applicable circle rate as sale consideration.

9. The provision of Section 56(2)(vii)(b) of the Act came into force by Finance Act, 2013 which is w.e.f 01/04/2014. Prior to 01/04/2014, there was no such bar on the purchaser for purchasing the immovable property lesser than the circle rate. Therefore, the invocation of

provision of Section 56(2)(vii)(b)(ii) by the A.O. for Assessment Year 2011-12 is erroneous.

10. The Ld. Departmental Representative contended that it is only an error of wrong mentioning of Section by the Lower Authorities, which can be corrected by the Tribunal and relied on the Judgment of the Hon'ble High Court of Punjab and Haryana in the case of Namev Arora Vs. CIT reported (2016) 72 Taxmann.com 124 (P &H). In our considered opinion, the Judgment relied by the Ld. Departmental Representative is not applicable as in the present case. In the present case, it is not the case of wrong mentioning of provision of Section, it is crystal clear that the Ld. A.O. has proceeded to make addition u/s 56(2)(vii)(b)(ii) of the Act and accordingly made addition under the very same provision. Furthermore, even the Ld. CIT(A) has also confirmed the very same addition made u/s 56(2)(vii)(b)(ii) of the Act. Such a blatant error of invocation of a provision against the Assessee, which was not even applicable/exist in the year under consideration, which has been confirmed by the First Appellate Authority, cannot be construed as mere wrong mentioning of provision of law. Therefore, the Judgment relied by the Ld. Departmental Representative in the case of Namev Arora Vs. CIT (supra) is not applicable to the case in hand.

11. Now, the question remains regarding proving the source of investment of Rs. 40,80,000/- for purchase of Agriculture Land. During the assessment proceedings, to prove the source of investment of Rs. 40,80,000/-, the Assessee contended that the Assessee had paid Rs. 13,50,000/- out of agriculture income earned during the past years and current year. To substantiate the same, the Assessee produced Jamabandi in respect of the lands owned by the Assessee and his family members measuring 18 acres. However, the authorities have erroneously disbelieved the claim of the Assessee without any reason. Further, the Assessee has also claimed that remaining amount has been received from the family members who are also co-owners of the property and the details are as under:-

S.NO.	NAME	AMOUNT	RELATION	SOURCE OF INCOME
1	SHARAVAN KUMAR	13,50,000/-	SELF	AGRICULTURIST
2	KARAN SINGH	4,50,000/-, :	BROTHER	AGRICULTURIST
3	CHARAN SINGH	4,50,000/-	BROTHER	AGRICULTURIST
4	SAJJAN	4,50,000/-	BROTHER	AGRICULTURIST
5	HARIG	4,50,000/-	BROTHER	AGRICULTURIST
6	AJAY KUMAR	4,50,000/-	BROTHER	AGRICULTURIST
7	ATTAR SINGH	2,50,000/-	FATHER	AGRICULTURIST
8	VIDYADEVI	2,50,000/-	MOTHER	AGRICULTURIST

12. It was the case of the Assessee that the property has been purchased through the agriculture source of the Assessee and his family members and also received remaining amount from the family members mentioned above. However, the Ld. A.O. disbelieved the claim of the Assessee without their being any contrary evidence or without making any investigation or examination of the parties. Considering the land holdings of the Assessee and his family members, the Ld. A.O. should have accepted the claim of the Assessee in the absence of any contrary evidence brought on record. Therefore, the Ld. A.O. has committed error in making the addition and the Ld. CIT(A) has also erroneously upheld the same. For the above reasons and the discussions, the addition of Rs. 1,00,00,000/- made by the A.O. which has been upheld by the Ld. CIT(A) it hereby deleted. Accordingly, we allow the Ground No. 5 to 7 of the Assessee.

13. The Ground No. 8 & 9 is regarding confirming the addition of Rs. 1,00,000/- by the Ld. CIT(A) out of the total addition made by the A.O. 6,22,100/-. The Ld. A.O. while making the addition has only considered 4 acres of agriculture land previously owned of the Assessee, but completely ignored the six acres of land purchases in the beginning of the Financial Year i.e. on 09/04/2010. The Ld. CIT(A) while restricting

the said addition considered the land holdings of the Assessee and deleted the partial addition.

14. It is the case of the Assessee that the Assessee was owing six acres of the land from the beginning of the Financial Year which yielded him the income of Rs. 9,50,500/-. The said fact that the Assessee was owning additional six acres of land which has been acquired during the starting of the Financial Year has not been considered by the A.O. However, though the Ld. CIT(A) has granted substantial relief after considering the holdings of the land of the Assessee, no reason or justification has been given for sustaining addition of Rs. 1,00,000/-. The Ld. CIT(A) ought to have allowed the entire claim of the Assessee as agriculture income in view of 18 acres of land holdings of the Assessee and his family member. Considering the above facts and circumstances, we allow the Ground No. 8 & 9 of the Assessee by deleting the addition of Rs. 1,00,000/- sustained by the Ld. CIT(A).

15. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open court on 21st March, 2025

Sd/-

**(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

Date:- 21.03.2025
R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**