

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' NEW DELHI)
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER
ITA No. 3279/Del/2018 (A.Y 2011-12)**

Jaipal C/o. Kunal Aggarwal & Associates, 226, JMD Megapolis, 2 nd Floor, Sector-48, Sohna Road, Gurgaon. Haryana PAN: ALAPJ3014C	V s	ITO Ward 2(5) Gurgaon. Haryana
Appellant		Respondent
Assessee by	None	
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR	
Date of Hearing	17/12/2025	
Date of Pronouncement	14/01/2026	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-1, Gurgaon ('Ld. CIT(A)' for short), dated 28/02/2018 for the Assessment Year 2011-12.

2. None appeared for the Assessee and no adjournment application filed on behalf of the Assessee.
3. Brief facts of the case are that, an assessment order came to be passed u/s 147 of the Income Tax Act, 1961 ('Act' for short) on 22/03/2016 by making certain additions and computed the income of the Assessee at Rs. 80,56,680/-. As against the return of income filed

by the Assessee at Rs. 1,15,583/-. Aggrieved by the assessment order dated 22/03/2016, Assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 28/02/2018, partly allowed the Appeal of the Assessee. As against the order of the Ld. CIT(A) dated 28/02/2018, the Assessee preferred the present Appeal.

4. The Ld. Departmental Representative relying on the findings and conclusion of the Ld. CIT(A), sought for dismissal of the Appeal.

5. We have heard the Ld. Departmental Representative and perused the material available on record. The Ld. CIT(A) while deciding the Appeal held as under:-

“4. Ground No. 2:- This ground is against assessment made after by issue of notice u/s 148.

4.1 Brief facts are that Assessing Officer received information that the appellant had made cash deposits of Rs. 18 lakhs in his bank account maintained with ICICI Bank. The Assessing Officer accordingly recorded reasons and issued notice u/s 148. The appellant did not file any return in response to this notice. The Assessing Officer thereafter issued notice u/s 142(1) calling for information with regard to the various debit and credit entries in the bank account. There was no compliance from the appellant. The Assessing Officer thereafter obtained bank statement by issuing letter u/s 133(6). Subsequently, the appellant furnished bank statement, P&L account and balance sheet as well as computation of his income showing gross receipts of Rs. 13,75,569/- and income u/s 44AD at Rs. 1,15,000/- The Assessing Officer noted that the appellant was a Prop. of M/s JSB Packer. From the bank account of the appellant, the Assessing Officer noted that there was a credit entry of Rs. 98,87,500/- on 27/07/2010. The appellant submitted that he had received 1/4th share against sale of land to

M/s KrishBuildtech. The Assessing Officer noted that the land sold by the appellant was within 6 Km. of nearest municipal limit and as such was a capital asset. The Assessing Officer further observed that cost of acquisition of the land as on 01/04/1981 was Rs. 27,000/- per acre which was rate of similar land of nearby area during 1981-1982. The Assessing Officer accordingly asked the appellant to explain why the long term capital gains may not be computed accordingly. The Assessing Officer also obtained information from HalkaPatwari that the land was approx. 2 Km. away from the municipal limit of Gurgaon. The appellant contended that the said land was at a distance of 15 Km. from the Tehsil Sohna and as such was not a capital asset. The Assessing Officer considered the appellant's submissions and observed that as per provisions of section 2(14), the distance is to be seen from any 'Municipality' and accordingly held that the income arising on account of transfer of this land was taxable under the head capital gains. The Assessing Officer further noted that the appellant had purchased agricultural land on 02/12/2010 and 08/12/2010 amounting to Rs. 16,88,863/-. This amount was allowed as deduction u/s 54B.

4.2 The appellant also claimed deduction u/s 54F on account of purchase of residential house from Smt. Rajesh BalaW/o Sh. Pawan Kumar of Sohna on 16/03/2011 for an amount of Rs. 18 lakhs. The appellant furnished a photocopy of Mukhtiyarnama. The Assessing Officer did not accept this evidence and rejected the claim of deduction u/s 54F. Long Term Capital Gains were computed as under:-

<i>Sale consideration</i>	<i>Rs. 98,87,500/-</i>
<i>Cost of acquisition</i>	<i>Rs. 3,07,152/-</i>
<i>Long term capital gains</i>	<i>Rs. 95,80,348/-</i>
<i>Less: Deduction u/s 54B</i>	<i>Rs. 16,88,863/-</i>

Balance (LTCG) Rs. 78.91.485/-

4.3 This amount was held as taxable income in the hands of the appellant.

4.4 AR of the appellant vide written submissions dated 22/08/2017 submitted as under:-

"Reason recorded by the Ld. AO u/s 148 of the Act:- The case was reopened on the basis of cash deposit exceeding Rs. 10,00,000/- in saving bank account.

In the present case, the case was reopened on the basis of cash deposits in bank account and during reassessment proceedings the Ld. AO did not make any addition to the income of the assessee on account of cash deposits. It is submitted that in terms of section 147 of the act, if no additions were made in respect of original reasons given for reopening of assessment, it was not open to AO to make additions on some other ground without first issuing a notice u/s 148 with respect to such other possible escapement of income. Therefore the assessment order is null and void"

4.5 I have carefully considered the appellant's submissions. The appellant has contended that the case was reopened u/s 148 on the ground that there were unaccounted cash deposits in the bank account and as no addition has been made on this issue, no addition on any other ground could have been made by the Assessing Officer. I do not agree with this contention of the appellant. The case was reopened on the ground that there were cash deposits in the bank account. It was only while examining the bank account that the issue of credit entry amounting to more than Rs. 98 lakhs was noticed by the Assessing Officer. As such the addition under the head long term capital gains is based on the information obtained from the bank account of the appellant.

4.6 Even otherwise there is no bar in making additions on other grounds even though no addition is made on the ground on which the case is reopened. Reference in this regard may be made to the decision of the Hon'ble Jurisdictional P&H High Court in the case of CIT V/s MehakFinvest Pvt. Ltd. (2014) 50 Taxman.com 51. In this case, the Hon'ble High Court held in para 7 of the order as under:-

"This court in Majinder Singh Kang's case (supraj, considering the scope of Explanation 3 to section 147 of the Act held that the Assessing Officer is empowered to make additions even on the ground on which reassessment notice might not have been issued where during the reassessment

proceedings, he concludes that some other income has escaped assessment which comes to his notice during the course of the proceedings for reassessment under section 148 of the Act. The provision nowhere postulates or contemplates that the Assessing Officer cannot make any additions on any other ground unless some addition is made on the ground on which reassessment had been initiated. Special Leave Petition (Civil) No. 13028 of 2011 against this decision was dismissed on August 19, 2011. The reassessment proceedings, thus, in the present case, cannot be held to be vitiated"

4.7 This ground of appeal is accordingly dismissed.

5. Ground No. 3:- This ground was withdrawn by the appellant during the course of appellate proceedings in view of the decision dated 29/05/2017 of the Hon'ble Jurisdictional ITAT, Delhi in the case of ACIT, Circle-38(1), New Delhi V/s M/s KailashNath and Associates in ITA No. 3095/Del/2011 and the decision of the Hon'ble Jurisdictional P & H High Court in the case of Smt. AnjanaSehgal (2013) 40 taxman.com 485.

6. Ground No. 4:- This ground is against computing the long term capital gains by considering the circle rate of the land @ Rs. 27,000/- per acre.

6.1 Brief facts have been discussed above.

6.2 The AR of the appellant vide written submissions dated 22/08/2017 contended that there was no basis for adopting the cost of acquisition on 01/04/1981 @ Rs. 27,000/- per acre.

6.3 I have carefully considered the appellant's submissions. I have also perused the facts recorded in the assessment order. It is clearly recorded by the Assessing Officer that the rate was based on the rate of similar land as on 01/04/1981. The appellant has not furnished any other alternate evidence to controvert this observation of the Assessing Officer. It is accordingly held that the Assessing Officer was justified in adopting the rate of Rs. 27,000/- per acre as on 01/04/1981.

7. Ground No. 5:- This ground is against denial of deduction u/s 54F.

7.1 Brief facts have been discussed above.

7.2 The AR of the appellant filed a copy of the registered sale deed in support of his contention that the appellant had purchased a residential house on 15/03/2011 from Smt. Rajesh BalaW/o Sh. Pawan Kumar.

7.3 Perusal of the sale deed reveal that the sale deed has been duly registered for an amount of Rs. 18 lakhs on which stamp duty of Rs. 1,26,000/- has been paid. It is accordingly held that the appellant is eligible for claim of deduction u/s 54F amounting to Rs. 19,26,000/-. This ground of appeal is allowed.

8. Ground No. 6:- This ground is against charging of interest u/s 234A which is consequential in nature.

9. Additional Ground of appeal

9.1 During the course of appellate proceedings, the appellant filed a request for admission of following additional ground of appeal:-

"That on facts and circumstances of the case and in law the reassessment proceedings were initiated on suspicion only, therefore whole of the reassessment proceedings are liable to be quashed."

9.2 The additional ground raised by the appellant is against the reopening of assessment on the basis of suspicion only.

9.3 Brief facts have been discussed above.

9.4 It is seen from the facts recorded in the assessment order and the contentions of the appellant that no such objection with regard to reopening of assessment had been taken by the appellant before the Assessing Officer. There is no mention of any such objection being raised by the appellant at the time of assessment proceedings. As such the objections raised now are not valid. Reference in this regard may be made to the following case laws:-

Crown Consultants Pvt. Ltd...v. CIT(2014) 102 DTR 77/362 ITR 368 (Bom.)(HC)

Reassessment-Obiection not raised before the AO -New issues raise first time before the Court-Assessee is not entitled to challenge validity of reopening on a ground not stated in objections to AO.[S.148] Just as the revenue cannot improve upon its case for reopening before the Court but must stand or fall by the reasons recorded for reopening the assessment, the same test would be applicable in case of an assessee i.e. it must stand or fall by its objection to the grounds for reopening of assessment. It is not open to the assessee to urge fresh objections before the Court which the AO had no occasion to deal with, unless of course the notice to reopen is ex-facie without jurisdiction not requiring consideration of any argument such as beyond limitation. (AY.2007-08)

MuktiPropertier (P) Ltd. Vs. CIT (2011) 12 taxmann.com 215 Cal

Where Assessee did not challenge initiation of reasstt. proceedings before authorities below, said waiver legally estopped Assessee from raising such a question before High Court for first time particularly when there had been no order of assessment passed and return was merely processed u/s 143(1)

CIT. Shyam Cold Storage (2013) 215 Taxman 669 (All) (HC)

S.148: Reassessment-Recording of reasons-No mention of assessment year in the recorded reasons - Reassessment held to be valid as the assessee participated in the proceedings without raising any objections. [S. 147, 292B] The assessee had participated in the reassessment proceedings without raising any objections as to which assessment year the reasons recorded relate Tribunal set aside the re assessment order, as in the reasons there is omission of assessment year. On appeal by revenue the Court held that after participating in the reassessment proceedings in which the Assessing Officer made certain additions, the assessee raised an objection before the Tribunal that the recorded reasons did not mention the

assessment year. Held, since it was not shown that the assessee was misled by not mentioning the assessment year in the reasons recorded and that the assessee participated in reassessment proceedings without raising any such objection, hence the reassessment was valid, however the additions made have to be decided on merits. Matter was restored back to Tribunal. (A.Y. 2002-03)

9.5 The additional ground filed by the appellant is therefore not being admitted and the request is accordingly rejected.”

6. Assessee has not brought any material to contradict the above finding of the Ld. CIT(A) and as the Ld. CIT(A) has decided all the grounds of Appeal of the Assessee, we find no reason to interfere with the findings and the conclusion of the Ld. CIT(A). Accordingly the Appeal of the Assessee is dismissed.

Order pronounced in the open court on 14th January, 2025

Sd/-

**(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

Date:- 14 .01.2026
R.N, Sr.P.S*

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

