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

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.2832/DEL/2019
(Assessment Year: 2015-16)

ITA No.8563/DEL/2019
(Assessment Year: 2015-16)

Praveen Tyagi, G-230, Sanjay Nagar, Sector 23, Ghaziabad – 201 002.	vs.	ITO, Ward 2 (1), Ghaziabad.

(PAN : APUPT5107Q)

(APPELLANT)	(RESPONDENT)

ASSESSEE BY : Shri Rajeev Khandelwal, Advocate
Shri Gagan Khandelwal, Advocate
Shri Jaind Jaiswal, Advocate
REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 14.01.2025
Date of Order : 27.03.2025

O R D E R

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed quantum appeal as well as penalty appeal against the order of the Learned Commissioner of Income-tax (Appeals), Ghaziabad ["Ld. CIT(A)", for short] dated 22.02.2019 for the Assessment Years 2015-16.

2. Since the issues are common and the appeals are connected, therefore, the same are heard together and being disposed off by this common order. First we take up quantum appeal being ITA No.2832/Del/2019 and the assessee has taken the following grounds of appeal :-

> "1. The order under section 250 passed by Hon'ble CIT (A) is bad in law.
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> 2. The ld. CIT (A) has grossly erred in passing order u/s 250 with pre-conceived notion and without appreciating material on record.
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> 3. Hon'ble CIT (A) has erred in confirming the addition made by the ld. AO amounting to Rs.1,85,53,892/- to his declared total income of Rs.2,81,335/-.
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> 4. Hon'ble CIT (A) has erred in making addition amounting to Rs.5,98,73,460/- to the previous assessment income by the ld. AO by limiting the deduction u/s 54F of the Income Tax Act, 1961.
>
> 5. Hon'ble CIT (A) has grossly erred in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961."

3. The assessee has also taken the following additional grounds of appeal :-

> "The following ground of appeal is independent of, and without prejudice to, the original ground(s) of appeal-
>
> The CIT(A) erred in assessing the entire capital gains (long-term) on sale of agricultural land (inherited from late father of the appellant), in the hands of the appellant as against assessing only one-half of the capital gains. being his share in the said agricultural land.
>
> The appellant contends that on the facts and in the circumstances of the case and in law. The CIT(A) ought to have accepted that the capital gains (long-term) in the case of the appellant ought to have been taxed only in respect of the appellant's share in the

agricultural land inasmuch as the said agricultural land was inherited by both, the appellant and his mother Mrs Usha Tyagi in equal share."

4. Considered the rival submissions and material placed on record by both the parties. We observed that the issues raised by the assessee in additional grounds go to the root of the matter challenging the jurisdictional issue. In the light of Hon'ble Supreme Court in the case of NTPC, Limited vs. CIT (1998) 229 ITR 383 (SC), we are inclined to admit the additional grounds and take up the same for adjudication herein below.

5. Ground no.1 is general in nature and not adjudicated at this stage.

6. With regard to Ground No.2, relevant facts are, assessee sold an agricultural land bearing Khasra No.1131, Area 0.6625 hectare in Village Noor Nagar, Tehsil and District, Ghaziabad to M/s. Vibhor Vaibhav Infrahomse (P) Ltd. for Rs.19 crores vide sale deed executed on 14.11.2014. The assessee has declared long term capital gain of Rs.nil as under :-

Sale Consideration received	Rs.19,00,00,000/-
Less : Indexed Cost of purchase	Rs.1,35,68,000/-
	Rs.17,64,32,000/-
Less exemptions for reinvestment	Rs.17,64,32,000/-
Long Term Capital Gain	Nil

7. The Assessing Officer observed that the assessee has determined index cost of purchase considering the cost of acquisition as on 01.04.1981 adopting the rate of Rs.200/- per sq.yds. The Assessing Officer observed that the land was ancestral land which the assessee has inherited and the relevant value as on 01.04.1981 is Rs.20 per sq.yds.. During assessment proceedings, assessee submitted that the assessee has adopted Rs.200 per sq.yds. based on the decision of Hon'ble Supreme Court in the case of GDA vs. Anoop Singh in SLP No.5101 of 1996 dated 23.01.2003 determining the award at the rate of Rs.85 per sq.yds. plus 30% solatium which comes to Rs.110.50. It was submitted that the land acquired by the Ghaziabad Development Authority (GDA) of same village and other villages in the year 1962 @ Rs.1 per sq.yds. against which the land owners had approached the courts for which Hon'ble Supreme Court has awarded the abovesaid rates per sq.yds. After considering the submissions of the assessee, Assessing Officer rejected the same and computed the index cost of acquisition as under :-

Area of land 0.6625 hectare – 6625 square meter = 7245 square yard
Value of land as on 01.04.1981. 7,245/- X Rs.20/- = Rs. 1,44,900/-
Indexed cost of acquisition : 1,44,900X1024/100 = Rs.14,83,776/-

Sale consideration received by the assessee	Rs.19,00,00,000/-
Less : Indexed cost of acquisition as worked out above.	Rs. 14,83,776/-
Income from Long Term Capital Gains	Rs.18,85,16,224/-

8. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT(A) and ld. CIT (A), after considering the submissions of the assessee, rejected the same with the observation that the assessee failed to substantiate the applicability of the facts and circumstances of his case, as matter before the Hon'ble Supreme Court was pertaining to compulsory acquisition by the competent Development Authority, whereas assessee has sold the land to a builder. Therefore, the contention of the assessee is found non-maintainable.

9. Aggrieved with the above order, assessee is in appeal before us.

10. At the time of hearing, ld. AR of the assessee resubmitted the same facts before us and submitted that ld. CIT (A) has dismissed the appeal of the assessee on the basis of the land so sold by the assessee to the builder and the facts of Hon'ble Supreme Court are not relevant. However, he submitted that assessee has relied on the decision of Hon'ble Supreme Court to determine the value as on 1962 the date on which several lands were acquired by the GDA on compulsory acquisition basis considering the rate of Rs.1 per sq.yds. and the Hon'ble Supreme Court has determined the value of land as on 1962 @ Rs.85 per sq.yds. with the solatium of 30%. He submitted that taking the above said value, the assessee has arrived at the value of Rs.200 per sq.yds. which is

reasonable for adopting the value as on 01.04.1981 and he prayed that the claim of the assessee is reasonable and should be allowed.

11. On the other hand, ld. DR of the Revenue objected to adopting the value determined by Hon'ble Supreme Court in the case of compulsory acquisition whereas the facts in assessee's case is not so and she relied on the findings of the lower authorities.

12. Considered the rival submissions and material placed on record. We observed that the assessee has sold the lands to a builder and in order to determine the capital gains, the assessee has to adopt the value as on 01.04.1981 to determine the index cost of acquisition. Since father of the assessee acquired the land prior to 1961 and at the same time, GDA has acquired several lands in the same vicinity of the village in which the land of the assessee also exists. Against the compulsory acquisition of land by the GDA, several farmers filed SLP before the Hon'ble Supreme Court and Hon'ble Supreme Court has determined the value as on 1962 @ Rs.85 per sq.yds. along with solatium of 30%. Since there is no data available for correct value of cost of acquisition, the value determined by the Hon'ble Supreme was adopted. We noticed that Hon'ble Supreme Court determined the value of Rs.85 alongwith solatium of 30% allowed by Hon'ble Supreme Court. In our view, the solatium was awarded for other purposes that cannot be considered. Therefore, the assessee can

adopt the value of Rs.85 per sq.yds. as on 1962 and assessee has to determine the value as on 01.04.1981. We noticed that there is a gap of 19 years between 1962 to 1981. Since there is no data available on record in order to dispense the justice, however even if we take 3% year on year increase of index cost, the total index cost for 19 years would be 57%. By adopting the same, the cost of acquisition as on 01.04.1981 would be Rs.150/- (i.e. Rs.85 ÷ 57 x 100). Therefore even though the cost of acquisition determined by Hon'ble Supreme Court for compulsory acquisition, however the rate determined by Hon'ble Supreme Court for the lands within the vicinity of the lands of the assessee. Therefore, nothing wrong in adopting the same rate as on 1962. We are inclined to direct the Assessing Officer to determine the value of Rs.150 as on 01.04.1981 and direct the Assessing Officer to recalculate the index cost of acquisition and allow the difference.

13. In the result, ground no.2 raised by the assessee is partly allowed.

14. Coming to ground no.3 and additional grounds raised by the assessee which are inter-connected, the relevant facts are, against the long term capital gain of Rs.18,85,16,224/-, the assessee has claimed deduction u/s 54F of the Act on purchase of one house in the name of his widow mother situated at C-20, Lohia Nagar, Ghaziabad for Rs.4,54,67,440/-and investment towards construction of Rs.1,40,63,196/-, the total amount

comes to Rs.5,95,30,636/- which was claimed as deduction. The assessee also claimed deduction u/s 54F for purchase and construction of house of R-13/72, Raj Nagar, Ghaziabad in his own name. The Assessing Officer raised a query that the assessee cannot be allowed to purchase house in the name of his mother since it is not purchased in assessee's own name, however assessee submitted a detailed submissions relying on the decision of CIT vs. Kamal Wahal dated 11.01.2013, in which it was held that the entire consideration was paid only out of sale consideration by the assessee and not a single penny was contributed by the assessee's wife. Similarly assessee demonstrated that entire sale consideration was invested to purchase the abovesaid two properties from the same sale consideration. After considering the same, Assessing Officer allowed the claim of the assessee u/s 54F of the Act.

15. Aggrieved assessee preferred an appeal before the ld. CIT (A) on the issue of index cost of acquisition, however ld. CIT (A) observed that assessee has claimed deduction u/s 54F in two proportion, and accordingly enhanced the income of the assessee by rejecting the claim u/s 54F on the second property and allowed the claim u/s 54F of Rs.4,38,99,196/- and determined the actual deduction u/s 54F and enhanced the difference to the income of the assessee :-

Total Long Term Capital Gain	Rs.18,85,16,224/-
Net Sale Consideration	Rs.19,00,00,000/-
Cost of New Asset	Rs.4,38,99,196/-

Deduction u/s 54F :

= (Rs.18,85,16,224/- x Rs.4,38,99,196/- ÷ Rs,19,00,00,000/-

= Rs.4,35,56,372/-

16. Aggrieved with the above order, assessee is in appeal before us raising ground no.3 as well as raising additional grounds of appeal.

17. Before us, ld. AR of the assessee submitted as under :-

> "1. In respect of the first ground of appeal the AR reiterated the submissions made before the lower authorities, relying on the decision of Apex Court in the case Ghaziabad Development Authority vs. Anoop Singh in SLP No. 5107 of 1996, and requested for adopting the rate of Rs.200 per sq yard in respect of the agricultural land sold.
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> 2. In respect of the second ground of appeal the AR stated that-
>
> - The father of the assessee was the owner of the subject agricultural land sold during the year under reference and he breathed his last on 15.4.l992, 19 days prior to the date of birth of the assessee); thus, the assessee as in the womb of his mother on the date of death of the father.
>
> - Section 20 of the Hindu Succession ct stating the right of the child in the womb of the mother is given below -
>
> "Right to Child in womb- A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

- Thus, in view of section 20 of the Hindu Succession Act, the assessee is entitled to a share in the property of the father, who died intestate, and the share will be one-half to both, the assessee and the mother of the assessee.

- On a query from the Honourable Bench it was clarified that section 171 of the U.P. Zamindari Abolition Act Land Reforms Act, 1950 has no application as there is no provision for inheritance of a child in the womb of the mother at the time of the father dying intestate, and hence, the general law of section 20 of the Hindu Succession Act would apply.

- It would not be out be out of place to mention that the mother of the assessee has not filed her return of income, on the understanding that the investment in residential property to claim deduction under section 54F would bring down the capital gains to nil."

18. On the other hand, ld. DR of the Revenue brought to our notice report on additional grounds from the Assessing Officer and the same is reproduced below :-

> "Report on Additional Ground of appeal to the Appellate Tribunal
>
> 1. The learned CIT(A) has rightly and legally assessed the entire capital gain, on sale of land in question, in hands of the assessee for the reason that he himself has claimed deduction u/s 54F against the property purchased in the name of her mother and as observed by her in para 5.2.3. (as discussed above) the income of the assessee was enhanced by Rs.5,98,73,460/-.
>
> 2. From perusal of agreement to sell executed on 07.03.2013 between Shri Praveen Tyagi and M/s Vibhor Vaibhav Infrahom Pvt. Ltd., (PAN - AABCF2720J), in respect of land measuring 1.3250 hectare, it is observed that the total sale consideration of the land in question was Rs.38,00,00,000/- and the agreement to sell is signed by Shri Praveen Tyagi as a single seller and nowhere name of her mother is mentioned in the said agreement to sell as well as sale deed dated

14.11.2014 showing sale consideration at Rs.19,00,00,000/- only in respect of land measuring 0.6625 hectare, i.e. 50% of total land.

4. The assessee has not submitted any documentary evidence, during the course of assessment proceedings and appeal stage, showing that her mother was also having any share in the land in question. Rather, as mentioned hereinabove the agreement to sell dated 07.03.2013 and sale deed dated 14.11.2014 clearly reflects that Shri Praveen Tyagi was the only owner of the land in question as he had executed the agreement to sell and sale deed as a single owner. Therefore, plea of the assessee is not tenable in the eye of law.

4. Shri Praveen Tyagi, the assessee, has never brought it to the notice of Income-tax Department that her mother namely Smt. Usha Tyagi had any share in the land in question, being legal heir, and as to whether she had filed any ITR showing the transactions made in respect of the same in any assessment year. Moreover, from the agreement to sell and sale deed, as mentioned hereinabove, it is apparent that she did not have any share in the land in question. If she had any share in the same agreement to sell and sale deed could not be executed without her.

Submitted for kind perusal and necessary action please.

19. Ld. DR heavily relied on the above submissions and relied on the findings of the lower authorities.

20. Considered the rival submissions and material available on record. We observed that this is a peculiar case wherein father of the assessee was the owner of the agricultural land which was sold by the assessee owning the whole property in his own name and executed all the documents as if he has inherited the whole property. It is brought to our notice that father of the assessee was deceased on 15.04.1992 before the birth of the assessee. As per section 20 of the Hindu Succession Act, the right of the unborn child shall have the same right to inherit to the intestate as if he or she had

been born before the death of the intestate and the inheritance shall be deemed to vest in such a case w.e.f. from the date of the death of the intestate. Therefore, from the facts available on record, we observed that the land belongs to father of the assessee and after his demise, the whole property should have been inherited by widow mother and the assessee. Since assessee has owned the whole property and sold the lands and purchased two properties, one in the name of his mother and other in his own name. Since the property was not divided officially, the assessee would have taken the permission from his mother to dispose of the land with the understanding that a separate house would be purchased in her name. The same was executed in letter and spirit.

21. We also noticed that a portion of the land belongs to mother of the assessee and she has not declared any sale consideration in her own name nor filed any return of income claiming the same as deduction u/s 54F. Since the whole property was sold by the assessee in his own name without bringing mother of the assessee on record, however he part with the due share of the mother by registering a property in her name. Therefore, this is a case of indirect partition of inherited property. It is also fact on record that assessee has declared whole sale consideration of the whole property and purchased the two properties bringing on record all facts. This is fact on record that all the details and purchase of the

property were declared by the assessee. This is clearly a case of action without any malign intention.

22. In the report to additional grounds of appeal, Assessing Officer not disputed the fact that the assessee has sold the property as a single owner/seller and it is not brought on record inheritance of his mother. Further he observed that agreement to sell dated 07.03.2013 and sale deed dated 14.11.2014 clearly reflects that the assessee was the only owner of the land in question and executed various agreements as a single owner. This issue was not raised by the assessee before the Assessing Officer or ld. CIT (A). It is fact on record that the land belongs to the father of the assessee and as per the Hindu Succession Act, the property belongs to assessee and his mother. Merely because assessee has sold the property as a single owner, the fact will not change. This is a peculiar case wherein assessee has declared as a single owner and sold the property, however purchased two properties and registered one property in the name of his mother on the basis of inheritance. This fact cannot be denied. Considering the peculiar facts on record, we are inclined to allow the claim of the assessee based on the facts brought on record. The Assessing Officer has not disputed the fact nor brought any material to dispute the above facts on record. Therefore, we are inclined to allow the claim of the assessee in Ground No.3 and additional grounds.

23. Even otherwise, if we consider the inheritance as per Hindu Succession Act, the property sold by the assessee has to be apportioned on the basis of inheritance and the portion of sale consideration in the name of the mother of the assessee will have tax neutral considering the fact that the relevant sale consideration is already invested in the property and the same would be available for deduction u/s 54F of the Act. Therefore, in our considered view, it will lead to tax neutral and considering the peculiar facts on record, we are inclined to allow the claim of the assessee.

24. In the result, the appeal filed by the assessee is partly allowed.

25. Since we are deleting the quantum addition u/s 54F of the Act enhanced by the ld. CIT (A), the relevant penalty levied u/s 271(1)(c) of the Act by the ld. CIT (A) is also deleted.

26. To sum up : quantum appeal filed by the assessee being ITA No,2832/Del/.2019 is partly allowed and the penalty appeal being ITA No.8563/Del/2019 is dismissed.

Order pronounced in the open court on this 27th day of March, 2025.

Sd/-	**sd/-**
(SUDHIR KUMAR)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 27.03.2025
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI