

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. Nos. 489 & 490/DEL/2016

A.Yrs. 2009-10

ACIT, CIRCLE 41(1),
ROOM NO. 1704, E-2,
CIVIC CENTRE, MINTO ROAD,
NEW DELHI - 110 002

(APPELLANT)

VS. MS. USHA RANI TALLA
B-5, NEAR DURGA MANDIR,
MOTI NAGAR,
NEW DELHI - 15
(PAN: AEBPR3546P)

(RESPONDENT)

Department by : Sh. Arun Kumar Yadav, Sr.DR

Assessee by : None

ORDER

PER H.S. SIDHU, JM :

These appeals by the Revenue are directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-14, New Delhi both dated 13.11.2015 pertaining to Assessment Year 2009-10. Since the issues are inter-connected, hence, the appeals were heard together and are being disposed of by this common order, for the sake of brevity.

2. The grounds raised in ITA No. 489/Del/2016 read as under:-

“On the facts and circumstances of the case and in law
CIT(A) has erred in -

- (i) Allowing deduction u/s. 54 of the I.T. Act of Rs. 74,97,830/-, ignoring the fact that the property purchased is commercial property as mentioned in the registration deed and such does not fulfill requirement of getting deduction under section 54 of the I.T. Act, 1961.
- (ii) The appellant craves the right to add, alter or amend any ground of appeal.

3. The grounds raised in ITA 490/Del/2016 read as under:-

On the facts and circumstances of the case and in law, CIT(A) has erred in –

1. Deciding the issue in respect of capital gain on the sale of property after taking into consideration the sale consideration on the basis of the registered sale deed of Rs. 95,00,000/- as against Rs. 3,87,00,000/- determined by the AO on the basis of valuation report thus ignoring the fact that in the present case the valuation report was found from the premises of the assessee during survey proceedings u/s. 133A of the I.T. Act, whereas in the case of relied upon judgment of CIT vs. Anil Arora the AO had requisitioned the valuation report from the DVO.

2. The appellant craves the right to add, alter or amend any ground of appeal.

4. Facts narrated by the revenue authorities are not disputed, hence, the same are not repeated here for the sake of brevity.

5. Ld. DR relied upon the orders of the AO.

6. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor her authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte* qua assessee, after hearing the Ld. DR and perusing the records.

7. We have heard the Ld. DR and perused the relevant records, especially the grounds of appeal raised in the present Appeals filed by the Department, both the impugned orders passed by the Ld. CIT(A) as well as the Tribunal's order dated 30.6.2015 passed in the case of assessee in assessment year 2009-10 in ITA No. 5698/Del/2014 title ACIT vs. Smt. Usha Rani Talla and ITA no. 5974/Del/2014 (AY 2009-10) title Smt. Usha Rani Talla vs. ITO. We find that Department in the present ITA No. 489/Del/2016 (AY 2009-10) has raised the following effective issue:-

"On the facts and circumstances of the case and in law CIT(A) has erred in –

(i) Allowing deduction u/s. 54 of the I.T. Act of Rs. 74,97,830/-, ignoring the fact that the property purchased is commercial property as mentioned in the registration deed and such does not fulfill requirement of getting deduction under section 54 of the I.T. Act, 1961."

7.1 After perusing the aforesaid ground raised by the Revenue, we find that Tribunal's vide its order dated 30.6.2015 passed in the case of assessee in assessment year 2009-10 in ITA No. 5698/Del/2014 title ACIT vs. Smt. Usha Rani Talla and ITA no. 5974/Del/2014 (AY 2009-10) title Smt. Usha Rani Talla vs. ITO. (AY 2009-10) has already decided the issue in favour of the Assessee and against the Revenue vide para no. 12 at page no. 25 to 26 of the order, while dealing with Revenue's Appeal. The relevant finding of the Tribunal is as under:-

"12. Apropos ground no. 3 regarding directing the AO consider the claim of assessee u/s. 54 of the I.T. Act, 1961 is concerned, we find that during the relevant assessment year, the assessee has sold a property at 20C/72, West Punjabi Nagar, New Delhi for the consideration of Rs. 95,00,000/- as per the registered value of the property (whereas during the course of

survey, the same property was found to be valued at Rs. 3,87,00,000/- by a registered valuer). The assessee has claimed that the sale proceed of the aforesaid property at 20C/72, West Punjabi Bagh, New Delhi was invested in the purchase of property in the same assessment year at J-1/161, Rajouri Garden, New Delhi. We observed that the assessee was entitled for deduction u/s. 54 of the I.T. Act in respect of capital gain on the sale of property at 20C/72, West Punjabi Bagh, New Delhi. We further note that the assessee has also relied upon the decision of the Hon'ble Supreme Court of India in the case of National Thermal Power Co. Ltd. vs. CIT 229 ITR 383. The AO has not considered the claim of exemption of the assessee u/s. 54 in respect of the capital gain arose in respect of the sale of property at 20C/72, West Punjabi Bagh, New Delhi. In view of the above, in our considered opinion, the Ld. CIT(A) rightly directed the AO to consider the aforesaid claim of the assessee of exemption u/s 54 of the I.T. Act, while computing the income of the assessee. We also find considerable cogency in the assessee's counsel that Ld. DR itself was saying that the assessee has sold one property and purchased

another, then there is no question why exemption u/s. 54 should not be given. In view above, we find that the CIT(A) has given a well reasoned finding on the issue in dispute, which does not need any interference on our part, hence, we uphold the same and decide the issue no. 3 against the Revenue.

In the result, the Revenue's appeal is dismissed."

7.2 We further find that Department in another ITA No. 490/Del/2016 (AY 2009-10) has raised the following effective issue:-

"On the facts and circumstances of the case and in law CIT(A) has erred in –

- (i) Deciding the issue in respect of capital gain on the sale of property after taking into consideration the sale consideration on the basis of the registered sale deed of Rs. 95,00,000/- as against Rs. 3,87,00,000/- determined by the AO on the basis of valuation report thus ignoring the fact that in the present case the valuation report was found from the premises of the assessee during survey proceedings u/s. 133A of the I.T. Act,*

whereas in the case of relied upon judgment of CIT vs. Anil Arora the AO had requisitioned the valuation report from the DVO.”

7.3 After perusing the aforesaid ground raised by the Revenue, we find that Tribunal's vide its order dated 30.6.2015 passed in the case of assessee in assessment year 2009-10 in ITA No. 5698/Del/2014 title ACIT vs. Smt. Usha Rani Talla and ITA no. 5974/Del/2014 (AY 2009-10) title Smt. Usha Rani Talla vs. ITO. (AY 2009-10) has already dismissed the grounds vide para no. 14 at page no. 27 of the order, while dealing with Assessee's Appeal. The relevant finding of the Tribunal is as under:-

“14. At the time of hearing, Ld. Counsel of the Assessee Sh. Nagesh Behl, stated that assessee has raised 5 grounds of appeal. As regards ground no. 1 is concerned, he stated that the Assessee has raised this ground before the Ld. CIT(A) which has not been decided by the Ld. CIT(A), but he decided the other issues by partly allowing the Appeal filed by the Assessee. Assessee has filed the Appeal on the issue involved in ground no. 5 mentioned in the Assessee's Cross Appeal and Revenue has filed the Appeal i.e. ITA No. 5698/Del/2014 and challenged the addition deleted by the Ld. CIT(A). He stated that the issue in ground no. 2

to 4 are inter connected with the Revenue's Appeal and if the Revenue's Appeal is dismissed, then he is not pressing the grounds raised in Assessee's Appeal vide ground no. 2 to 4. Since we have already dismissed the Revenue's Appeal, hence, as per the statement of the Ld. Counsel of the assessee that he is not pressing the issue involved in ground no. 2 to 4, if the Revenue's appeal is dismissed, the ground no. 2 to 4 raised in the Assessee's Appeal stands dismissed, as not pressed."

7.4 Keeping in view of the facts and circumstances of the case, we are of the considered opinion that the issue raised by the Revenue against the impugned order dated 13.11.2015, has already been decided by the Tribunal, as discussed above and Ld. CIT(A) has not complied with the directions of the Tribunal's order dated 30.6.2015 passed in assessee's own case in assessment year 2009-10, however wrongly decided the issues again, which were already decided by the Tribunal vide order dated 30.6.2015. It is also noted that Revenue has wrongly filed the Appeal before the Tribunal against the order of the Ld. CIT(A) on issues already decided by the Tribunal. We further note that Tribunal's vide order dated 30.6.2015 passed in the case of assessee in assessment year 2009-10 in ITA No. 5698/Del/2014 title ACIT vs. Smt. Usha Rani Talla and ITA no. 5974/Del/2014 (AY 2009-10) title Smt. Usha Rani Talla vs. ITO. (AY

2009-10 while dealing with Assessee's Appeal has remitted back the ground no. 1 to the Ld. CIT(A) to decide the same afresh, under the law, after giving adequate opportunity of being heard, but however, the Ld. CIT(A) has not dealt the ground no. 1 and did not comply with the directions of the Tribunal's order dated 30.6.2015, as aforesaid. Therefore, in the interest of justice, the issue raised in ground no. 1 in the first round of Appeal before the Tribunal in ITA No. 5874/Del/2014 (AY 2009-10) is required to be adjudicated by the Ld. CIT(A) afresh, after giving adequate opportunity of being heard to the assessee and pass a speaking order only on the specific issue. We hold and direct accordingly.

8. In the result, both the Appeals filed by the Revenue stand allowed for statistical purposes.

Order pronounced on 12/12/2017.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Date:12/12/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY
By Order,

Assistant Registrar,
ITAT, Delhi Benches