

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.3924/DEL/2019  
[Assessment Year: 2010-11]

Mr Amrish Kumar, S/o-Shri Harnand, Noor Nagar, Sihani, Ghaziabad, Uttar Pradesh	Vs	Income Tax Officer, Ward-1(5), Ghaziabad Uttar Pradesh
<b>PAN-CJBPA8250N</b>		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. Kanv Bali, Sr. DR

<b>Date of Hearing</b>	<b>23.03.2023</b>
<b>Date of Pronouncement</b>	<b>05.04.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Ghaziabad, dated 18.12.2018 and pertains to Assessment Year 2010-11.

2. The grounds of appeal reads as under:-

1. *That the order of dismissing appeal by the Ld CIT(A) is bad in law, wrong on facts and against the principle of natural justice as she is not correct in rejecting the grounds of the appellant that the AO has erred in assuming jurisdiction u/s 147 without any legal and valid mandatory service of notice us 148 of the Act and passed ex-parte order us 144 of the Act which is against the principles of natural justice, hence liable to be quashed.*

(a). *That the Ld. CIT(A) has erred in sustaining the findings of the AO assessing the whole sales consideration (his share) as short term capital gain at Rs.78,10,000/- without appreciating the fact that the consideration received on sale of agricultural land situated at vill. Noorpur, Ghazibad invested in purchase and construction of house property hence entitled exemption us 54F of the Act.*

(b). *That the Ld CIT(A) as well as AO has failed to appreciate the computation provisions of section 48 & 49 of the Income Tax Act*

*and computed whole consideration amount as short term capital gain therefore the ex-parte assessment us 144 of the Act is without application of mind hence liable to be quashed deleting addition.*

*(c) The Ld CIT(A) has failed to appreciate the fact that the assessee is a farmer and illiterate, not aware about the taxability of sale of agriculture land and misguided by the professional who attended the assessment as well appellate proceedings. She has not provided ample to file the documents in support is claim to provide his counsel.”*

3. In this case, the Assessing Officer passed an order u/s 144 of the Act and made addition of Rs.78,10,000/- being share of assessee in sale of property.

4. Upon assessee's appeal, the ld. CIT(A) sustained the order of the Assessing Officer. The assessee claims for 54F exemption was also denied by referring the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. vs CIT (284 ITR 323)(SC)

5. Against this order, the assessee is in appeal before us.

6. We have heard the ld. DR and perused the records. The assessee has prayed that he was not presented the case properly before the Assessing Officer when order was passed u/s 144 of the Act. The assessee also pleaded that he was misguided by the professional who attended the appellate proceedings. Furthermore, he claims that he is a farmer and illiterate and the legal consultant did not properly present his case, so the assessee pleaded that an opportunity may be granted before the Assessing Officer.

7. The Ld. DR did not seriously objected to this proposition and relied upon the orders of the authorities below.

8. Upon careful consideration, we find that the assessee is an illiterate farmer and claims that he was not properly presented in the assessment and appellate proceedings. Moreover, the assessee claims that he was misguided by the consultant. We further note that the assessee claims for u/s 54F exemption has also been denied by referring the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd.. We find in the interest of justice will be well served if the matter is remitted to the file of the Assessing Officer to consider the issue afresh. Furthermore, as regards, the assessee claims for exemption u/s 54F of the Act, we note that Hon'ble Apex Court in Goetze (India) Ltd. (supra) the Hon'ble Apex Court has expounded that the said decision would not impinge upon the powers of ITAT in dealing with the claim otherwise than by revised return. Accordingly, we direct that the above ground be admitted and decided as per law. Needless to say the assessee be given opportunity of being heard.

9. In the result, this appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05<sup>th</sup> April, 2023.

**Sd/-**  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

**Sd/-/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 05.04.2023.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi