

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.6672/Del/2015  
Asstt. Year: 2004-05

Shri Praveen Juneja L .H. (son) of Late Smt. Kiran Juneja, E-47, 2 <sup>nd</sup> Floor, Greater Kailash-II, Delhi PAN AAHPJ2998M	Vs.	Dy.CIT, Central Circle-29, Jhandewalan Extn. New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri V.K. Agarwal, AR Ms. Sweta Bansal, CA
Department by :	Shri S.S. Rana, CIT(DR)
Date of Hearing	22/08/2019
Date of pronouncement	11/09/2019

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against impugned order dated 29.9.2015, passed by Ld. CIT (Appeals) 30, New Delhi for the quantum of assessment passed u/s 153A/254 for the assessment year 2004-05. In the grounds of appeal, the assessee has challenged the addition of Rs. 34,00,000/- on account of alleged long term capital gain on the sale of house property by considering the sale consideration at Rs. 44,00,000/- as against Rs. 10,00,000/- declared in the sale deeds.

2. Apart from that the grounds on merits, assessee has also raised following as additional grounds:-

*“The Ld. CIT(A) has grossly erred on facts as well as in law in upholding the assessment order u/s 254/153A which is ex-facie illegal, arbitrary and without jurisdiction as the same is barred by limitation having been passed on 20.2.2015 though the original order u/s 153A was set aside on 22.1.2010 by the Hon’ble ITAT.*

*The Ld. CIT(A) has grossly erred on facts as well as in law in upholding the assessment order u/s 254/153A which is ex-facie illegal, arbitrary and without jurisdiction because no search was conducted n the case of the appellant.”*

3. Since the additional ground is purely a legal ground, challenging the very validity of order on the ground of limitation, therefore same is being admitted in view of judgment of Hon’ble Supreme Court in the case of NTPC vs. CIT reported in 229 ITR 383 (SC). Before us, Ld. Counsel on the issue of limitation submitted that here in this case, a search and seizure action u/s 132 was conducted on 22.9.2005 and accordingly, notice u/s 153A was issued on 2.5.2006. In response to such notice, return of income was filed and accordingly, assessment was completed vide order dated 27.12.2007 after making addition of Rs. 34,31,456/- on account of long term capital gain on sale of house property. In the first appeal Ld. CIT (A) had confirmed the assessment order vide order dated 5.1.2009. Thereafter, the matter had travelled up to the stage of Tribunal; and Tribunal vide order dated 22.01.2010 in ITA No.1333/Del/2009 has set aside the entire issue back to the file of the AO for readjudication afresh. The relevant observation and finding of the Tribunal reads as under:-

*“4. With the assistance of learned representatives, we have gone through the record carefully. It is not disputed by the learned representative before us that cross-examination of Shri JB Goel was not permitted by the AO to be carried out by the representative of the assessee. In a series of authoritative pronouncement, it has been held time and again that a statement of any witness cannot be used against the person unless that person is granted an opportunity to cross-examine the witness. Assessing Officer is supposed to give either an opportunity to cross-examine the assessee or to exclude the statement of Shri JB Goel from the evidence. It is not the discretion of the witness to permit any person to cross-examine him or not. Such discretion lies with the Assessing Officer. For buttressing out view point that statement of Shri JB Goel cannot be relied in evidence in case he is not subjected to the cross-examination by the assessee, we are fortified by the decision of Hon’ble Delhi High Court in the case of CIT vs Dharampal Prem Chand 295 ITR 105 and the judgment of the Hon’ble Madhya Pradesh High Court in the case of Prakash Chand Nahata vs. CIT 301 ITR 134. In view of the above discussion, we set aside this issue to the file of the Assessing Officer for readjudication. It is needless to say that the observations made by us will not impair or injure the case of Assessing Officer or will cause any prejudice to the defence/explanation of the assessee.”*

4. Now in pursuance of said Tribunal order, the AO has passed the assessment vide order dated 20.2.2015 i.e., almost after five years of the passing of the order of the Tribunal. Ld. Counsel submitted that such assessment order could have been passed after the expiry of nine months from the end of the financial year in which order of the Tribunal was received by the Principal Chief Commissioner or Chief

Commissioner or Principal Commissioner or Commissioner in terms of sub section 3 of section 153. Thus, impugned assessment order is clearly barred by limitation.

5. On the other hand Ld. DR submitted that the issue of limitation was not raised before the Ld. CIT (A) and therefore, the same should not be entertained and also submitted a detailed written submission on merits of the addition.

6. After considering the relevant facts available on record *qua* the issue of limitation, first of all, we are unable to accept the contention of the Ld. DR that, since the issue of limitation has not been raised before the Ld. CIT (A), therefore, assessee is precluded from raising this ground. The issue of limitation or relating to jurisdiction which goes to the very root of the validity of assessment order can be raised at any stage, provided all the facts and materials are borne out from the record and do not require any investigation of facts. Here in case, there is no dispute that the Tribunal has set aside the original assessment order back to the file of the AO for fresh adjudication vide order dated 22.1.2010. The assessment order as per the statutory provision of limitation provided in section 153 for passing of the order, provides that in such cases order should have been passed before the expiry of 9 months from the end of the financial year in which order u/s 254 received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. The passing of the assessment order after the expiry of the five years, i.e., on 20.2.2015 is clearly barred by limitation in terms of sub section 3 of section 153; and such a time barred assessment cannot be sustained. Accordingly, entire assessment order dated 22.2.2015 is quashed being barred by limitation.

6. In the result appeal of the assessee is allowed.

Order Pronounced in the open court on 11<sup>th</sup> September, 2019.

sd/-

**(DR. B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 11/09/2019

***Veena***

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi