INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2676/Del/2016
[Assessment Year : 2008-09]

Ram Kumar Tyagi, SF-86, Shastri Nagar, Ghaziabad, U.P. ***PAN-AHIPT9119Q***	vs	ITO, Ward-2(2), Ghaziabad.
APPELLANT		**RESPONDENT**

Appellant by	Mr. Salil Agrawal, Sr. Adv., Mrs. Prem Lata Bansal, Sr. Adv. & with Shri Shivang Bansal, Adv.
Respondent by	Shri Sahil Kumar Bansal, Sr.DR
Date of Hearing	21.05.2025
Date of Pronouncement	13.08.2025

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 17.02.2016 passed by Ld. Commissioner of Income Tax (A), Ghaziabad ["Ld.CIT(A)"] in Appeal No.097/372/2014-15/GZB/407 u/s 250 of the Income Tax Act, 1961 ["the Act"] arising from the assessment order dated 27.02.2015 passed u/s 143(3)/147 of the Act pertaining to assessment year 2008-09.

2. Brief facts of the case are that the assessee is an individual. AO had information that assessee had received Rs. 8,00,72,200/- as sale consideration as 1/6th share of his family out of total consideration of INR 48,04,33,200/- from the sale of ancestral properties inherited by them. As no return was filed by the assessee

for the year under appeal nor disclosed such transactions to the Department therefore, the case of the assessee was re-opened by issue of notice u/s 148 and served upon the assessee on 13.10.2014. Since no compliance was made of filing the return of income in response to notice u/s 148 of the Act, two notices were issued u/s 142(1). The second notice u/s 142(1) was issued on 11.02.2015. In response to the said notice, return of income was e-filed by the assessee on 17.02.2015 through e-filing portal in ITRV and on 18.02.2015, assessee submitted a copy of the return of income so filed alongwith a letter of even date. The AO thereafter, issued notice u/s 143(2) alongwith questionnaire and notice u/s 142(1) on 18.02.2015 for 20.02.2015. On the fixed date, the assessee sought adjournment and the case was finally fixed for 27.02.2015. As no details were filed, as sought by the AO, he concluded the proceeding and passed the assessment order dated 27.02.2015 u/s 143(3)/147 of the Act wherein addition of INR 8,89,37,168/- was made towards Long Term Capital Gain ("LTCG") from the sale of land which was claimed by the assessee as agricultural land in the return of income filed in response to notice u/s 142(1)/148 and further made the addition of INR 75,000/- on account of agricultural income treating the same as undisclosed income.

3. Against the said order, the assessee has filed an appeal before Ld.CIT(A) who in terms of impugned order dated 17.02.2016 had dismissed the appeal of the assessee.

4. Aggrieved by the said order, the assessee is in appeal before the Tribunal wherein following grounds of appeal are raised by the assessee:-

(1) *"Where a return of income is filed electronically with digital signature, on successful transmission of the data, an acknowledgement as generated by the server of the Central Government shall be available to the person in printable format.*

(2) *The acknowledgement shall contain the acknowledgement number of the electronic transmission and the date of transmission as an evidence of filing of the return.*

(3) *A copy of the electronic transmission of filing the return of income shall be downloaded and kept by the person.*

(4) *Where a return of income is filed electronically without digital signature, on successful transmission of the data, an acknowledgement in Form ITR-V as provided in rule 12 of the Income Tax Rules, 1962 shall be generated by the server of the Central Government and available to the person.*

(5) *The Form ITR-V shall also contain the acknowledgement number of the electronic transmission and the date of transmission as an evidence of filing of the return.*

(6) *A copy of ITR-V shall be downloaded and after taking a printout of such a form, it shall be physically verified under the signature of the person and forwarded to the Centre.*

(7) *The Form ITR-V duly verified shall be sent to the Centre, either through ordinary or speed post, within such period of uploading the electronically filed return as may be specified by the Director General in this behalf.*

(8) *The date of transmitting the data electronically shall be the date of furnishing the return if the Form ITR-V is furnished in the prescribed manner and within the period specified."*

5. During the course of hearing in terms of letter dated 17.08.2019, the assessee raised two additional grounds of appeal which reads as under:-

*"**Additional Ground No. 1** : That the impugned assessment so framed is bad in law and invalid, in as much as, the notice under section 143(2) of the Act, was issued on the same day of filing of return income, which shows complete non application of mind on the part of assessing officer and thus, the assessment so framed was without jurisdiction and according all proceedings thereafter are nullity.*

***Additional Ground No. 2** : That the impugned assessment so framed is bad in law and on facts, in as much as, the initiation of proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act was without satisfying the statutory pre- conditions (i.e. with non application of mind, without there being any tangible material and without supplying the copy of reasons recorded) as envisaged in aforesaid section and was without jurisdiction and was liable to be quashed, as such."*

6. Since the additional grounds of appeal are legal in nature thus, the same are admitted for adjudication by following the order of Hon'ble Supreme Court in the case of ***NTPC Ltd.*** reported in ***229 ITR 383(SC).***

7. **Ground of appeal No.1** is general in nature hence, dismissed.

8. First we have taken legal issues raised by the assessee in the appeal memo as well through additional grounds of appeal.

9. **Additional Grounds of appeal Nos.1 & 2** are with respect to the validity of the assessment order as according to the assessee, the notice issued u/s 143(2) of the Act is not issued in accordance with the provision of the Act.

10. During the course of hearing, Ld.AR for the assessee, Shri Salil Agarwal appeared and made submissions with respect to the legal grounds taken in the appeal memo and through additional legal grounds taken by the assessee. It is submitted by Ld.AR that

the assessee has not filed the ITR in response to notice u/s 148 of the Act and had filed the return of income on 17.02.2015 in response to the notice issued u/s 142(1) of the Act dated 11.02.2015.

11. Ld.AR for the assessee submits that the assessee filed the return of income in form ITR-V on 17.02.2015 vide e-filing acknowledgement No. 483876120170215. However, as this return was not digitally signed therefore, it is required to be sent to CPC, Banglore for validation of the said return with a period of 120 days. However, as per the Ld.AR for the assessee, such procedure has not been followed by the assessee and acknowledgement of ITR-V was sent to CPC, Banglore within 120 days. Ld.AR further submits that Shri Dinesh Tyagi, Advocate of the assessee appeared before the AO on 18.02.2015 and furnished copy of return, vakalatnama and computation of income. He drew our attention to the Paper Book page 32 which is certified copy of the order sheet in the instant case. As per the order sheet entry dt. 18.02.2015, upon receipt of return of income alongwith letter, AO issued notice u/s 143(2) for 20.02.2015 alongwith the questionnaire and notice u/s 142(1) of the Act. Ld.AR thus, submits that the AO issued notice u/s 143(2) of the Act immediately upon receiving the return from the Counsel without going into the contents of the return of income filed and thus, the notice was issued u/s 143(2) without application of mind. He, therefore, submits that notice so issued u/s 143(2) deserves to be quashed as the same was issued in mechanical manner, without independent application of mind on the part of AO. For this, Ld.AR

placed reliance on the judgement of ITAT, SMC Bench in the case of ***Himat Mittal vs ITO*** rerpoted in ***117 taxmann.com 390*** wherein it is held that before issue of notice u/s 143(2) of the Act, AO must examine the return filed by the assessee and in absence of such examination, the assessment order passed u/s 143(3) was quashed. Accordingly, Ld.AR for the assessee submits that the facts of the present case are identical to the facts in the case of Himmat Mittal (supra) as in the present case also the AO issued notice us/ 143(2) on spot without verifying the contents and thus is bad in law and consequent reassessment order passed u/s 143(3)/147 of the Act deserves to be quashed.

12. On the other hand, Ld. Sr. DR for the Revenue submits that the return of income was filed on 17.02.2015 electronically which was treated as nonest by the CPC since it was not followed by duly signed copy of acknowledgement of ITR-V sent to CPC, Bangalore. He further submits that the assessee as on the very next day filed the return of income before the AO and after considering the same, AO had issued notice u/s 143(2) of the Act to the assessee. Ld. Sr. DR for the Revenue drew our attention to the notice issued u/s 143(2) available at page 7 of the Paper Book alongwith 142(1), notice of even date and the questionnaire wherein the AO made specific queries with respect to the transaction of sale of property by the assessee therefore, it cannot said that there was no independent application of mind by the AO before issue of notice u/s 143(2) of the Act. He thus, prayed that there was no error or omission on the part of the AO while issue of notice u/s 143(2) therefore the

reassessment proceedings as concluded by AO deserve to be hold as in accordance with law.

13. Heard the contentions of both the parties and perused the material available on record. The claim of the assessee is that the return of income was firstly filed electronically through e-filing portal on 17.02.2015 however, since it was not digitally singed therefore, the assessee was required to sent the acknowledgement duly signed within the period of 120 days for the validation of the same to the CPC. It is further seen that on the very next date i.e. 18.02.2015, Ld. Authorized Representative appointed by the assessee namely, Shri Dinesh Tyagi appeared before the AO and submitted the copy of the ITR so filed alongwith the computation of income which is evident from the order sheet entry dated 18.02.2015 available at page 32 of the Paper Book. As the assessee had filed the return of income in physical form through its AR on 18.02.2015, the AO treated the same as return filed in compliance to the notice issued u/s 148/142(1) of the Act and after considering the same, had issued a detailed questionnaire alongwith notice u/s 142(1) on 18.02.2015 containing six points which are as under:-

1. *"Furnish the source of income with nature of business/profession.*

2. *Furnish copy of all banks A/c in your name or in the names of your family members alongwith their I.T. details.*

3. *Furnish the details of property sold/purchased during the year and also furnish the computation of long term capital gain on the sale of property of your share for Rs.8,00,72,200/- to M/s Kunal Creation Pvt. Ltd. and M/s Oracle Homes Pvt. Ltd. on 15/02/2008. The total sale consideration is Rs.48,04,33,200/- and your share is 1/6 of above amount which comes Rs.8,00,72,200/-.*

4. *Furnish the details of income from other sources with documentary evidence.*

5. *Please furnish your personal statement of affairs of current year and last 3 years.*

6. *Please furnish details of all assets immoveable & moveable properties acquired or disposed off during the year and last 3 years by you or your family members."*

14. From the records, it seen that the Counsel duly authorized to represent on his behalf has received the notice u/s 143(2) and further received the notice u/s 142(1) alongwith questionnaire on 18.02.2015. From the perusal of the questionnaire, it could be seen that it contained the complete details of the transactions carried out by the assessee on sale of land thus it is not a general query later but contained specific query about the transaction of sale carried out by the assessee, therefore, it cannot be said that the AO had issued the notice u/s 143(2) without applying his mind and was issued in mechanical manner. Further the facts of the case of Himmat Mittal (supra) as relied upon by the assessee are not applicable to the facts of the present case where the Co-ordinate SMC Bench observed that notice u/s 143(2) was issued by the AO without applying his mind on the return furnished by the assessee. In view of these facts and the discussion made herein above, in our considered opinion, the notice u/s 143(2) of the Act alongwith questionnaire were issued after proper application of mind on the return of income filed by the assessee and the material available on record including the reasons recorded for re-opening of the assessment and therefore, there is no error or omission on the part

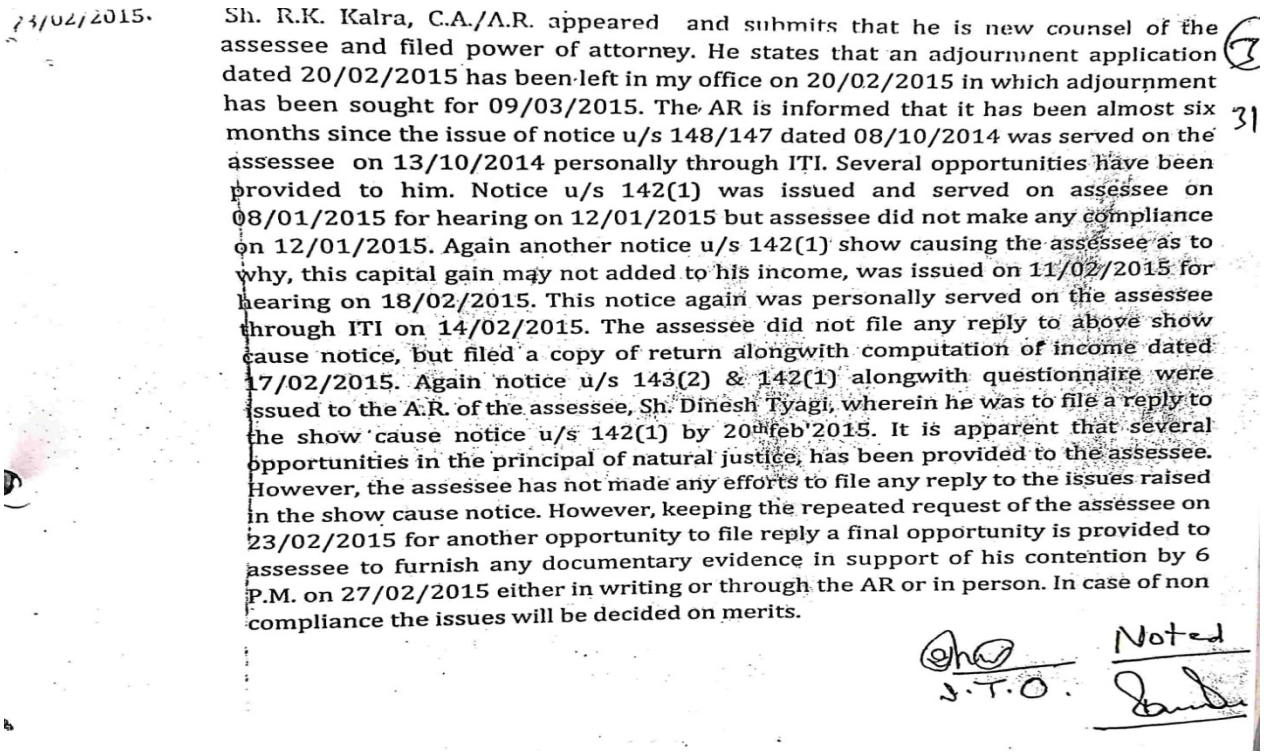
of the AO and accordingly, the additional Ground of Appeal Nos. 1 & 2 taken by the assessee are dismissed.

15. At this point of time, the Bench has heard the parties on the additional grounds taken by the assessee and the case was taken as "heard" on this limited issued and both parties were informed that no effective hearing on merits was taken by the Bench and if need be, the case will be fixed for hearing on the merits. Accordingly, when in our considered opinion, we do not find merits in the additional grounds of appeal taken by the assessee, in terms of order sheet entry dated 10.02.2015, the case was listed for hearing on the merits on remaining grounds of appeal.

16. Here, it is relevant to state that at this stage, the assessee has changed the Counsel before us and on the appointed date i.e. on 20.02.2025, Mrs. Prem Lata Bansal, Senior Advocate appeared before us and requested for adjournment for preparation of the case. On her request, the case was adjourned on various occasions. It was further made it clear to the new counsel Mrs. Prem Lata Bansal that submissions on additional Ground of appeal Nos. 1 & 2 were already concluded by the previous Counsel for the assessee and thus, she can make submissions only on the remaining grounds of appeal. The case was heard at length on 22.04.2025 where Mrs. Prem Lata Bansal made detailed arguments on grounds of appeal Nos. 3 to 5 and requested for further adjournment for making submissions on the remaining grounds of appeal. Thereafter, on 21.05.2025, the case of the assessee was finally

heard at length on the remaining ground of appeal and reserved for the orders.

17. With respect to **Ground of appeal No.2** regarding no proper opportunity of being heard was provided by the AO, Ld.AR submits that the case was fixed for hearing on 20.02.2015 in terms of notice issued u/s 143(2) alongwith questionnaire 142(1) of the Act. On 20.02.2015, the then AR of the assessee appeared and filed adjournment application alongwith medical certificates of assessee and requested for adjournment of two weeks. However, the AO had not taken cognizance of the said application as is evident from order sheet entry dated 20.02.2015 wherein the AO observed that "none attended nor any reply was received". However, in the assessment order, the AO observed and referred the application of the assessee dated 20.02.2015 and it is further observed that the final opportunity was given on 27.02.2015 which according to ld. AR is in contradiction to the entry made in the order sheet entry dated 20.02.2105. Ld. AR further drew our attention to the order sheet entry dated 23.02.2015 page 31 of the Paper Book wherein it is observed by the AO as under:-



23/02/2015. Sh. R.K. Kalra, C.A./A.R. appeared and submits that he is new counsel of the assessee and filed power of attorney. He states that an adjournment application dated 20/02/2015 has been left in my office on 20/02/2015 in which adjournment has been sought for 09/03/2015. The AR is informed that it has been almost six months since the issue of notice u/s 148/147 dated 08/10/2014 was served on the assessee on 13/10/2014 personally through ITI. Several opportunities have been provided to him. Notice u/s 142(1) was issued and served on assessee on 08/01/2015 for hearing on 12/01/2015 but assessee did not make any compliance on 12/01/2015. Again another notice u/s 142(1) show causing the assessee as to why, this capital gain may not added to his income, was issued on 11/02/2015 for hearing on 18/02/2015. This notice again was personally served on the assessee through ITI on 14/02/2015. The assessee did not file any reply to above show cause notice, but filed a copy of return alongwith computation of income dated 17/02/2015. Again notice u/s 143(2) & 142(1) alongwith questionnaire were issued to the A.R. of the assessee, Sh. Dinesh Tyagi, wherein he was to file a reply to the show cause notice u/s 142(1) by 20th feb'2015. It is apparent that several opportunities in the principal of natural justice, has been provided to the assessee. However, the assessee has not made any efforts to file any reply to the issues raised in the show cause notice. However, keeping the repeated request of the assessee on 23/02/2015 for another opportunity to file reply a final opportunity is provided to assessee to furnish any documentary evidence in support of his contention by 6 P.M. on 27/02/2015 either in writing or through the AR or in person. In case of non compliance the issues will be decided on merits.

J.T.O. Noted

18. Ld.AR thus submits that the case was fixed for hearing on 27.02.2015 and on the said date when the assessee filed an application through e-mail wherein the order of Hon'ble High Court dated 26.02.2015 was submitted before the AO passed u/s 281B of the Act, the AO passed the reassessment order on the same day without even providing any further opportunity to the assessee though the case was got barred by limitation only in March, 2016. It is thus submitted by Ld.AR that no proper opportunity of being heard was provided to the assessee therefore, consequent order passed is in the violation of principle of natural justice and deserves to be quashed.

19. On the other hand, Ld.Sr. DR for the Revenue vehemently supported the orders of the lower authorities and submits that in this case, the assessee tried to avoid re-assessment proceedings by

not filing the return of income in response to notice u/s 148 of the Act and thereafter, by seeking adjournment on every occasions therefore, there is no error in the order of the AO which deserves to be uphold.

20. Heard the contentions of both the parties and perused the material available on record. In the instant case, the notice u/s 148 of the Act was issued on 08.10.2014 and thereafter, notice u/s 142(1) was issued on 24.12.2014 and again on 11.02.2015. Thereafter, upon receipt of the return of income, again notice u/s 142(1) on 18.02.2015 and the assessment was completed on 27.02.2015.

21. From the perusal of series of the notice issued and the opportunities given by the AO, it is evident that sufficient opportunities of almost four months were provided to the assessee during which except filing the return and taking adjournment, assessee had not filed a single document as called for by the AO. Therefore, we find no infirmity in the order of the AO who provided sufficient opportunities to the assessee to submit its case before the AO. Accordingly, Ground of appeal No.2 raised by the assessee is dismissed.

22. In **Ground of appeal No.3**, the assessee challenged the validity of the assessment when ITR V filed was not acknowledged by CPC.

23. Before us, Ld.AR for the assessee submits that the assessee has filed return of income through e-filing portal on 17.02.2015 and had not submitted the signed acknowledgement of ITR-V within the period of 120 days as provided therefore, the return was treated as nonest. In this regard, out attention is invited to the remand report dated 06.10.2023 wherein it is observed that the return filed on 17.02.2015 vide acknowledgement No. 483876120170215, the copy of ITR V was received on CPC, Bangalore on 26.10.2015 as is beyond the stipulated time period of 120 days. Ld.AR further submits that in terms of Notification dated 04.01.2012, the scheme for processing of return of income was provided by the Board wherein in Item No.4 it is provided as under:-

(1) "Where a return of income is filed electronically with digital signature, on successful transmission of the data, an acknowledgement as generated by the server of the Central Government shall be available to the person in printable format.

(2) The acknowledgement shall contain the acknowledgement number of the electronic transmission and the date of transmission as an evidence of filing of the return.

(3) A copy of the electronic transmission of filing the return of income shall be downloaded and kept by the person.

(4) Where a return of income is filed electronically without digital signature, on successful transmission of the data, an acknowledgement in Form ITR-V as provided in rule 12 of the Income Tax Rules, 1962 shall be generated by the server of the Central Government and available to the person.

(5) The Form ITR-V shall also contain the acknowledgement number of the electronic transmission and the date of transmission as an evidence of filing of the return.

(6) A copy of ITR-V shall be downloaded and after taking a printout of such a form, it shall be physically verified under the signature of the person and forwarded to the Centre.

(7) The Form ITR-V duly verified shall be sent to the Centre, either through ordinary or speed post, within such period of uploading the electronically filed return as may be specified by the Director General in this behalf.

(8) The date of transmitting the data electronically shall be the date of furnishing the return if the Form ITR-V is furnished in the prescribed manner and within the period specified.

(9) In case Form ITR-V furnished after the prescribed time is rejected on account of it being unsigned, illegible, mutilated, bad quality or not as per specification, it shall be deemed that the return in respect of which the Form ITR-V has been filed was never furnished and it shall be incumbent on the person to electronically file the return of income again followed by submission of the new Form ITR-V.

(10) The Form ITR-V shall be submitted at the address, in the mode and within the period or extended period specified by the Commissioner in this behalf.

(11) The Commissioner may, in order to avoid hardship in a case or class of cases, condone the delay in receipt of Form ITR-V.

(12) The Commissioner may call for fresh Form ITR-V in special circumstances, where the Form ITR V earlier submitted cannot be considered for technical reasons."

24. Ld.AR submits that according to above Notification, if the ITR-V is furnished after the prescribed time of 120 days the same is liable to be rejected. He thus submits that since CPC has accepted that the return of income filed by the assessee was not filed within 120 days therefore, the said return was not a valid return and therefore, any notice issued u/s 143(2) on such invalid return and consequent order are bad in law and deserved to be quashed.

25. On the other hand, Ld. Sr. DR for the Revenue drew our attention to second remand report of CPC, Bangalore dated 10.12.2023 wherein it is categorically stated that the return of income filed by the assessee in response to notice u/s 148 of the

Act was not processed by CPC but was further scrutinized by the AO and final assessment order was passed and served upon the assessee alongwith notice of demand thus, this return is scrutinized by the AO. The remand report so submits is reproduced as under:-

OFFICE OF THE
INCOME TAX OFFICER,
WARD – 2(2)(2), GHAZIABAD
Email: ghaziabad.ito2.2.2@incometax.gov.in

F.No: ITO-W-2(2)(2)/GZB/Ram Kumar Tyagi/2023-24/ 525 Dated: 10.10.2023

To,

The Income Tax Officer,
G Bench, ITAT, 7th Floor,
Lok Nayak Bhawan, Khan Market,
Delhi – 110003

[Through Proper Channel]

Sir,

Sub: Requirement of copy of report from CPC, Bangalore in the case of Sh. Ram Kumar Tyagi, Appeal No. 2676/Del/2016, for the A.Y. 2008-09 (PAN: AHIPT9119Q) – Reg –

Kindly refer to your office letter F. No. Sr. D.R./ITAT/G Bench/2023-24/401 dated 10.04.2023 and 01.05.2023 on the subject mentioned above.

In this connection, point wise reply with respect to queries raised by you is as under:

Point No. 2 (i): Please furnish the date of ITR-V filed before CPC.
Reply: ITR-V was filed on 17.02.2015 (copy of ITR-V enclosed)

Point No. 2 (ii): When was ITR-V processed (date).
Reply: As per records available with this office, this return was filed by the assessee in response to notice u/s 148. The returns filed u/s 148 are not processed by CPC but are further scrutinized by the AO and final assessment order may be treated as its processing copy of which has already been served upon the assessee along with notice of demand.

Point No. 2 (iii): What/how ITR V was processed (please furnish the copy of the same).
Reply: As discussed in point No. 2(ii) above, the case of the assessee was processed by the assessment/scrutiny proceedings completed by the AO by passing the final assessment order after considering the reply of the assessee filed by him during the assessment proceedings in support of his claims. (Copy of assessment order may be treated as processing of ITR).

Yours faithfully,

Ajay Kr

(Ajay Kumar)
Income Tax Officer,
Ward-2(2)(2), Ghaziabad

He therefore, requested that the order so passed is a valid order and deserves to be upheld on this count.

26. Heard the contentions of both the parties and perused the material available on record. It is seen that Ld.CIT(A) has discussed this issue in para 8.3 of the order wherein Ground of appeal taken by the assessee is rejected by placing reliance on the provision of section 292B of the Act wherein it is provided that if the assessee has not raised the contention about the return filed by him as invalid and participated in the assessment proceedings, the assessee cannot challenge the same subsequently. We find that before us assessee has failed to rebut such findings of ld. CIT(A). Accordingly, Ground of appeal No.3 raised by the assessee is dismissed.

27. **Ground of appeal No.4** raised by the assessee is with respect to the issue of notice u/s 143(2) on the Counsel of the assessee without following the procedural manner provided in Section 282 of the Act.

28. Heard the contentions of both the parties and perused the material available on record. On this issue, we find that the notice issued u/s 143(2) of the Act by the AO was served upon the Ld. Counsel of the assessee duly appointed by the assessee with regard to the representation of his case before the Income Tax authorities and therefore, there is no error in the action of the AO in serving the notice u/s 143(2) of the Act to the Ld. Counsel of the assessee. Further assessee has not raised any objections in this regard during the assessment proceedings and participated in the same. Thus looking to these facts we find no error in the action of AO in

the service of notice u/s 143(2) of the Act and accordingly, Ground of appeal No.4 raised by the assessee is dismissed.

29. **Ground of appeal No.5** raised by the assessee is with regard to non-supply of reasons recorded.

30. Heard the contentions of both the parties and perused the material available on record. In this regard, it is seen that the assessee has filed the return of income on 18.02.2015 before the AO and thereafter, no formal request was made for the supply of reasons recorded. Thus, in absence of the same, there is no error in part of the AO in not supplying the copies of the reasons recorded. The Hon'ble Supreme Court in the case of ***Gkn Driveshafts (India) Ltd vs Income Tax Officer And Ors*** reported in ***259 ITR 19*** (SC) has spelt out the procedure to be adopted for challenging the jurisdiction for re-assessment wherein the Hon'ble Court has held that the assessee first has to file the return of income in compliance of notice u/s 148 of the Act and thereafter, a prayer could be made for the supply of the reasons recorded. However, as observed above, in the instant case, no such prayer was made before the AO therefore, AO was not obliged to supply the reasons recorded. Accordingly, Ground of appeal No.5 raised by the assessee is dismissed.

31. **Ground of Appeal No.6** taken by the assessee is with respect to the merits of the issue wherein the assessee has challenged the action of the AO in treating the assessee as the 1/6th owners of the said property which come into the possession of the assessee under

inheritance from his forefathers and accordingly, the property belong to common hotch-potch and thus was of the HUF property.

32. Before us, Ld.AR of the assessee submits that during the course of appellate proceedings, the assessee submitted the family settlement executed between the assessee and his family members as per which the ancestral property sold by the assessee was inherited by his family and the 1/6 share of assessee's family was to be distributed amongst the family members of the assessee comprising of himself and his two major sons., the assessee has shared the consideration from the sale of these properties as 1/3rd of 1/6th shares which comes to 1/18th of total consideration however, such contention was rejected by the Ld.CIT(A).

33. Before us, Ld.AR for the assessee submits that the property was related to HUF as it was ancestral property and therefore, the capital gain arising out of the said property has to be assessed in the hands of the HUF and not in his individual capacity. The assessee has made a detailed written submission in this regard which reads as under:-

E. ***Property did not belong to the assessee in his individual capacity***

Assessee has raised the following ground of appeal in this regard:-

6. "That having regard to the fact that there was a family settlement amongst the appellant and his two sons whereby the appellant and his two sons were having 1/3rd shares in the ancestral land, which stood mutated in the name of appellant, the Ld. CIT(A) has grossly erred in rejecting the contention that the liability of the appellant should be restricted to 1/3rd of the total liability."

It was throughout the case of the assessee that the land did not belong to him. It was the ancestral property and his family had inherited 1/6th of the same. Since it was the ancestral property, his sons had share equal to that of him. Accordingly, he was the owner of only 1/3rd of the 1/6th

share. He also produced a copy of family settlement dated 03.10.2007 arrived at between him and his sons, during the appellate proceeding. However the CIT(A) rejected his contention observing that during the assessment proceeding or during the appellate proceeding, assessee had not mentioned regarding any family settlement. The same was produced only in the rejoinder filed in pursuance to application under Rule 46A. Hence, he rejected the said document holding the same as inadmissible and unverifiable additional evidence. He also repelled the contention of the assessee that the sale consideration was distributed amongst him and his two sons, in the absence of any evidence. Ultimately, he held that any capital gain arising on sale of ancestral property would be taxable in the hands of assessee as he was the inheritor of the property. Rights of the two sons, if any, would arise only when the property would bequeath upon the sons.

SUBMISSIONS

01. The CIT(A) has misinterpreted, infact not appreciated the concepts of hindu law.

02. A Hindu Undivided Family (HUF) is the normal condition of Hindu Society. HUF is a unit of assessment under the Income Tax Act. It consists of persons lineally descended from a common ancestral and includes their wife and unmarried daughters. A Hindu Undivided Family is different from a hindu coparcenary.

03. All property inherited by a Male Hindu from his father, father's father or father's father's father is ancestral property. The essential feature of ancestral property according to Mitakshra Law is that the sons, grandson's and great grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment to their birth.

04. In the simple language under Mitakshra Law, each son upon his birth, takes an interest equal to that of his father in ancestral property, whether it be movable or immovable. It is very important to note that the right which the son takes at his birth in the ancestral property is wholly independent of his father. He does not claim through his father.

05. After the amendment in the Hindu Succession Act in 2005, each daughter, since she is by virtue of the amendment, recognized as a coparcener alongwith the sons, also takes a similar interest.

06. The father of a joint family has the power to divide the family property at any moment during his life, provided he gives his sons equal shares with himself, and if does so, the effect in law is not only a separation of the father from the sons but a separation of the sons inter se.

07. Partition is a severance of joint status and as such it is a matter of individual volition. All that is necessary, therefore, to constitute a partition, is a definite and un-equivocal indication of his intention by a member of a

joint family to separate himself from the family and enjoy his share in severalty.

08. Hon'ble Supreme Court in Raghaamma vs Chenchamma (AIR 1964 SC 136) had pointed out that there should be an intimation, indication, or representation of such intention and that, what form that manifestation should take would depend upon the circumstances of each case. It is implicit that this manifestation of intention should be to the knowledge of the persons affected.

09. An agreement to separate is not required by law to be in writing. If it is in writing & clearly indicates on the face of it an intention to separate and hold the property in defined shares as separate owners, no evidence is admissible of the subsequent acts of the parties to alter or control its legal effect.

10. A mere agreement to divide does not require registration, if there is an actual oral partition. It is well settled that the document though unregistered, can, however, be looked into for the limited purpose of establishing a severance in status, though that severance may ultimately, after the nature of possession held by members of the separate family as co-tenants. Kindly see

Digamber Patil vs Devram (AIR 1995 SC 1728)

11. Privi counsel in Appovier vs Rama Subba Aiyan (1866) 11 MIA 75 had held that where the coparceners, with a view to partition executed a writing, whereby they agreed to hold the joint property in defined shares as separate owners, such writing operates in law as a partition, though the property is not physically divided. This is a case where the agreement declares on the face of it, the intention of the parties to hold the joint property as separate owners and no evidence is admissible of the subsequent acts of the parties to control or alter the effects of the document.

12. In Ranganayakamma vs K S Prakash (2008) 15 SCC 73 (SC), it is held by the Supreme Court that a deed of partition can also be entered into by way of family arrangement where no registration is required.

13. In Narendra Nath (NB) vs CWT (1960) 74 ITR 190 (SC) the question for consideration by the Supreme Court was whether the property obtained by a coparcener on a partition between himself and his father and brothers constituted HUF property so as to be assessed to wealth tax as such. It was held that when a coparcener having a wife and two minor daughters and no son, received his share of a joint family properties on partition, such property, in the hands of the coparcener belongs to the Hindu Undivided Family of himself, his wife and minor daughters and was held not assessable as his individual property. It was pointed out that the effect of partition could not be held to have effected the character of these properties, which continued to remain joint family properties in the hands of the divided coparcener. This position was reiterated by the Supreme

Court in Hriday Narain (L) vs ITO (1970) 78 ITR 26 (SC). In Tola Ram Bijoy Kumar vs CIT (1978) 112 ITR 750 (SC), the business was until partition a joint family business. It was held that the share of the assessee in partnership which came into being on the partition of the HUF could not be regarded as his separate property. It was held to have become the property of the joint hindu family of the assessee and his sons.

14. In the present case, it is held that the property sold by the assessee was an ancestral property and therefore, as per Mitakshara Law, the sons of the assessee had an interest equal to that of his father (present assessee). It is needless to say that the right which the son takes at his birth in the ancestral property is wholly independent of his father. He does not claim through his father. Even before the CIT(A) assessee had taken a specific ground that his father had only 1/3rd share in the ancestral property. However, CIT(A) has not dealt with the same. Assessee had also produced the family settlement dated 03.10.2007, however, Ld. CIT(A) was not convinced with the same, observing that the assessee had for the first time in the Rejoinder come-up with the plea that there was a family settlement. It is needless to say that there cannot be any estopel against the statute. It is a well settled law that in the ancestral property, the sons have interest equal to his father. CIT(A) had repelled the contention of the assessee holding that land being ancestral property, any capital gain liability on its sale would be taxable in the hands of assessee as he was the inheritor of this property. Rights of the two sons, if any, would arise only when property bequeaths to sons. This is, it is stated, misconception of Hindu Law. Even if family settlement had not to be accepted by the CIT(A) then also this was the property held by the assessee in his HUF capacity and not in the individual capacity. Hence, the assessment framed by the Assessing Officer as confirmed by the CIT(A) in the hands of assessee was bad-in-law, liable to be struck down."

34. Ld.AR finally submits that the land did not belong to the assessee in his individual capacity and since it was ancestral land wherein share of assessee's family was 1/6th share thus the capital gains from the sale of the same should be assessed in the capacity of HUF under Income Tax Act. It was further submitted by Ld.AR that mutation of the said land was in the name of six persons representing six different families and thus every family is to be assessed in the capacity of HUF for its 1/6th share in sale consideration. Ld. AR further drew our attention to the family

statement between the assessee and his sons according to which the assessee had paid 1/3rd share of the sale consideration received at INR 8,00,72,200/- to his sons. Copy of the same is also placed on record. Therefore, it is submitted by the assessee that if the land is treated as "residential" and not "agricultural", the entire amount of the consideration either is to be assessed in the hands of the bigger HUF consisting of all the six families of in the hands of smaller HUF of all the six families separately for their 1/6th share and it could not be assessed in the hands of any individual member in his individual capacity as has been done in the instant case. She prayed accordingly.

35. On the other hand, Ld. Sr. DR submits that land was sold is not agricultural land and what is the status of land is to be seen as on 01.04.1981 and not as on date of sales. He further submits that as per the Sale Agreement, name of the assessee is appearing as one of the owners out of six co-owners and 1/6th of the consideration was received by the assessee. It is thus, submitted that the said consideration is rightly assessed in the hands of the assessee in the individual capacity and thus the Long term capital gains as computed by the AO in the hands of assessee deserves to be uphold. He prayed accordingly.

36. Heard the contentions of both the parties and perused the material available on record. It is an admitted fact that the lands in question which were sold during the year, were inherited by the assessee's family from his fore-father and there were total six family to whom the land parcels were transferred under inheritance. The

assessee, being head of his family, was considered as one of the seller in the Sale Deed and the heads of other five families were taken as co-owner for the purpose of execution of the sale deed which was registered before the competent authorities. It is also seen that the mutation was also registered in revenue records in the name of six co-owner families which are six separate families. The assessee also filed family statement between himself and his two major sons with respect to their shares in the said property according to which the assessee is having 1/3rd share in the overall 1/6th share of his family thus, the assessee is the owner of 1/18th share in the lands sold. Once the lands are inherited from the fore-fathers, it cannot be said that the land was owned by the assessee in its individual capacity.

37. The Hon'ble Supreme Court in the case of ***Tolaram Bijoy Kumar vs Commissioner Of Income Tax, Assam*** reported in ***112 ITR 750*** **(SC)** held that share of the assessee in partnership which came into force on the partition of HUF cannot be regarded as his separate property. It is the joint HUF property of assessee and his family members. In the instant case also, the subject lands were came into the ownership of the assessee's family by way of inheritance accordingly, the said lands were of the ownership of the HUF of all the six families who were become owner to the extent of their 1/6 share and the assessee's family comprising of assessee and his family members were the co-parcener to the extent of the 1/6 share of their family in the said lands.

38. It is also seen that there was a litigation between the assessee and his sons which was settled in terms of the arbitration award wherein the assessee had agreed to transfer 1/3rd share of the consideration received by him to the both of his sons, namely Shri Prashant Tyagi and Shri Pankaj Tyagi. Thereafter in terms of the Arbitration award, the Additional Civil Judge, CD, Ghaziabad in case No.449 of 2015 vide order dated 28.06.2017, had allowed to withdraw the case between the assessee and his sons on the basis of arbitration award and the settlement reached between them. This further proves that the consideration received by the assessee was on behalf of the smaller HUF of his family and the share of the other co-parceners was transferred by the assessee to them. Therefore, it is successfully demonstrated by the assessee that the consideration was received by him was actually belonged to the HUF.

39. The arguments of Ld. Sr. DR that the status of the land as on 01.04.2001 is to be seen is not correct as for the purposes of the determination of the character of the land, the date of sale is the important factor when it is to be seen whether the land is agricultural land or the capital assets. Further, with respect to the ownership, also the status as on the date of sale is to be seen. As observed by us, in the instant case, the subject lands were inherited by all the six family's including the family of assessee from their fore-fathers and therefore, the these are the assets of bigger HUF and since all the six families had received their 1/6th share in the sale consideration separately, the same should be assessed in the

hands of their smaller HUF. Thus, the capital arising from the transfer of sale of these lands is to be assessed in HUF capacity only and not in the hands of the assessee in individual capacity. Accordingly, we hold that the assessment order passed by making addition towards the long term capital gain from the sale of ancestral lands in his individual capacity is bad in law and the subject lands being under the ownership of the HUF therefore, the same should be assessed in HUF capacity only. Therefore, we direct the AO to delete the additions made in the hands of the assessee on account of LTCG from sale of such land and further direct to take necessary action in the hands of HUF in accordance with the provisions of law. With this, the Ground of appeal No.6 raised by the assessee is hereby allowed.

40. **Ground of appeal No.7** is with respect to the addition of INR 75,000/- made on account of agricultural income declared by holding the same as undisclosed.

41. Heard the contentions of both the parties and perused the material available on record. Lower authorities have made the addition for the reasons that the assessee has failed to file any evidences of having agricultural income. Before us also, no evidence was produced therefore, we find no infirmity in the order of the lower authorities in this regard. Accordingly, Ground of appeal No.7 raised by the assessee is dismissed.

42. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 13.08.2025.

Sd/- ***Sd/-***

(VIKAS AWASTHY)
JUDICIAL MEMBER

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Amit Kumar, Sr.P.S

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI