

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2640/Del/2016
Assessment Year: 2006-07**

Sh. Sunil S/o Mool Chand, Through Legal Heir Smt. Nirmal & Sansar, C/o Mahavir Singh, Adv., 1078, Sector-15 part-2, Gurgaon. PAN-AHEPY1328C (Appellant)	vs.	Income-tax Officer, Ward-2, Rewari. (Respondent)
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Appellant by	Sh. Mahvir Singh, Advocate
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	27.02.2019
Date of Pronouncement	26.04.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order dated 09.02.2016 of Id. CIT(A)-2, Gurgaon for the assessment year 2006-07 on the following grounds :

"1 (a). The Ld. Commissioner of Income Tax (A) has erred in law and in facts in deciding first ground of appeal regarding proper service of notice under section 148 of I.T. Act without looking in to the record and without calling for any evidence of service from the AO on whom the burden of service lies at the first instance by passing almost non speaking order in just 8 words "There is no evidence of non-service of notice". It is prayed that due to above facts and circumstances of the case the assessment proceedings may be quashed ab-initio.

(b). That the Id. CIT (A) as well as the Ld. AO failed to see the report of the server on the notice u/s 148 itself and also the appeal which was filed through legal heir that the assessee is dead and hence not available. Sh. Sunil Kumar had died on 18/12/2007 much before the date of issue of notice. The Ld. CIT (A) has erred in law by confirming the assessment on a dead person. It is prayed that due to above facts and circumstances of the case the initiation of assessment proceedings may be quashed.

2. The Ld. CIT (A) has also erred in fact and in law by upholding the issue of notice u/s 148 of the Act on merits without giving just a cursory look to the reasons recorded and also quoted in the assessment as well as appellate order. In view of above facts, it is prayed the assessment proceedings may be held as null and void.

3. The Ld. CIT (A) has erred in law and in facts by assuming that the land in question is covered in the definition of capital asset in view of the notification issued by CBDT vide F.No. 164/03/87 ITAI dated 06-01-1994 by relying on the text from TAXMANN while ignoring the official Gazette notification produced by the assessee during appellate proceedings and also admitted by the AO in his remand report that there is mistake in the name of the place which is Dhantera Disst Mohindergarh in the notification where as land in question was in Dharuhera Disst Rewari. It is prayed that due to above facts the above property may not be held as capital asset.

4. That the Ld. CIT (A) has also erred in law and in facts by confirming the taxing of total receipts from sale of land in place of taxing the capital gain only computed as per provisions of law after deducting the indexed value of the property from the total receipts by holding that this contention does not find place separately in grounds of appeal though contested strongly during appellate proceedings. It is prayed that action of the CIT(A) in confirming the order of the AO in taxing the total receipts be quashed and necessary computation of capital gain as per law may kindly be allowed.

5. *The Ld. CIT (A) has erred in law and in facts in rejecting the claim of the assessee u/s 54F of the I.T. Act. It is prayed that the assessee may be allowed the claim made u/s 54F of the Act.”*

2. From the above grounds of appeal and the attending facts of the case, it reveals that the assessee has challenged the impugned order on validity of notice issued u/s. 148 and assessment of capital gains in the hands of assessee assuming the land in question as capital asset. Challenge is also made with respect to deduction u/s. 54F of the IT Act.

3. During the course of hearing, the ld. AR of the assessee, inter alia, submitted at the outset that the core issue involved in this appeal regarding validity of reopening u/s. 147/148 stands decided by the Co-ordinate Bench in the case of one of co-owners of the same land which was sold, namely, Smt. Savita D/o Late Mool Chand (ITA No. 2642/Del/2016) vide order dated 04.12.2018 in the identical facts and circumstances of the case.

4. The ld. DR, on the other hand, relied on the orders of the authorities below.

5. Having heard both the parties and perused the material available on record, we find substance in the contention of assessee that the core issue involved in this appeal is squarely covered by the aforesaid decision of Co-

ordinate Bench in the case of one of the co-owners of the same land. The relevant portion of the order of Co-ordinate Bench reads as under :

“2. Brief facts of the case are that during the Assessment Year 2006-07, the assessee sold agricultural land situated at Dharuhera, District Rewari for a consolidated sum of Rs.8,89,12,500/- with other co-sharer on 29.12.2005. Learned AO made substantive assessment in the name of M/s Mool Chand HUF vide order dated 28.3.2013 and to protect the interest of revenue, he initiated assessment proceedings in the individual capacity of the assessee for which notice u/s 148 of the Income-tax Act, 1961 (“the Act”) on 26.3.2003.

Looking at the absence of the assessee, the learned AO concluded the assessment u/s 143/144 of the Act.

3. Appeal preferred by the assessee before the learned CIT(A) on two grounds, namely, that the assessment is bad for want of issuance and service of proper notice u/s 148 and also that when the agricultural land was sold and long term capital gains arises from such transfer, the capital gains are exempt being not a capital asset as per Section 2(14)(iii) (b) of the Act.. However, learned CIT(A) dismissed the appeal on these two counts.

4. Assessee is, therefore, before us in this appeal challenging the validity of the notices issued u/s 148 stating that the learned CIT(A) dismissed the ground relevant to this issue by passing a non speaking order and also without giving even a cursory look at the reasons recorded and also quoted in the assessment order. It is further contended by the assessee that the learned CIT(A) erred in assuming that the land in question is covered by the definition of the “capital asset” in view of the notification issued by the CBDT vide F.No.164/03/87/TA/ dated 6.1.1994 by relying on the text from Taxmann while ignoring the official gazette produced by the assessee during the appellate proceedings and also admitted by the AO in his remand report that there is a mistake in the name of the place which is Dhantera in the notification while the land in question now was in Dharuhera.

5. At the outset, learned AR brought to our notice that the learned CIT(A) extracted the reasons recorded by the learned AO to propose the reopening of the concluded assessment vide para 3.1 of his order. He demonstrated to us that the notice u/s 148 of the Act was said to have been issued on 26.3.2013 with the prior approval of the Joint Commissioner of Income-tax, Rewari, Range-Rewari and after recording the reasons. In the reasons recorded it was stated that the substantive assessment was made vide order dated 28.3.13 in the hands of Mool Chand and to protect the interest of revenue, assessment proceedings are being initiated in the individual capacity being TB matter involved: Learned counsel submitted that it is rather not possible to refer the substantive assessment order dated 28.3.2013 in the hands of Mool Chand, HUF, in the reasons recorded in this matter on 26.3.2013. Basing on this, he argued that there is no proper issuance or service of notice u/s 148 and this vital fact was overlooked by the learned CIT(A).

6. For the sake of clarity, we deem it just and proper to extract Para 3.1 of the order of the learned CIT(A) to the extent it is relevant:

"Brief facts as recorded in the assessment order on this issue are as under:-

"On the basis of information available in the case of M/s Mool Chand HUF, notice u/s 148 of the Income Tax Act'1961 was issued to the appellant for A.Y. 2006-07 on 26.03.2013 with prior approval from Joint Commissioner of Income Tax, Rewari Range, Rewari after recording the reasons. The extract of the reasons is as follows:

"On the basis of AIR information available in the case of M/s Mool Chand HUF that said HUF had sold a land at Dharuhera for a consideration of Rs. 8,89,12,500/- in the F.Y. 2005-06 for A.Y. 2006-07 which was a capital assets, therefore, notice u/s 148 for A.Y. 2006-0-7 was issued to M/s Mool Chand HUF. During the course assessment proceedings Smt. Shanti Devi wife, Ajit Singh & Sunil son and Smt. Savita-Shashi Bala daughter of late Sh. Mool Chand filed a reply stating therein that M/s Mool Chand HUF was not in existence in past nor present. They further stated that he land sold b Smt. Shanti Devi wife, Ajit Singh & Sunil son and Smt. Savita & Shashi

Bala daughter of the late Sh Mool Chand on 29.12.2005 was in their individual capacity. Keeping in view the facts, substantive assessment was made vide order dated 28.3.13 in the hands' of M/s Mool Chand HUF and to protect the interest of revenue, assessment proceeding are being initiated in the individual capacity being TB matter involved. The share of the appellant was calculated at Rs. 1,77,55,511/- in the land in question."

7. *It is, therefore, clear that either the notice u/s 148 of the Act was not issued on 26.3.2013 or the reasons would not have been recorded on 26.3.2013 or the substantive assessment order in the case of Mool Chand, HUF was not passed on 28.3.2013.*

8. *The assessee produced before us the copies of the documents obtained u/s 7(1) of the RTI Act, 2005 from the office of the Assessing Officer and such document include the copy of the notice u/s 148 of the Act issued on 26.3.2013 and the copy of the order dated 28.3.13 in the case of Mool Chand, HUF. It is interesting to note that the reasons supplied under the RTI Act are not identical to the one that were extracted by the learned CIT(A) in his order. The relevant portion of the reasons furnished under RTI Act read as follows:*

"As per AIR information available, M/s Mool Chand HUF had sold a land at Dharuhera for a consideration of Rs.8,89,12,500/-. The land in question was a capital assets, therefore, notice us/ 148 for AY 2006-07 was issued to M/s Mool Chand HUF. During the course of assessment proceedings in the case of M/s Mool Chand HUF, Smt. Shanti Devi, wife and Ajit Singh-sunil son and Smt. Savita-Shashi Bala daughter of late Mool Chand filed a reply stating therein that M/s Mool Chand HUF was not in existence in past nor present. They further stated that the land sold by Smt. Shanti Devi wife and Ajit Singh-Sunil son and Smt. Savita-Shashi Bala daughter of the late Mool Chand near Police Station Dharuhera on 29.12.2005 was in their individual capacity. Keeping in viw the facts, substantive assessment was made in the hands of M/s Mool Chand HUF and to protect the interest of revenue, assessment proceedings are being initiated in the individual capacity being T.B. matter involved. The share of the assessee was calculated at Rs. 1,77,55,511/- in the land in question."

[Emphasis supplied]

9. *Be that as it may, the fact remains that in both the sets of reasons, there is a reference to the substantive assessment that was in the hands of Mool Chand, HUF and it is only consequent thereto the protective assessment was said to be made in the hands of the assessee. It is, therefore, clear that when the fact does not admit of any doubt that the substantive assessment in the hands of Mool Chand, HUF on 28.3.13, it would not have been possible for the AO to record the reasons in this case on 26.3.13. It suggests that the reasons and the notice u/s 148 of the Act are ante dated or at the lease that they are not properly recorded.*

10. *In this set of facts and circumstances, it is difficult to say that there was proper issuance or service of notice u/s 148 of the Act and no reliance could be made on the reasons recorded in this matter. We, therefore, hold that there is no proper issuance and service of notice u/s 148 in this matter and consequently, the assessment order is liable to be quashed. Appeal of the assessee is allowed accordingly.”*

6. There being no change in the facts, circumstances and contentions of both the parties, the appeal of the assessee is found to have merits and the reassessment order deserves to be quashed on legal aspect of the case. Once, the assessment is held invalid, we need not to enter other grounds of appeal on merits of the addition or exemption u/s. 54F of the Act.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.04.2019.

Sd/-
(Amit Shukla)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 26.04.2019