

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI "E" BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3935/DEL/2017
[Assessment Year: 2009-10]

Shri Narayan Singh[HUF]
C/o Naresh Singh Chauhan
1035-P-Sector 3, Part II,
Near Ganeshi Lal Dharamshala
Rewari

Vs.

The Income tax Officer
Ward 1
Rewari

PAN: AAFHN 9504 B

[Appellant]

[Respondent]

Date of Hearing : 10.06.2020

Date of Pronouncement : 11.06.2020

Assessee by : Shri Gautam Jain, Adv

Revenue by : Ms. Rakhi Vimal, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A), Rohtak dated 13.04.2017 pertaining to assessment year 2009-
10.

2. The grievance of the assessee is two-fold - firstly, the assessee is aggrieved by the initiation of proceedings u/s 147 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] by way of issuance of notice u/s 148 of the Act and secondly, the assessee is aggrieved by the additions made by the Assessing Officer in respect of long term capital gain on sale of agricultural land.

3. The grounds challenging the reopening of assessment and validity of notice u/s 148 of the Act read as under:

1. *That the Id. Commissioner of Income Tax (Appeals), Rohtak has erred both in law and on facts in sustaining the initiation of proceedings u/s 147 of the Act and, completion of assessment u/s 147/143(3) of the Act which were without jurisdiction and deserved to be quashed as such.*

1.1 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no tangible and relevant material on record on the basis of which it could be held that, there was any "reasons to believe" with the learned Income Tax Officer the income of the appellant had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable.*

1.2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in failure to appreciate that, issuance of notice u/s 148 merely amounted to change of opinion as original assessment was completed u/s 143(3) and, no tangible material surfaced after the completion of assessment and, notice was illegal and, without jurisdiction.

1.3 That the basis adopted in the reasons recorded that action u/s 148 of the Act in compliance of order of Hon'ble Tribunal dated 26.9.2014 in ITA No. 1082/D/2013 is based on misinterpretation and misconstruction of the findings of the Hon'ble Tribunal and hence the action is without jurisdiction."

4. Briefly stated, the facts of the case are that a notice u/s 148 of the Act dated 28.03.2013 was issued and served upon the assessee in response to which the assessee filed return of income declaring total income of Rs. 3,13,660/- on 10.10.2013. The assessment was completed u/s 143(3)/148 of the Act vide order dated 26.03.2014.

5. The reasons for reopening the assessment and quarrel relate to the sale of an agricultural land situated in the Municipal limits of Dharuhera in the case of Shri Narayan Singh [Ind]. This quarrel travelled upto the Tribunal in ITA No. 1802/DEL/2013 and the Tribunal was of the opinion that the impugned land belonged to the HUF and

the Tribunal was pleased to set aside the order of the first appellate authority and remit the matter back to the file of the Assessing Officer with a direction to verify whether the HUF has been assessed on the capital gain on the land in question and if so made on the individual assessee, needs to be deleted.

6. It appears that the Assessing Officer totally misinterpreted the directions of the Tribunal. Notice issued once again u/s 148 of the Act and reasons for issuance of notice are as under:

"Assessment u/s 147/143(3) of the Act was made vide Order dated 26.03.2014 at an income of Rs. 3,13,660/- wherein the capital loss on sale of land was determined at RS 42,918/- by adopting the cost of acquisition of land at Rs 33,84,880/-as on 01.04.1981 as per calculation given below

Sale Consideration of land Rs. 1,96,57,084/-

Less:

indexed cost of acquisition as on 01.04.1981 $33,84,880/100 \times 582 =$

Rs.1,97,00,002/-

Capital Loss = Rs. (-) 42,918/-

Later on, perusal of the Hon'ble I.T.A.T, New Delhi's Order dated 26.09.2014 in appeal No. ITA No. 1802/Del/2013 in assessee's case in Individual Status for A.Y. 2009-2010 it is revealed that the assessee has submitted before the I.T.A.T that

the Capital Gains on the land in question has been brought to tax in the hands of HUF and the Hon'ble ITAT has directed the undersigned to verify the issue. The assessee has not challenged the cost of acquisition of the land in question as on 01.04.1981 and calculation of Capital gains at Rs 1,94,86,593/- in individual status before the Hon'ble ITAT. During assessment proceedings u/s 143(3) dated 14.12.2011 in the assessee's individual case the cost of acquisition was determined at Rs 97/- per Marla at the rate of Rs 15,520/- per acre as on 01.04.1981 on the basis of sale instance and the total cost of acquisition of the land 15 Kanal 2 Marla (302 Marla) was determined at Rs 29,294/- (302*97/-) and the indexed cost of acquisition of the land in question was determined at Rs 1,70,491/- (29294*582/100= 1,70,491/-). The Long-term Capital Gain was worked out at Rs. 1,94,86,593/-(1,96,57,084/- 1,70,491/- =1,94,86,593/-). Therefore, in compliance of Hon'ble ITAT's Order the Capital Gains is to be charged to tax in HUF Status of the assessee by applying the same cost of acquisition of the land in question as determined in the case of Individual Status for the same assessment year. Thus, by taking the cost of acquisition of the land as on 01.04.1981 as that determined in the Individual Status of the assessee vide Order u/s 143(3) dated 19.12.2011 the Long-term Capital Gains in HU

Sale Consideration of land 15 Kanal 2 Maria (302 Marla)

Rs. 1,96,57,084/-

Less: Cost of Acquisition 29294/-(302*97=29294/-)

Indexed Cost = 170491/-(29294*582/100=170491/-)

	Rs. 1,70,491/-
Long Term Capital Gains	Rs.1,94,86,593/-

As the Long-term Capital Gain has been shown at Capital Loss of Rs 42,918/- , therefore, Long-term Capital gain to the extent of Rs. 1,95,29,511/- (1,94,86,593 + 42,918/-= 1,95,29,511/-) has escaped assessment.

I, therefore, have reason to believe that income of the assessee from long term Capital gain to the extent of Rs 1,95,29,511/- as discussed above and any other income which subsequently comes to the notice of the undersigned has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

7. As mentioned elsewhere, earlier also, a notice u/s 148 was issued and served upon the assessee and assessment was completed vide order dated 26.03.2014. The order of the Tribunal is 26.09.2014 and the directions of the Tribunal are very clear that the Assessing Officer had to verify whether the capital gains have been taxed in the hands of the HUF or not and assessment order dated 26,03,2014 clearly shows that assessment has been completed in the hands of the HUF.

8. In our considered opinion, once assessment has been reopened to tax capital gain in the hands of the HUF, to avoid double taxation the Tribunal in the hands of the individual has simply directed the Assessing Officer to verify whether the HUF has been assessed or not. The Tribunal nowhere directed the Assessing Officer to reopen the assessment and make the impugned additions. In our humble opinion, the Assessing Officer has totally misinterpreted the directions of the Tribunal and grossly erred in once again reopening the assessment on the same set of facts which have already been considered while framing assessment order dated 26.03.2014 in the hands of the HUF. Therefore, we have no hesitation to set aside the notice u/s 148 of the Act, thereby quashing the assessment order framed pursuant to the said notice. Accordingly, Ground Nos. 1 to 1.3 taken together are allowed.

9. Since we have quashed the assessment order itself, we do not find it necessary to dwell into the merits of the case.

10. In the result, the appeal of the assessee in ITA No. 3935/DEL/2017 is allowed.

The order is pronounced in the open court on 11.06.2020.

Sd/-

Sd/-/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 11th June, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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