

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4377/DEL/2017
[A.Y 2008-09]
(THROUGH VIDEO CONFERENCING)

Mr. Bir Singh
Village Sihi, Sector-8
Faridabad, Haryana

Vs. Income Tax Officer
Ward - 1(5), Faridabad

[Appellant]

[Respondent]

Appellant by : Sh. Avdhesh Bhatnagar, Advocate
Respondent by : Sh. Jagdish Singh Dahiya, Sr. DR.

Date of Hearing : 06.07.2020
Date of Pronouncement : 08.07.2020

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred the order of the CIT(Appeals), Faridabad dated 19.04.2017 pertaining to A.Y.2008-09.

2. The grounds raised by the assessee are as under :-

1. *That the appellant is a small farmer owning small agricultural land who does not know Income Tax Law and blindly trusted on Chartered Accountant Mr. Shy am Sunder Mangla, M/s Shy am Sunder Mangla & Co, having office at Sco - 201 shopping center sector - 8 Faridabad (India) -121006. The appellant has given all the necessary documents & information to CA Mr. Mangla who has not submitted return of income, all the information & documents during the assessment & Appeal proceedings as per the Income Tax Law and did not performed his professional duties and did not give*

proper advice to appellant. In view of these facts, kindly allow an opportunity to the appellant to explain the case and to submit all the necessary information & documents to the Ld. Assessing Officer.

2. That the Ld. Commissioner of Income Tax (Appeals) is not right in conforming the impugned order framed by the Assessing Officer in treating the whole sales consideration of Agriculture Land and old house on agricultural land amounted to Rs.2,13,17,710/- on estimated basis as taxable income from capital gain where as the appellant has reinvested the sales proceeds in Agriculture Land & Construction of Residential property and no exemption is allowed to the appellant.

3. That the Ld. Commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by assessing officer in treating the indexed cost Rs.5,00,000/- on estimated basis by stating "subject to change" and not considered market value as on 01-04-1981 of agricultural land & old house.

4. That the Ld. Commissioner of Income Tax (Appeals) and the Ld. Assessing Officer have erred in calculating correct taxable income and correct indexed cost of agricultural land and old house inherited from parents.

5. That the Ld. Commissioner of Income Tax (Appeals) is not right in conforming the impugned order framed by the Assessing Officer who has not considered the deductions/ exemptions allowable under the head Capital gain.

6. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer under Section .144 without serving mandatory notice.

7. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer under Section 144 in serving the notice U/s.142(1) dated 16/03/2009.

8. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing Officer

without following the provisions u/ s.147 and 148. The appellant has not received any notice u/s.148 of Income Tax Act.

9. That having regards to the facts and circumstances of the case, the learned commissioner of Income Tax (Appeals) has not complied the provision of section 250(6) to pass a speaking order.

10. That the learned commissioner of Income Tax (Appeals) has not afforded proper opportunity to the appellant to explain the matter and whole order is arbitrary and against the principles of natural justice and passed the order in a hurry.

11. That the order passed by Learned CIT(A) is bad in law and against the facts & circumstances of the case.

12. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

3. Briefly stated the facts of the case are that as per the information received from Sub Registrar, Ballabgarh, Faridabad the AO came to know that there was transfer of land to M/s. BPTP Ltd. and its group concerns. It came to the notice of the AO that the assessee and others on 07.06.2007 received total Rs. 15,26,50,000/- as sale consideration of their land from M/s. Green Valley Housing Development Private Limited. According to the AO out of this sale consideration the assessee shares comes to Rs. 2,18,17,708/-. The AO was of the opinion that since the land in question was situated within Municipal Limits of Faridabad. Therefore, it is a capital asset chargeable to tax u/s. 45 (5) of the Act.

4. Accordingly, notices were issued and served upon but no one attended the assessment proceedings inspite of several notices. The AO was left with no other choice but to proceed exparte. The AO finally concluded as under :

7. It is also undisputed that the assessee was owner & in possession of Land situated in village Sihi during the year 2003-04 and sold this land to M/s Green Valley Housing & Land Development Pvt. Ltd, M-11, Middle Circle, Cannaught Circle, New Delhi and received total sale price at Rs. 2,18,17,708/-. The assessee did not cooperated in the finalising of the Income tax assessment proceedings. In the interest of equity, indexed cost of land at Rs. 5,00,000/- has been taken irrespective of holding of land by the assessee subject to change, in case assessee furnishes complete documents for purchase/acquisition price of Land. Therefore sum of Rs. 5,00,000/- has been taken, as the indexed cost price of land as on 07.06.2007 i.e. the date of sale of land.

8. In the light of above observations; the income of the assessee is computed as under:

Long term capital gains : Rs. 2,18,17,708/-

Less Indexed cost price of Land as on : Rs. 5,00,000/-

07.06.2007

Total taxable Income Rs.2,13,17,708/-

RO Rs.2,13,17,710/-

5. Aggrieved by this the assessee carried the matter before the CIT(Appeals).

6. Before the CIT(Appeals) the assessee trusted his counsel to furnish necessary documentary evidences before the CIT(Appeals).

7. Some documents were submitted as additional evidences. The CIT(Appeals) called for a remand report. On merits of the addition the CIT(Appeals) observed as under :-

14. Ground Nos. 5 & 6 deal with the fact that the AO made addition of Rs.2,13,17,710/- on account of capital gain. The Ld. AR has not made any written submissions on the merits of the additions made. The written submissions were filed in on 26.07.2016 wherein the Ld. AR had submitted that the submissions of this Ground will be submitted next week. Subsequently the Ld. AR has filed an affidavit on 01.08.2016 in DAK however no written submissions were filed on these grounds. Thus after considering the assessment order especially for para 4 to 7, I find that the appellant has indeed received the total consideration of Rs.2,18,17,708/- on 17.10.20005 and 07.06.2007 and final deed was executed on 07.06.2007. The appellant has not filed his return of income for A.Y. 2008-09 and also not paid the capital gain tax on the same. Hence in view of these facts, these grounds of the appellant are dismissed.

8. Aggrieved by this the assessee before us. The counsel for the assessee vehemently stated that the counsel appearing before the CIT(A) did not submit all the necessary documents and the assessee being an illiterate farmer who trusted the counsel was betrayed by the counsel. The counsel prayed that considering the facts of the case the assessee should be given one more opportunity to defend his case. The Counsel also furnished additional evidences with an application for the admission of the same.

9. The DR supporting the orders of the authorities below, stated that the documents furnished by the assessee needs verification.

10. We have given a thoughtful consideration to the orders of the authorities below. The fact is that the assessment order was framed exparte. The documents filed before us show that the assessee has entrusted his counsel to furnish evidence before the first appellate authority but a perusal of the order of the first appellate authority show that the appellate proceedings were not properly attended.

11. We have also given through the application for the admission of additional evidences. We are of the considered view that these documents go to the root of the matter. Therefore, in the interest of justice and fair play we deem it fit to restore the entire quarrel to the files of the AO. The assessee is directed to furnish all those documents before the AO and the AO is directed to decide the issue fresh after considering the documents and after giving a reasonable opportunity of being heard to the assessee.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 08.07.2020.

Sd/-
[KULDIP SINGH]
JUDICIAL MEMBER

Dated: 08.07.2020

Neha

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	06.07.2020
Date on which the typed draft is placed before the dictating Member	06.07.2020
Date on which the typed draft is placed before the Other member	08.07.2020
Date on which the approved draft comes to the Sr.PS/PS	08.07.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.07.2020
Date on which the fair order comes back to the Sr. PS/ PS	08.07.2020
Date on which the final order is uploaded on the website of ITAT	08.07.2020
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	