

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4519/Del/2016
Assessment Year: 2012-13

Ms. Vandana Guliani,
24062, ATS Paradiso
Sector-Chi-4,
Greater Noida
(PAN: AHSPG6652K)
(APPELLANT)

vs. Income Tax Officer,
Ward-2(5),
Noida

(RESPONDENT)

Assessee by : SH. R.M. MEHTA, ADV.
Department by: SH. S.K. JAIN, SR. DR

ORDER

The Assessee has filed the Appeal against the impugned Order dated 15.6.2016 of Ld. CIT(A), Noida pertaining to assessment year 2012-13. The ground raised in the Assessee's appeal reads as under:-

1. That the assessment order passed under section 143(3) on 20.3.2015 is barred by limitation having being served on the assessee on 8.4.2015 i.e. after the limitation period and therefore deserves to be quashed.
2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs. 1,81,497/- to the income of the appellant on account of incentive from property broker on original booking of a residential flat in a Developers project.

3. That the Ld. CIT(A) ought to have considered the plea that the appellant booked the flat with a view to reduce her cost of acquisition and that there was no relationship of Principal & Agent between the broker and the appellant. The appellant did not render any service to the broker in order to earn any income. Direct incentive offered and accepted by the appellant was only with a view to minimize the cost.
4. That each ground of appeal is without prejudice to one another.
5. The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and or any ground(s) of appeal on or before the date of hearing.

2. Brief facts of the case are that the assessee had filed return declaring income at Rs. 7,98,180/- on 3.8.2012. The case was picked up for scrutiny through CASS. Thereafter a notice u/s 143(2) of the I.T. Act, 1961 was issued on 14.8.2013 fixing the date for compliance therein on 30.8.2013. Subsequently, statutory notices u/s. 142(1) of the I.T. Act alongwith questionnaire issued on 28.11.2014. In response to the notices, the assessee attended the proceedings from time to time and furnished the necessary details and information as called for. During the year the assessee enjoys income from salary and received the same from M/s Sistema Shyam Teleservices Limited and Dish TV India Limited. During the year AO observed that the assessee has received Rs. 1,81,497/- as brokerage from M/s Ali check Deals.com on which the TDS of Rs.

18,150/- was deducted u/s. 194H of the Act. In this regard, assessee submitted that she had got a discount on her Jay Pee Property purchased in Feb, 2010 from All Check Deals in the year 2011-12. The assessee had not added the receipt of Rs. 1,81,497/- from All Check Deals, in her total income, therefore, Rs. 1,81,497/- was added to the income of the assessee as other income and accordingly, the assessment was completed at Rs. 9,79,680/- vide assessment order dated 20.3.2015 passed u/s. 143(3) of the I.T. Act, 1961.

3. Against the assessment order, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 15.6.2016 has dismissed the appeal of the assessee.

4. Now the Assessee is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. Counsel of the Assessee has stated that as per the Income Tax Act only the income is to be taxed in the hands of the recipient in whose hands the nature of income is to be decided. It was also stated that in the case of the assessee the income received by her is not a revenue receipt. The very source of her receipt is only the residential flat which is a capital receipt in nature. Therefore, Ld. Counsel of the assessee stated that the issue involved in the present appeal is squarely covered by the Hon'ble Supreme Court of India judgement in the case of CIT vs. Saurashtra Cement Ltd., 325 ITR 422 (SC). Ld counsel of the assessee further stated that in the case of assessee no principal/ agent relationship is there,

because in this the case the Builder is a Principal and the Dealer is his agent. However, the assessee is simply a buyer of the property. The assessee has not rendered any service to anyone. Rather, the agent of the Builder helped the assessee in booking of the flat. To support this view, he relied upon the decision of the Coordinate Bench dated 01.6.2012 in the case of DCIT vs. Shri Surendra Mohan Mukhija in ITA NO. 4552/Del/2011 for the AY 2008-09.

6. On the contrary, Ld. Sr. DR relied upon the orders of the authorities below.

7. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A) and the case law relied upon. I find considerable cogency in the case law cited by the Ld. Counsel of the assessee of the Hon'ble Supreme Court of India in the case of CIT vs. Saurashtra Cement Ltd., 325 ITR 422 (SC), has held that any receipt directly and intimately linked with the procurement of capital asset is in the nature of capital receipt and not a revenue receipt.

7.1 I further find that the ITAT, Delhi vide its order dated 01.6.2012 passed in the case of DCIT vs. Shri Surendra Mohan Mukhija in ITA NO. 4552/Del/2011 for the AY 2008-09 has held as under:-

“5. We have heard both the parties and gone through the facts of the case as also the aforesaid decisions relied upon. Indisputably, the payment of Rs. 51,37,584/- was made to persons by a/c payee cheques as per

details placed on page 9 to 33 of the Paper Book, who booked flats in various projects of different builders. The Ld. CIT(A) found that these persons did not render any service to the assessee and therefore, discount offered by the assessee could not be treated as commission nor was there any principal-agent relationship between the assessee and these persons. In these circumstances, the Ld. CIT(A) concluded that the provisions of section 194H could not be invoked. The Ld. AR pointed out that in similar circumstances, a coordinate Bench in their decision dated 27th May, 2011 in the case of Surendra Buildtech Pvt. Ltd. in ITA No. 4854/Del/2010 for the AY 2007-08 concluded as under:-

"6. The expression "commission or brokerage" has been explained in the explanation appended to this section. According to the meaning provided in the explanation, the commission would be considered, if any person received it directly or indirectly on behalf of another person for the services rendered, and such services should not be professional services. In the present case, admittedly the person to whom

discount was granted by the assessee were not acting as an agent for the assessee, rather they are the purchaser of the property. They have not provided any type of services to the assessee. They have just booked the flat through the assessee. In fact, assessee is an agent between the builder and the ultimate purchaser of the flats. The assessee has parted with some part of the commission received from the builder from alluring the purchaser so that it can earn more commission. It is just providing a discount to the purchaser and not paying any commission for any services taken from such customers. It appears that learned Assessing Officer was influenced by the nomenclature of the receipt in the hands of the assessee. He failed to distinguish what character such receipt would attain when it will be offered to the customer. The relationship between the assessee and the purchaser of the flat is of buyer and seller. The learned First Appellate Authority has appreciated the controversy in right perspective

and we do not see any person to interfere in his order.”

5.1 *On appeal by the Revenue, the Hon'ble High Court upheld the findings of the ITAT in the following terms:-*

"10. We do not think that the aforesaid findings are perverse or require any interference in exercise of our jurisdiction u/s 260A of the Act. The factual finding as recorded by the first appellate authority and the Tribunal is that the payments were made by the purchasers who had booked plots/flats. While making payment, discounted price was paid by the buyers. In these circumstances, we do not think that section 194H of the Act can be invoked. Therefore, no substantial question of law arises on the first aspect.”

5.2 *In the instant case before us also, the assessee parted with a portion of his commission received from the builder for helping the intending buyers of flats. In other words, the purchasers received discount in the purchase price. There is nothing to suggest that the purchasers of flats rendered any service to the assessee rather the assessee rendered services to the*

intending purchasers. In the light of view taken by the Hon'ble Apex Court in their aforesaid' decision in Surendra Buildtech Pvt. Ltd(supra),especially when the Revenue have not placed before us any material controverting the aforesaid findings of the Id. CIT(A) so as to enable us to take a different view in the matter, we are not inclined to interfere with the findings of the Id. CIT(A),holding that the provisions of section 194H are not attracted while making payments to the aforesaid intending purchasers of flats. Consequently, provisions of sec. 40a(ia) of the Act are not applicable and therefore, ground nos. 1 & 2 in the appeal are dismissed.”

8. After perusing the aforesaid decisions of the Hon'ble Supreme Court of India in the case CIT vs. Saurashtra Cement Ltd. (Supra) and the Coordinate Bench decision of ITAT, Delhi in the case of DCIT vs. Surendra Mohan Mukhija (Supra), I am of the considered view that the issue in dispute is squarely covered by the aforesaid decisions, because the facts and circumstances of the present case are exactly similar and identical to that of case of CIT vs. Saurashtra Cement Ltd. (Supra) and DCIT vs. Surendra Mohan Mukhija (Supra). Therefore, respectfully following the aforesaid decisions, the addition in dispute is deleted and accordingly, the ground no. 2 raised by the assessee stands allowed.

9. Since I have already deleted the addition in dispute raised vide ground no. 2, the other grounds have become academic, hence, need not be adjudicated.

10. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 02/02/2017.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 02/02/2017

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITATTRUE COPY

By Order,

ASSISTANT REGISTRAR