

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 2606/Del/2024  
निर्धारणवर्ष/Assessment Year: 2012-13**

ASHEESH KUMAR SHARMA, T02/00 02, PARAS TIERA, SECTOR-137, NOIDA, UTTAR PRADESH.	<b>बनाम Vs.</b>	INCOME TAX OFFICER, CIVIC CENTRE, MINTO ROAD, NEW DELHI.
PAN No.BBHPS1995P		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

Assessee by	Shri Vinod Jain, CA
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	26.05.2025
उद्घोषणाकीतारीख/ Pronouncement on	16.06.2025

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals)-NFAC Delhi dated 28.03.2024 for the AY 2012-13 in sustaining the addition made under long term capital gains in respect of sale of property.

2. Ld. Counsel for the assessee, at the outset, submitted that assessee is a salaried individual and filed his return of income on 30.08.2012 declaring income of Rs.10,20,000/-. The assessment was reopened u/s 147 and the reassessment was completed at Rs.2,53,62,000/- on account of alleged long term capital gains arising from sale of two immovable properties as appearing in the ITS details. Ld. Counsel submits that a copy of registered sale deed obtained from the sub-registrar was also enclosed in the Paper Book at pages 116 and 196. Ld. Counsel submits that there was no sale transaction has undertaken by the assessee in the relevant assessment year i.e. AY 2012-13. However, the assessee has sold the same property to Shri Hari Om Aggarwal in the FY 2007-08 through General Power of Attorney (GPA) and sale agreement dated 29.05.2007 which was enclosed at pages 32 to 44 of the Paper Book. Ld. Counsel also submits that in the course of assessment proceedings through letter dated 19.11.2019 it was explained to the Assessing Officer that no transaction involving immovable property took place during the AY 2012-13.

3. Ld. Counsel further submits that additional evidences were filed before the Ld. CIT(Appeals) under Rule 46A, however, the Ld. CIT(A) without providing any opportunity of being heard, dismissed

the appeal and rejected the additional evidences and sustained the addition made by the AO in respect of long term capital gains completely brushing aside the submissions and evidences produced which categorically shows that there was no transaction had happened during the assessment year under consideration i.e. 2012-13. Ld. Counsel for the assessee further made submissions as under: -

*i. First Ground is related to addition as sale of 2 properties with the Market value of Rs.2,53,62,000/- during the PY 2011-12.*

*> The assessee did not execute any sale deed or any other documents to transfer the title of any immovable property during the FY 2011-12 i.e. AY 2012-13*

*> The concerned land was already sold by the assessee long ago i.e. 29th May, 2007 by duly executing the sale agreement, General Power of Attorney and entire consideration was also received on 29<sup>th</sup> May, 2007 itself and the possession was also handed over on 29.05.2007 itself.*

*> The assessee received the full sale consideration amounting to Rs.12,75,000 on 29th May, 2007 itself from Shri Hari Om Aggarwal via cheque no. 582173 dated 29/05/2007 amounting to Rs. 5,95,000 and remaining Rs 6,80,000 through cash. This can be verified from page no. 34 of agreement of sale enclosed in paper book. Thus, Shri Hari Om Agarwal was the rightful owner of the 2 property and not the assessee Mr. Asheesh Kumar Sharma.*

*> In terms of market practice since sale agreement could not be registered immediately the assessee had executed a registered General power of attorney dated 29th May, 2007 in favour of Mr. Hari Om Agrarwal with respect to the said land to enable him to get the land*

*registered in his name or any other person and to deal with the land in any manner including ownership rights, mortgage rights, freely usage rights etc.*

> Accordingly, in terms of Transfer of property Act, the title in the entire land was sold and transferred on 29th May, 2007 itself as entire sales consideration was received, possession of land was handed over and sale agreement and GPA was also executed.

> Further, in case of Pace Developers And Promoters Pvt. Ltd. vs Govt. Of NCT 2013 judgement, the Delhi High Court allowed property sales based on general power of attorney (GPA)(Para 6.2). This ruling struck down a state government circular that restricted such transactions and was in line with a 2011 Supreme Court decision( Suraj Lamp & Industries v. State of Haryana 2009)(Para 15)on the issue. The court emphasized that as long as the transaction was genuine, it could be registered by a Sub-Registrar.

> The copy of General power of attorney and affidavit from Sh. Hari Om Aggarwal has been attached herewith from page no. 37-44 and 69-70 respectively of paper book for your kind reference.

ii. Second Ground is related to that the Learned AO has erred in law and facts by considering sale transaction of Sh. Hari Om Agarwal as the sale transactions of assessee during FY 2011-12 (AY 2012-13) even without considering that the entire money collected for such sale deed was by cheque by Sh. Hari Om Agarwal on his own account.

> During the FY 2011-12, the concerned land was transferred by Shri Hari Om Aggarwal to Sh. Mukesh Aggarwal and not by Mr. Asheesh Kumar Sharma. The sale deed for transfer of land by Sh. Hari Om Aggarwal to Sh. Mukesh Agarwal has been attached from page no.114 to 193 and 194 to 253 for your reference.

> During the previous year 2011-12, Sh. Hari Om Aggarwal had transferred the land for a consideration of ^ 6,56,250 vide cheque no. 303759 SBI and R 13,01,250/- to Sh. Mukesh Aggarwal and the same had

*been received by way of A/C Payee cheques (all drawn on Union Bank of India) as per following particulars: -*

S.No.	Cheque No.	Date of cheque	Amount (Rs.)	Page No. of Paper Book
1.	059964	25.06.2011	2,00,000	144
2.	059970	25.06.2011	1,01,250	144
3.	059973	01.07.2011	8,00,000	144
4.	059974	08.07.2011	2,00,000	144
<b>TOTAL</b>			13,01,250	

> The above consideration in whole had been received by Sh. Hari Om Aggarwal in his bank account itself and during the previous year 2011-12, there are no credits in the bank account of the assessee except in relation to salary received by him and some other small payments. No consideration in respect to transfer of immovable property had been received by the assessee in the PY 2011-12.

> In this respect Bank statements of the Assessee for the respective year is attached herewith on page from 61 to 68 of paperbook for your kind reference.

iii. Third Ground is related to that the land in question was an agricultural land in terms of Section 2(14)(a)(iii) of Income Tax Act 1961 situated in Khadar of Yamuna river, about 15 kms away from the nearest Municipal Corporation.

> As per Section 2(14) of the Income Tax Act, the land in question does not qualify as a capital asset. The Land and Revenue Department, Government of Uttar Pradesh, certified that the land in Village Sikanderpur was more than 15 km away from the nearest municipal corporation. Thus, the Assessing Officer (AO) erred in law and facts by failing to consider the land as agricultural (not a capital asset) and wrongly applying Section 50C to compute Long-Term Capital Gains (LTCG). A copy of the RTI response confirming municipal limits is attached on page 47 to 49 for your reference.

> The AO incorrectly applied the circle rate under Section 50C, estimating LTCG at Rs.2,53,62,000 (Rs.1,68,59,000 + Rs.85,03,000) for FY 2011-12. However, during this period, Mr. Hari Om Agarwal

*transferred the land to Mr. Mukesh Agarwal for Rs.6,56,250 and Rs.13,01,250 via duly executed sale deeds. The agricultural land was, in fact, sold by the assessee in FY 2007-08 (AY 2008-09).*

*> Without prejudice to other grounds, the transfer of agricultural land does not constitute a transfer which is taxable under capital gains provisions.*

*> The land in question, being "Khadar" land, was unsuitable for residential or commercial use. No circle rate for such land was notified during the assessee's ownership. Photos related to land is attached on Page no 256 to 257 of the paper book. Further, land ownership documents are also attached as jamabandhi on page no. 254 and Khatoni on page no. 255 of the Paper book.*

*> In a similar ruling in CIT vs. P. S. Raghupathy, the Supreme Court dismissed the SLP against the High Court decision, which held that income from the sale of agricultural land beyond 8 km from a municipality (as recorded in revenue documents) is not taxable. This precedent supports the assessee's case. The relevant case law is attached on page 270 of the paper book for reference.*

*iv. The fourth ground is related to that The Ld. Assessing officer has not issued a final show cause notice and passed the assessment order without providing the opportunity of being heard. Further, the CIT (A) had rejected the application for admission of additional evidence without giving an opportunity of being heard to the assessee.*

*> During the assessment proceedings, the Ld. AO has issued a notice u/s 142(1) dated 27<sup>th</sup> September 2019 requiring the assessee to furnish explanation about the transaction. The assessee duly submitted the response against the said notice. Thereafter, the Assessing Officer (AO) did not issue any show cause notice and completed the assessment proceedings on 17th December 2019, adding Rs.2,53,62,000/- to the income without seeking further details or clarification.*

> During the assessment proceedings, the AO failed to provide the assessee an opportunity to cross-examine the evidence collected under Section 133(6) from the sub-registrar, which was solely relied upon in the assessment order.

> On 15th March 2023, an application under Rule 46A of the Income Tax Rules was filed for admission of additional evidence, including:

1. Agreement to Sell (Ikrarnama): Executed on 29th May 2007, transferring the land to Shri Hari Om Agarwal (Attached on page no 32 to 36 of paper book).

2. General Power of Attorney (Mukhtyarnama): Granting legal rights over the land to Shri Hari Om Agarwal (Attached on page no 37 to 44 of paper book).

3. Affidavit by Assessee: Confirming the sale of land to Shri Hari Om Agarwal and receipt of full consideration (Attached on page no 45 to 46 of paper book).

4. Notarized Land Document: Proving the land is in a submerged area, over 15 km from the nearest municipal corporation (Attached on page no 47 to 49 of paper book).

5. Khasra-Khitoni Records: Evidence of inherited ownership (Attached on page no 50 to 60 of paper book).

6. Bank Statement: For the period 1st April 2011 to 31st March 2012 (Attached on page no 61 to 68 of paper book)

7. Affidavit by Shri Hari Om Agarwal: Confirming the sale and related events (Attached on page no 69 to 70 of paper book).

> The CIT(A), in the order dated 28th March 2024 under Section 250, rejected the application for additional evidence without granting the assessee an opportunity to be heard, citing non-submission of the said evidences during assessment proceedings. The appeal filed on 16th



*January 2020 was dismissed, and the additions made by the Assessing Officer were upheld. It may please be noted that the assessee was never asked to submit these details during the assessment proceedings and in absence of any show cause notice, the assessee was under bona- fide belief that no further explanation, information or documents required from his side in the matter. Hence, the assessee was prevented by sufficient cause to produce these evidences during the assessment proceedings. However, the Hon'ble CIT did not provide the sufficient opportunity of being heard and rejected the application of additional evidences while dismissing the appeal without seeking for written submission.*

*> In the case of Shri Nisarhusen Amdali Lakhani (ITA 532/Ahd/2018), ITAT Ahmedabad observed as under:*

*In view of the circumstances, the matter is remanded to the CIT(A) to ensure a fair opportunity for the assessee in the interest of justice. The assessee is directed to cooperate fully, failing which the CIT(A) may proceed as per the law. The CIT(A)'s order is set aside, and all issues are restored for fresh adjudication with a reasonable opportunity of hearing provided to the assessee.(attached on page no 263 (para 12) of paper book).*

*> Further, in the matter of FR. Sauter AG vs. CIT in the ITAT Delhi Bench [2024] 158 taxmann.com 161 (Delhi - Trib.) held that that the additional evidence as filed by the assessee goes to the root of the dispute, therefore, to serve the interest of justice, we hereby admit the additional evidences filed by the assessee and restore the additional evidence to the file of the Ld. CIT(A) for deciding the Grounds of Appeal afresh after giving due opportunity to the assessee and considering the additional evidences so filed (Attached on page no. 269 (para 7 & 8) of paper book)."*

4. In view of the above submissions, the Ld. Counsel for the assessee prayed that the appeal be restored to the file of the



Assessing Officer for *denovo* assessment as the Ld. CIT(Appeals) failed to admit the additional evidences which goes to the root of the matter for determining the issue of taxability of long term capital gains as was made by the AO ignoring the submissions of the assessee.

5. Ld. DR has no serious objection in restoring the matter to the file of the Ld. AO.

6. On hearing both the sides and perusing the orders of the authorities below, we find that the Ld. CIT(Appeals) did not admit the additional evidences filed by the assessee. We also further find that the Ld. CIT(Appeals) has neither adjudicated upon nor considered any of the submissions in his *ex parte* order. The order is too cryptic as none of the submissions were considered nor rendered any independent findings on the submissions made by the assessee. Therefore, taking the totality of facts and circumstances into consideration we are of the view that this issue should go back to the file of the AO for *denovo* consideration. Thus, the appeal is restored to the file of the AO for *denovo* assessment after providing adequate opportunity of being heard to the assessee. The assessee is at liberty to file evidences before the AO who shall consider while framing the *denovo* assessment.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16/06/2025

**Sd/-  
(S RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 16.06.2025

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**