

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3403/Del/2015
(Assessment Year: 2006-07)

Smt Alpana Kirloskar, 115, Ansal Bhawan, 16, KG Marg, New Delhi PAN: AARPK0165B (Appellant)	Vs.	ACIT, Circle-52(1), New Delhi (Respondent)
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Assessee by :	Shri RN Sharma, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	01/10/2018
Date of pronouncement	30/11/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-18, New Delhi dated 30.03.2015 for the Assessment Year 2006-07.
2. The assessee has raised the following grounds of appeal:-

"1.1 That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in law in upholding the action of the learned AO in including in the assessment of the Appellant a sum of Rs.4 crore received by her as a beneficiary on distribution of income by Fair Value Trust. This finding / action of the learned Commissioner (Appeals) is wholly illegal, unsustainable, without any logic and contrary to the provisions of law, inter-alia, on the following grounds:-

- i) she has solely relied upon the appellate order of the Commissioner (Appeals) for the assessment year 2009-2010 disregarding and disrespecting the subsequent order of Hon'ble I.T.A.T. for this very year over-ruling the decision of the Commissioner (Appeals);*
- ii) although the order of the Hon'ble I.T.A.T. was filed before her the failure on the part of Commissioner (Appeals) to ignore and disregard the order of the higher appellate authority which was binding on her, amounted to flagrant disregard and disrespect to the provisions of law.*

- 1.2 *That without prejudice to the foregoing ground, even if the Commissioner (Appeals) was of the view that the Hon'ble Tribunal's order was not binding on her, she should have considered and analysed the same and given considered reasons for not following the said order.*
2. *That without prejudice to and independent of the above grounds, the action of learned AO / Commissioner (Appeals) that Fair Value Trust was not a discretionary but specific trust and the income distributed by the trustees was not taxable in the hands of the trustees but mandatorily assessable in the hands of the appellant as a beneficiary was wholly illegal, unsustainable and contrary to the provisions of law.*
- 3.1 *That without prejudice to the foregoing grounds, on the facts and circumstances of the case, the learned Commissioner (Appeals) has erred in upholding the action of the learned AO in reopening the assessment u/s 147(1) which was purely on the basis of change of opinion was illegal and beyond jurisdiction of the learned AO and requires to be annulled.*
- 3.2 *That further, without prejudice the learned Commissioner (Appeals) while relying upon the appellate order for assessment year 2009-2010 failed to appreciate that the said order has been over-ruled by the Hon'ble I.T.A.T.*
4. *That without prejudice to the aforesaid grounds, the learned Commissioner (Appeals) failed to accept without any valid reasons, the alternative claim of the appellant that the share of income received by her as a beneficiary included dividend income exempt u/s 10(34) and the same deserved to be excluded from the assessable income.*
5. *That the impugned order is against the law and facts of the case."*
3. Assessee is an individual deriving income from business, capital gains and other sources. She filed a return of income for assessment year 2006 – 07 and 29/3/2007 at an income of INR 2159274/-. The income was assessed under section 143 (3) of the act on 15/9/2000 at the returned income of the assessee. Subsequently, notice under section 148 was issued on 26/3/2013 after recording the reason for reopening.
4. The reasons of the reopening was that the assessee is one of the beneficiaries of a trust, namely Fair Value Trust since year 2000 and regularly receiving income from the trust. During the assessment year 2009 – 10, also she received Rs. one crore from fair Value trust which was shown as exempt income. Some enquiries were conducted for assessment year 2009 – 10 With respect to the taxability of the sum of

Rs. one crore received from fair Value trust along with the copy of trust deed and specific provision under which this income has been treated as exempt in the hands of the recipient. Assessee claimed that distribution is not an income of the beneficiary where the distribution is out of the trust fund. It was further stated that the income of trust has already been offered for tax as per the provisions of the income tax act in respect of income of private discretionary trust where share of beneficiaries are indeterminate and not specified in the trust instrument. The assessee also submitted the copy of the trust deed dated 11/12/2000. It was also stated that as per the provisions of section 164 (1) trustees as representative assessee under section 160 (1) (iv) of fair value trust has submitted its return of income showing taxable income of trust and paid tax at the maximum marginal rate of tax. Therefore, the assessee claimed that the surplus fund of Rs. one crore is not an income and hence it is not taxable.

5. Similar issue arose for assessment year 2009 – 10 and after considering the submission of the assessee the learned assessing officer noted that on perusal of the trust deed that the income of the trust was to be distributed on the complete discretion of the trustees. Accordingly, the addition of Rs. 9950, 000/- was made in the hands of the assessee being amount received from the trust under section 56 (2) (vi). For assessment year 2009 – 10 The assessee preferred an appeal before the learned Commissioner of income tax (appeals) who dismissed the appeal of the assessee giving detailed reasons. Therefore, the AO noted that, by reason of omission on failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment income of about INR 40,000,000 chargeable to tax has escaped assessment for which notice under section 148 is required to be issued within the meaning of section 147 of the income tax act for assessment year 2006 – 07.
6. In response to the notice under section 148 of the act , assessee filed her return of income on 23/10/2013 along with the note stating that notice under section 148 is bad in law invalid and without jurisdiction. The objections of the assessee were considered and disposed of by a letter

dated 15/7/2013. The learned assessing officer noted that assessment is reopened correctly. On the merits, the learned AO made an addition of INR 40,000,000 in the hands of the assessee under the head income from other sources following his own order for assessment year 2009 – 10, which was confirmed by the learned Commissioner of income tax appeals for that year. Consequently the total income of the assessee was assessed at INR 42159274/- vide order dated 18/2/2014 passed under section 148 read with section 143 (3) of the income tax act, 1961.

7. Aggrieved with the order of the learned AO, assessee preferred an appeal before the learned Commissioner of income tax appeals who decided the issue following his own order for assessment year 2009 – 10. In ITA number 412/2011 – 12 dated 28/2/2013 and dismissed the appeal of the assessee. Therefore assessee aggrieved with the order has preferred an appeal before us.
8. The learned authorised representative submitted that the issue is squarely covered in case of the assessee in favour of the assessee by the order dated 28/04/2014 of the coordinate bench in ITA number 2670/Del/2013 for assessment year 2009 – 10. He further stated that the honourable Delhi High Court vide order dated 21/9/2015 in ITA number 664/2015 has also confirmed the above order. It was further stated that the learned Commissioner of income tax appeals vide order dated 30/5/2016 in appeal number 13/15 – 16 for assessment year 2007 – 08 in assessee's own case, has deleted the addition on the identical facts and circumstances of the case. Therefore, it was the claim of the assessee that issue is squarely covered in favour of the assessee by the decision of the honourable Delhi High Court in the year assessment year 2009 – 10,, reversing the order of the Commissioner of income tax, which was followed by the learned Commissioner of income tax appeals for confirming the above addition.
9. Learned departmental representative vehemently supported the order of the learned assessing officer.
10. We have carefully considered the rival contention and also perused the various order is placed before us by the learned authorised representative

of the assessee. We found that identical issue for assessment year 2009 – 10 based on which the learned assessing officer has reopened the case of the assessee has been decided by the coordinate bench vide order dated 28/04/2014 in ITA number 2670/del/2013, wherein, the appeal of the assessee is allowed. Further the honourable Delhi High Court on appeal by the revenue has decided the issue vide order dated 21/9/2015 in ITA number 664/2015 dismissing the appeal of the revenue. The honourable Delhi High Court vide para number 5 of that order has held that ITAT has in the impugned order rightly held that with the trust already having been assessed to tax on its income, the question of the assessee, as a beneficiary again being taxed in respect of share of such income does not arise. The ITAT has also referred to the fact that in relation to the income of another beneficiary of the same trust the revenue has taken a contrary stand. In view of the above facts, respectfully following the decision of the honourable Delhi High Court, we do not find that the addition made by the learned assessing officer of INR 40,000,000 in the hands of the assessee is sustainable, hence we direct the learned assessing officer to delete the same. Accordingly the ground number 1.1 of the appeal of the assessee is allowed.

11. As we have already struck the addition of INR 40,000,000 in the hands of the assessee while allowing the ground number 1.1 of the appeal of the assessee other grounds of appeal are merely academic in nature and therefore they do not require any adjudication. Hence, they are dismissed.

12. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 30/11/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 30/11/2018
A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi