

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA Nos:- 5623, 5624 and 5625/Del/2016
(Assessment Year: 2009-10)**

Shri Rajesh Kumar, 1/3256, Ram Nagar, Mandoli Road, Shahdara, Delhi-110032.	Vs.	Joint Commissioner of Income Tax, Range 45, New Delhi.
PAN No: AGFPK1653G		
APPELLANT		RESPONDENT

Assessee by : None

Revenue by : Shri Surender Pal, Sr. DR

CONSOLIDATED ORDER

Per Anadee Nath Misshra, AM

(A) The assessee has filed these appeals against impugned orders respectively dated 30.08.2016, 23.08.2016 and 29.09.2016 passed by Learned Commissioner of Income Tax (Appeals)-21, New Delhi, ("Ld. CIT(A)", in short). For the sake of convenience, these appeals are hereby disposed off through this Consolidated Order, on the following grounds:

ITA No. -5623/Del/2016

- “1. *That the Learned Commissioner of Income Tax has grossly erred in sustaining the applicability of Section 148 in the case of the appellant. That the provisions of Section 148 are not attracted in the least and written submissions made by the appellant have been brushed aside by the Learned Commissioner of Income Tax without assigning any reason whatsoever.*
2. *That the capital gains arising on the acquisition of agricultural land is exempt from the capital gain tax both U/s. 10(37) of the Income Tax Act'1961 and the section 54B of the which and have been ignored by the Learned Assessing Officer in the re-assessment proceedings whereas the said position was accepted in the course of original assessment proceedings.*
3. *That the appellant had not filed any new evidence before the Learned Commissioner of Income Tax and reliance had have been placed on the evidence already placed on record on original assessment proceedings.*
4. *That the reply filed by the Learned Assessing Officer in the remand report based on the admission of new evidence is wholly unsustainable. The learned Assessing officer has in no way disputed the submissions made in writing and sent to him for continents*
5. *That the appellant had filed conclusive evidence to show that the land in question was agricultural land, the same having been acquired by the Government as a agricultural land and the entire proceeds from the said lands had been invested in the purchase of another agricultural land.*
6. *That there were no capital gains chargeable to tax.*
7. *That in any case the Learned Assessing Authority had erred in taking the cost of the land at NIL and the Learned Commissioner of Income Tax (Appeals) has erroneously sustained the same.*
8. *That the Learned Commissioner of Income Tax has grossly erred in sustaining the addition of Rs.57,600/- which was claimed by the assessee in accordance with law and had been allowed after due consideration in the original assessment proceedings.*
9. *That the order as made is against law and facts of the case.”*

ITA No.- 5624/Del/2016

- “1. *That the provisions of Section 27 ID of the Income Tax Act' 1961 are not attracted in the least in the facts and circumstances of the case and the said provision was duly examined in the course of original assessment proceedings and the provisions of said section not were invoked.*

2. *That in any case the Learned Commissioner of Income Tax (Appeals) has grossly erred in sustaining the applicability of Section 27ID in the facts and circumstances of the case. The submissions made by the appellant and partly re-produced in the order of the Learned Commissioner of Income Tax have been erroneously brushed aside.*
3. *That Shri Vinod Kumar who had given "Bayana" for purchase of agricultural land had duly filed his confirmation letter and had been examined U/s. 131 of the Income Tax Act'1961 by the Learned Assessing Authority.*
4. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in completely ignoring the evidence on record and the statement on solemn affirmation made by Shri Vinod Kumar which is on record.*
5. *That the order as made is against law and facts of the case."*

ITA No.- 5625/Del/2016

- "1. *That the provisions of Section 27 IE of the Income Tax Act' 1961 are not attracted in the least in the facts and circumstances of the case and the said provision was duly examined in the course of original assessment proceedings and the provisions of said section were invoked.*
2. *That in any case the Learned Commissioner of Income Tax (Appeals) has grossly erred in sustaining the applicability of Section 27IE in the facts and circumstances of the case. The submissions made by the appellant and partly re-produced in the order of the Learned Commissioner of Income Tax have been erroneously brushed aside.*
3. *That Shri Vinod Kumar had given "Bayana for purchase of agricultural land had duly filed his confirmation letter and had been examined U/s.131 of the Income Tax Act'1961 by the Learned Assessing Authority.*
4. *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in completely ignoring the evidence on record and the statement on solemn affirmation made by Shri Vinod Kumar which is on record.*
5. *That the order as made is against law and facts of the case."*

(B) At the time of hearing, Revenue was represented by Shri Surender Pal, the learned Departmental Representative, ("Ld. DR", for short). However, neither the assessee appeared in person nor was the assessee represented by any Authorized

Representative ("AR" for short). In the absence of representation from the assessee's side, at the time of hearing before us, we have heard the Ld. DR. It was noticed that separate defect notices were sent to the assessee by the Registry, intimating that the appeals were time barred by 10 days. The Ld. DR opposed the appeals filed by the assessee on grounds of limitation and also on merit. It was his view that the appeals of the assessee should be dismissed as time barred, in view of the fact that these appeals are filed beyond the prescribed time limit U/s 253(3) of the I.T. Act. On merits, the Ld. DR relied on the orders of the Ld. CIT(A). Relevant portions from the orders of the Ld. CIT(A) are reproduced as under:

Order dated 30/08/2016 of Ld. CIT(A) [in ITA No.- 5623/Del/2016]

"Besides other grounds, the appellant has also raised the validity of AO's action in initiating proceedings u/s 147 of the I.T. Act. In this regard, on perusal of relevant material on record I find AO fully justified in initiating the assessment proceedings u/s 147 as the AO had all the necessary information and details clearly suggesting that many important facts were not examined while original assessment was done, which resulted in escapement of income and, therefore, the AO had valid reasons to initiate proceedings u/s 147. The appellant's repeated contention that the provisions of sec. 147 are not attracted in the cases which merely involve change of opinion and no new facts have been placed on record are well accepted legal propositions which I am also in agreement with. However, in the case in hand there is no change of opinion, rather it is a case where original assessment was completed on the basis of wrong facts leading to escapement of income for which the AO had valid reasons to initiate action u/s 147. In view of the above I find AO fully justified in initiating action u/s 147 of the I.T. Act and, therefore, the appellant's opposition to the AO's action is quashed.

During the appellate proceedings it is noticed that the appellant has claimed deduction u/s 24 of the Act amounting Rs.57,600/- which was claimed by the assessee in his return. In this regard, the AO has pleaded that the impugned income has been earned by the assessee while allowing Reliance Communication to erect telecom tower which cannot be treated as "income from house property" as the same would qualify to be taxed - tie hands of the assessee under the head "income from other sources"

only. I have carefully considered the rival contention in this regard and find AO's version quite justified in the light of the provisions of the law and, therefore, disallowance made in this regard is held to be fully justified.

During the appellate proceeding, besides above it is also noticed that the appellant -as earned long term capital gains on sale/acquisition of land which was not disclosed in me return of income on the plea that the same were income from sale of agricultural land which according to the assessee is not taxable in his hands. I have carefully considered the rival contention and have also gone through the material available on record. It is a well established legal proposition that the primary onus lies on the assessee to establish that the income shown by him is not taxable or exempt under the provisions of the Act. In this case I find that the assessee was given more time sufficient time and opportunity to establish that the income earned from sale of his land was not taxable but he has failed to produce necessary details and supporting evidence to show that the land was agricultural land and that on the sale of the said agricultural land he earned income which was not taxable. However, despite having been given sufficient opportunities, the assessee has not furnished before the AO all necessary evidence so as to establish that the land in question was agricultural land only as per provisions of sec.2(14)(iii)(b) of the I.T. Act. In this regard, the appellant has also failed to furnish crucial information, i.e. distance of 8 kms etc. It is also noticed that the appellant has not shown any agricultural income in his return of income for the purpose of determining tax rates in the assessee's case for which no valid arguments were furnished by the appellant. In the light of the above, failure on assessee's part to establish that the impugned land was agricultural land, the appellant was not justified in claiming the deduction thereon."

Order dated 23/08/2016 of Ld. CIT(A) [in ITA No.- 5624/Del/2016]

*"I have carefully considered the written submission of the appellant and also the contents of the penalty order and have perused the relevant material available on record. During the course of appellate proceedings the assessee has contended that the impugned amount of Rs.5,00,000/- was received by him against the land being sold to one: * Vinod Verma. However, appellant's above contention was not supported by any f able evidence. Moreover during the appellate proceedings it is also learnt that the so- :2 led agreement to sale was never registered and the same was subsequently reversed. Even during the appellate proceedings it is also noticed that no new facts/supporting evidence were furnished before me in support of his contention that the money received by him from Sh. Vinod Verma was advance against sale of property. On the other hand, I find that the assessee has entered into a colorable transaction so as to brand the transaction as advance against sale which never took place. Therefore , on careful perusal of the facts of the case I am convinced that the nature of impugned transaction in this case appears to be that of loan/deposits which*

has been taken by the assessee from vinod verma in cash in violation of provisions of section 269SS of the I.T. Act. Accordingly, penalty levied u/s 271D of the I.T. Act deserves to be upheld."

Order dated 29/09/2016 of Ld. CIT(A) [in ITA No.- 5625/Del/2016]

"I have carefully considered the written submission of the appellant and also the contents of the penalty order and perused the relevant material available on record. Based on similar facts, the assessee is also in appeal in his own case for the A.Y. 2009-10 against the penalty levied u/s 271D of the I.T. Act, wherein vide appeal no.483/14-15, I have decided the issue in favour of the Department upholding the receipt of cash as loan/deposits u/s 269SS of the I.T. Act. As such, on re-payment of said cash (i.e. loan/deposits) would logically attract the penal provisions u/s 269T of the I.T. Act. In this regard, the appellant has merely claimed that the amount was repaid to Sh. Vinod Verma out of gift he received from his father which is not supported by the relevant evidence. Taking all the above into consideration, I hereby hold the re-payment of Rs.5,00,000/- in cash has been done in violation of scc.259T of the Act and, therefore, the penal provisions of sec.269T are attracted in this case. As such, penalty levied by the AO u/s 271E of the I.T. Act amounting Rs. 5,00,000/- is upheld."

(C) As already mentioned in foregoing paragraph (B) of this order, we heard the Ld. DR, in the absence of any representation from the assessee's side. We have also carefully perused and considered the materials on record.

(C.1) As far as bar of limitation is concerned, we find from the perusal of records that the delay in filing of the appeals was explained in writing (in identically worded three separate letters) as under:

"i. That the date of communication of the order of the learned Commissioner of Income Tax (A) has been wrongly mentioned as 23.08.2016 in the form of Appeal as filed. The order under Section 143(3), 271(E) and 271(D) were received together by the Appellant on 23.09.2016 and not on the dates mentioned in the Memo of Appeal. A reference to the appellate order against the assessment under Section 143(3) in Appeal No. 151/2014-15 would show that the order itself has been passed on 30.08.2016. The same was communicated later. That likewise the order under Section 271(E) was passed on 02.09.2016 and communicated to the

assessee on 23.09.2016. The order under Section 271(D) was also received on the same date although the date of order is shown as 23.08.2016. The fresh forms of appeal and grounds are being filed. The order of the learned CIT(A) were dispatched on 14.09.2016 as per acknowledgement given by the learned CIT(A) on Appellant letter dated 30.12.2016 copy attached.

- ii. The Tribunal fee in all the cases has been deposited on 21.10.2016 i.e. well within the Limitation period.*
- iii. That the appellant is a school teacher and his father was critically ill at the relevant time and later expired on 02.12.2016.*
- iv. That in case, however, the learned Bench entertain any doubt with regard to the submissions made therein, a hearing may kindly be given to the assessee.*
- v. The appellant therefore humbly prays that the above appeal may kindly be admitted for hearing, it is prayed accordingly.*
- vi. It is prayed accordingly."*

(C.1.1) In view of the aforesaid reasons submitted from the assessee's side; we decline to dismiss the appeals on grounds of limitation.

(C.2) On merits, we find that Ld. CIT(A) has passed speaking orders. Relevant portions of the impugned orders of the Ld. CIT(A) have already been reproduced in foregoing paragraph (B) of this order. During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order. After hearing the Ld. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the impugned orders of Ld. CIT(A).

(D) In view of the foregoing discussion, the three appeals filed by assessee are dismissed.

(D.1) Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeals in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

(E) In the result, all the three appeals filed by Assessee are dismissed.

Order pronounced in the Open Court on 9th day of August, 2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 09.08.2019

Pooja/-

Copy forwarded to:

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

ASSISTANT 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	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	