

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2108/Del/2018
Assessment Year: 2013-14

Raj Kumar Bhardwaj, S/o Shri Krishan Lal, 51, Dr. Karoli Road, Begum Bagh, Meerut. PAN : AAOPB 2335 D (APPELLANT)	Vs.	ITO, Ward- 2(2), Meerut. (RESPONDENT)
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Assessee by	Shri Vinod Kumar Goel, Adv.
Revenue by	Shri Amit Jain, Sr. D.R.

Date of hearing:	21/09/2020
Date of Pronouncement:	28/09/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 07.03.2018 of the Commission of Income Tax (A), Meerut relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual having income from business house property and other sources. Assessee filed his return of income for A.Y. 2013-14 on 28.03.2014 declaring total income of Rs.4,96,490/- and agricultural income of Rs.1,98,000/-. The case was selected for scrutiny. AO noted that the notices issued u/s 143(2) and 142(1) remained uncomplied. He, thereafter, framed assessment u/s 144 vide order dated 21.03.2016 and determined the total income at Rs.3,04,90,489/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 07.03.2018 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised following grounds:

1. *That the A.O, has not justified in computing the assessment U/s 144, without going through the documents and explanation filed by the assessee. Regarding, the last notice dated 15-03-2016 the explanation recorded by A.O. is self explanatory, but it is twisted facts against the assessee. Therefore, assessment made U/s 144 is prejudice against the assessee and bad in law and CIT(A) is in error to confirming the same.*
2. *That to estimate income from other sources A.O. has taken a sum of credit entries in the bank, without considering the debit entries and difference after deducting agriculture land sale proceeds as business receipts is hypothetical and against the facts and law to estimate income from other sources to tax as maximum rate based upon half bake facts and against the principle of natural justice and such hypothetical calculation is not permitted by law. Therefore, estimated income on so called gross receipts @ 30.42% treated as business receipts is not tenable at all and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.*

3. *That the A.O. is in error to distinguish the sale of agriculture land Khasra No. 169, 170 & 171 as short capital gain which is covered by Section 54B of I.T. Act and exemption are available as per Section 54B after two years. As the condition of Section 54B is satisfied. Therefore, the A.O. has not justified in assessing Rs. 51,73,000/- as short term capital gain and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.*
4. *That the sale of agriculture land for a sum of Rs. 1,26,75,250/- and after deducting cost of acquisition of Rs. 8,08,273/- and assessed capital gain of Rs. 1,18,66,977/- as income of the assessee U/s 69A of I.T. Act is baseless, arbitrary, unjust and high pitch assessment and clear cut case of harassment because sale of agriculture land is covered U/s 54B of I.T. Act and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.*
5. *That the assessee has purchased agriculture land to get benefit U/s 54B of I.T. Act. The A.O. has not allowed the benefit of Section 54B of I.T. Act and on the basis of calculation he added the difference of total investment made by the assessee for Rs. (1,63,67,026 - 1,41,73,950) = Rs. 21,93,076/- as assessee's income as unexplained investment is without any basis. Even, it cannot be added on the basis of wrong facts mentioned by the A.O. and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.*
6. *That on one hand, the A.O. has compute the income as per return but he ignored the cost of agriculture land for a sum of Rs. 1,26,75,250/-. Therefore, there is no deficiency to treat shortage of fund. Therefore, addition of Rs. 18,62,200/- is based upon presumption and assumption and without any basis and bad in law and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.*
7. *That the AO has calculated the share of Rs.52,52,570/- as expenses relate to purchase of various agriculture land. The*

assessee has neither claimed these expenses for the benefit of Section 54B nor it required because the expenditures are made out of seller/purchaser both and CIT(A) has not justified in confirming the same and order passed by CIT(A) in mechanical manner.

8. *That the assessee has right to add, delete or modify and grounds during the appeal proceeding.”*

4. Before us, at the outset, Learned AR submitted that the AO has passed the order u/s 144 of the Act. He submitted that the assessee could not appear before the AO on the dates of hearing fixed by the AO as the assessee being the president of Vyapar Sangh was on dharna along with other members of Vyapar Sangh on the call of Vyapar Sangh. He submitted that this fact was also brought to the notice of CIT(A) but he has ignored this fact and upheld the order of AO. He submitted that if given an opportunity, the assessee undertakes to present himself before the AO and also furnish all the details to support his case. He, therefore, submitted that the assessee be granted one more opportunity to present his case before the AO. Learned DR on the other hand objected to the request of AR of granting one more opportunity to present his case. He pointed to the noting of the AO in the assessment order wherein the AO had noted that the notices issued by the AO had remained uncomplied. He thus supported the order of AO.

5. We have heard the rival contentions and perused the relevant materials available on record. It is an undisputed fact that the assessment order has been framed by the AO u/s 144 of

the Act. Before us, Learned AR has submitted that the assessee could not appear before the AO as he being the president of the Vyapar Sangh was on Dharna along with other businessmen. The submissions made by the AR has not controverted by the Revenue. It is an established principle of natural justice that a litigant should be heard before a decision is taken. In view of the principles of natural justice, we are of the view that the assessee deserves one more opportunity to present his case. Considering the totality of the aforesaid facts, we restore the entire issue back to the file of the AO and direct him to examine the evidences filed by the assessee and examine the same and thereafter decide the issue afresh. The AO is free to call for any other evidence required by him for deciding the issue afresh. The assessee is also directed to co-operate with AO by promptly filing the relevant details called by him. Needless to state, that the AO shall grant adequate opportunity of hearing to the assessee. Since we have restored the issue to the AO, the other grounds raised by the assessee are not adjudicated. **Thus the appeal of the assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 28.09.2020

Sd/-
(SUSHMA CHOWLA)
VICE PRESIDENT

Priti Yadav, Sr.PS

Date:-28.09.2020

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER