

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'G', NEW DELHI**

**BEFORE SHRI NK SAINI, ACCOUNTANT MEMBER
AND SHRI JOGINDER SINGH, JUDICIAL MEMBER**

ITA No. 3508/Del/2016

A.Y. 2010-11

ACIT, Circle 22(1) Room no. 226 2 nd floor, C.R.Building I.P.Estate New Delhi	vs.	Sarvodaya Realtors P Ltd. D 36, South Ex Part II New Delhi PAN: AAOCS 4264 R
(Appellant)		(Respondent)

Appellant by	Shri Kaushlendra Tiwari, Sr.D.R.
Respondent by	Sh. Somil Agarwal, Adv. Sh. Nirmal Singh, C.A.
Date of Hearing	07 th November, 2017
Date of Pronouncement	09 th November, 2017

ORDER

PER NK SAINI, ACCOUNTANT MEMBER

This is an appeal filed by the Department against the Order dt. 21.3.2016 of Ld.CIT(Appeals), New Delhi. The only effective ground raised in this appeal reads as under.

“1. The Ld.CIT(A) erred in annulling the order passed by the A.O. u/s 154 of the Income Tax Act, 1961. The Ld.CIT(A) erred in holding that since the original order passed u/s 144/147 of the Income Tax Act, 1961 by the A.O. had no legal validity, the subsequent rectification order passed by the A.O. u/s 154 of the Act also has no validity in the eye of law. The Dept. has filed appeal against the order of the CIT(A) annulling the original assessment order.”

2. Facts of the case in brief are that the assessment in this case was completed on 20.12.2007 at an income of Rs.64,43,940/- by passing the order u/s 144/147 of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on the A.O. passed the rectification order u/s 154 of the Act on 24.8.2009 and modified the calculation of interest u/s 234A and 234B of the Act. Being aggrieved the assessee carried the matter to the Ld.CIT(A) who annulled the order by observing in para 3.1 of the impugned order as under.

“3.1. Considering above and since the original order passed u/s 144/147 of the Income Tax Act 1961 had no legal validity, the subsequent rectification passed by the Assessing Officer u/s 154 of the Act also has no validity in the eye of law. Accordingly the order dated 20.12.2007 passed by the ACIT, Circle 7(1) New Delhi u/s 154/144/147 of the Act is annulled.”

3. Now the department is in appeal. We have considered submissions of both the parties and perused material available on record. In the present case, the observations of the Ld.CIT(A) that the assessment order dt. 20.12.2007 was annulled vide order dt. 18.3.2016 has not been rebutted. Therefore when the original assessment order which has been rectified by the A.O. was not in existence, the subsequent order passed by the A.O. by making the rectification u/s 154 of the Act in the assessment order was rightly annulled by the Ld.CIT(A). We do not see any infirmity in the impugned order, and, therefore, do not see merit in this appeal of the department.

4. In the result the appeal of the department is dismissed.

Pronounced in the Open Court on 09th November, 2017.

Sd/-

**(JOGINDER SINGH)
JUDICIAL MEMBER**

Sd/-

**(NK SAINI)
ACCOUNTANT MEMBER**

Dated: the 09th November, 2017.

***gmv**

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar

ITAT, Delhi Benches, New Delhi