

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
ITA No. 4810/Del./2015 : Asstt. Year : 2009-10
ITA NO. 4726/Del./2016 : Asstt. Year : 2009-10**

Laxmi Bhatia C/o. Gupta Ranjan K & Co., 208, Laxmi Deep, Laxmi Nagar District Centre New Delhi PAN-AAGPB7933F	Vs.	ITO Ward-58(5), Room No. 319, D Block New Delhi
[Appellant]		[Respondent]

Appellant by :	Sh.Ashish Goyal, CA , Sh. Ved Jain, Adv.
Respondent by :	Sh. R.C. Danday, CIT. D.R.

Date of Hearing:	13	06	2017
Date of Pronouncement:	16	06	2017

ORDER

PER R.K. PANDA, A.M:

The above two appeals filed by the assessed are directed against the separate orders dated 31st March, 2015 and 12th July, 2016 of the CIT(A) – 19 New Delhi relating to assessment year 2009-10. While the first appeal relates to the order of the CIT(A) in confirming the addition of Rs. 25,90,896/-, the second appeal relates to levy of penalty of Rs. 6,74,880/- u/s 271(1)(c) of IT Act, 1961 (hereinafter referred to as “the Act”) by the AO and confirmed by the CIT(A). For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case in brief are that the assessee is an individual and engaged in the business of fabrication of garments. She filed her return of

income on 18th January, 2010 declaring total income of Rs. 8,20,000/- which included short term capital gain of Rs. 7,18,450/-. During the impugned assessment year, the assessee had sold one property at F-153, Laxmi Nagar, Delhi -92 for Rs. 44,00,000/- and claimed deduction u/s 54 for the entire long term capital gain of Rs. 18,99,896/- in the computation of income being 50% share in the said property. The assessee had claimed deduction u/s 54 of Rs. 18,92,129/- and there was no mention in the computation about the address of the new house property or the details of investment made in the new house property. The AO observe that the assessee has purchased a new house property at 38, Geeta Colony, Delhi and granted deduction u/s 54 for Rs. 14,04,000/- to the assessee on the ground that only half the share of the above house property belongs to the assessee. The AO accordingly computed the long term capital gain at Rs. 4,95,896/- and brought the same to tax. The AO also recomputed the certain capital gain of the assessee at Rs. 28,13,450/- by invoking the provisions of section 50C of the Income Tax Act.

3. The assessee preferred an appeal before the CIT(A). During the course of appeal proceedings, the assessee filed an application for admission of certain additional evidence under Rule 46A on the ground that during the assessment proceedings, the AO had not asked the assessee for any evidence to substantiate the claim for deduction u/s 54 of the Income Tax Act. The AO had not asked the assessee to furnish any evidence to substantiate the claim of deduction u/s 54 of the Income Tax Act, 1961 regarding the construction of house property at 66 Geeta Colony, Delhi, 31.

3.1 However, the CIT(A) was of the opinion that the additional evidence now submitted before him under Rule 46A is not adequate to conclude that the assessed is eligible for deduction u/s 54 of the Income Tax Act. According to him the additional evidence filed before him is not conclusive enough to

conclude that the assessee had constructed a residential house during the relevant period. He noted that out of the 4 bills submitted as additional evidence only 1 relates to civil works and the other 3 are for plumbing, painting & electric wiring expenses. Even the civil works bill dated 27.11.2008 from Ram Swarup Building Contractor do not specify whether it was for construction of the house at 66, Geeta Colony, and further the bill is with the heading "Final Bill for Civil Works Pertaining Renovation And Construction Works". He further observed that the valuation report filed by assessee shows that ground floor and first floor were renovated and only the Second Floor was constructed. He, therefore, intimated the assessee that the additional evidence under rule 46A will be rejected since it is not adequate to conclude that the assessed is eligible for deduction 54 of the IT Act. Rejecting the various explanations given by the Assessee, the Ld. CIT(A) rejected the request for admission of additional evidence. So far as the merit of the case is concerned, the Ld. CIT(A) sustained the addition on account of long term capital gain of Rs. 4,95,896/-. However, so far as the addition on account of short term capital gain is concerned, the Ld. CIT(A) restricted such short term capital gain at Rs. 18,97,450/- as against Rs. 28,13,450/- determined by the AO.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before us with the following grounds :

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in enhancing the amount of Short Term Capital Gain from Rs. 7,18,450/- to Rs. 18,97,450/-.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in disallowing / restricting the exemption under section 54 for Long Term Capital Gain from Rs. 18,92,129/- to Rs. 9,63,896/-.

3. That having regard to the facts and circumstances of the case action of the learned CIT Appeals is bad, unjustified, illegal and arbitrary in refusing to admit additional evidence filed under rule 46A.

4. That in any view of matter and in any case, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned assessment order is beyond jurisdiction, illegal, in violation of principles of natural justice, contrary to law and facts and deserves to be quashed.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

5. The Ld. Counsel for the assessee referring to paper book pages 159-160 submitted that the Ld. CIT(A) had called for a remand report from the AO. However, without considering such remand report he has passed the order and also did not admit the additional evidences filed before him. He submitted that the additional evidences filed before him go to the root of the case and should have been admitted. In any case since he had called for a remand report from the AO and the assessee had appeared before the AO during such remand proceedings by filing the various details as called for during the remand proceedings, the Ld. CIT(A) should have considered the remand report of the assessing officer and then passed the order. He accordingly submitted that the matter may be restored to the file of the AO or the CIT(A) as the bench deems proper.

6. The Ld. DR on the other hand heavily relied on the order of the CIT(A). He however, submitted that since the Ld. CIT(A) has not waited for the remand report of the assessing officer and passed the order, which is very strange, he has no objection if the matter is restored to the file of the CIT(A).

7. I have considered the rival arguments made by both the sides, perused the orders of the AO as well as the CIT(A) and the paper book filed on behalf of

the assessee. I find the AO in the assessment order made addition of 4,95,896/- as long term capital gain and made addition of Rs. 20,95,000/- on account of short term capital gain. I find the Ld. CIT(A) confirmed the long term capital gain of Rs. 4,95,896/- but restricted short term capital gain to Rs. 11,79,000/- by giving relief of Rs. 9,16,000/- only. It is the submission of the Ld. Counsel for the assessee that assessee had filed various evidences to substantiate that the addition made by AO is uncalled for. It is also his submission that the CIT(A) should have passed the order after considering the remand report of the assessing officer. I find merit in the above argument of the Ld. Counsel for the assessed. The various evidences filed by the assessee in the shape of additional evidences go to the root of the matter and therefore, the Ld. CIT(A) under the facts and circumstances of the case should have considered such additional evidence since the order of the assessing officer is silent as to whether he has asked for such evidences to justify the construction of the property and whether the assessee has failed to do so. Further when the Ld. CIT(A) has called for the remand report from the assessing officer which is evident from the letter of the assessing officer to the assessee vide letter dated 13th February, 2015, copy of which is placed at page no. 159 to 160 of the paper book, the Ld. CIT(A) in all fairness should have waited for the remand report of the assessing officer and passed the order. From the various details furnished by the assessee, I find the assessee has appeared before the AO during the remand proceedings and filed various details. However, there is no whisper in the order of the CIT(A) regarding fate of such remand report. Considering the totality of the facts of the case and in the interest of justice, I am of the considered opinion that the matter requires a re-visit to the file of the AO. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No. 4726. Del. 2016

8. The assessee in the grounds of appeal has challenged the order of the CIT(A) in confirming the penalty levied by the AO u/s 271(1)(c) of the I.T.Act, 1961. Since the order of the CIT(A) has been set aside in the quantum appeal to the file of the AO, therefore, the penalty levied u/s 271(1)(c) which has been confirmed by the CIT(A) does not survive. However, the AO is at liberty to initiate penalty proceedings, if necessary, in the set-aside proceedings. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result both the appeals filed by the assessee are allowed for statistical purposes.

(Order Pronounced in the Open Court on 16/06/2017)

Sd/-
[R.K. PANDA]
Accountant Member

DATED: 16.6.2017

Binita

Copy forwarded to:-

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

Assistant Registrar

		Date	<u>Initial</u>	
1.	Draft dictated on	14/06/2017		
2.	Draft placed before author	15/06/2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			