



**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.14/ALLD/2013  
Assessment Year: 2006-07

Rashmi Mehrotra 15B, Lal Bahadur Shastri Marg Allahabad	v.	DCIT Circle I Allahabad
TAN/PAN:ACMPM2530M		
(Appellant)		(Respondent)

Appellant by:	Shri N.C. Agarwal, C.A.		
Respondent by:	Shri A. K. Singh, D.R.		
Date of hearing:	10	02	2020
Date of pronouncement:	12	02	2020

**ORDER**

**PER A. D. JAIN, V.P.:**

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 31/8/2012 for assessment year 2006-07, taking the following grounds:

1. Because on facts of the case, the CIT(A) has erred in law and facts in confirming the treatment of the Long Term Capital Gains arising out of sale of flats in Lotus Apartment as Short Term Capital Gains on hypothetical consideration.
2. Because the facts of the case, the appellant had rightly returned the profit on sale of flats as Long Term Capital Gains, but CIT(A) did not appreciate the fact that the flats were received by the appellant from the Developer in lieu of his contribution of land in the project.
3. Because the appellant has never transferred his rights in the land held by him and has merely given a licence to Shri Sanjeev Agrawal to use the land so as to complete the project as agreed and executed in MOD.

4. Because the CIT(A) has neither considered nor gone through the MOU as a whole and has based his finding & observation simply relying on the observations of A.O. which are quite different.

5. Because if the MOU executed on 06.01.2003 is read as a whole it would substantiate the claim of the appellant that he has rightly and legally shown the profit on sale of flats as Long Term Capital Gains.

6. Because on the facts and circumstances of the case, there had been no transfer U/s 2(47) of the Income Tax Act, 1961, on execution of MOU dated 05.01.2003.

7. Because the CIT(A) has not gone into the question that in case for computation of capital gains there should be cost of acquisition and if the cost of acquisition is NIL the question of capital gain would never arise.

8. Because the CIT(A) in fact, on irrelevant consideration has not accepted the claim of the appellant with respect to profit on sale of flats as Long Term Capital Gains and held the same otherwise. In any event of the matter the gains to the appellant should be assessed as Long Term Capital Gains and not as Short Term Capital Gains.

9.. .Because CIT(A) has erred in law and on facts in not deciding each and every ground y before him and rejecting the Grounds of appeal in summary manner.

10. Because the CIT(A) has not considered the claim of indexed cost of Freehold Charges amounting to Rs.1,19,378/- while computing Long Term Capital Gains on sale of Land at 48/24, S. P. Marg, Allahabad and confirming higher amount of Long Term Capital Gains.

11. Because the order passed by CIT(A) is bad in law as well as on facts.

12. Because the CIT(A) has erred in law and on facts in dismissing the following additional, "ground taken before him :

“Because the assessment order dated 31.12.2008 passed u/s 143(3) of the Act in wholly without

jurisdiction as no notice u/s 143(2) had been served on the appellant as per the provisions contained in Section 282 of the Act."

13. Because the CIT(A) has erred in law and on facts in holding on Page 13 of the Order as under:

"I do not agree with the contention of the appellant that there was no transfer on entering into agreement with the builder simply because the agreement was Irrecoverable. If the assessee dishonours such agreement there would be irrecoverable loss to the builder, therefore the term of the agreement are legally enforceable on the assessee. This is the reason such agreement would come in the ambit of transfer defined u/s 2(47) (v) of the IT Act."

2. This is second round of appeal before the Tribunal. In this case, the appeal in ITA No.14/Alld/2013 for assessment year 2006-07 was disposed of along with the other appeals of the assessee in ITA Nos.12 & 13/Alld/2013 for assessment years 2003-04 and 2004-05, vide order dated 28/9/2016, and the matter was remitted to the file of the Assessing Officer to decide the same afresh on affording due opportunity of hearing to the assessee and after disposing of the objections taken by the assessee in response to the notice issued under section 148(2) of the Act, by passing a speaking order. Against this order, the Revenue filed a miscellaneous application no.21/Alld/2017, requesting to recall the order of the Tribunal dated 28/9/2016 passed in ITA No.14/Alld/2013, as there is an apparent mistake in the order of the Tribunal, because the assessment order in this appeal has been passed under section 143(3) of the Act and not under section 147 of the Act and therefore, the direction of the Tribunal is not in correct perspective. Accordingly, the order of the Tribunal dated 28/9/2016 ITA No.14/Alld/2013 was

recalled, vide order dated 23/7/2018. Now, the appeal, in second round, is fixed for hearing before this Bench.

3. Before us, the ld. Counsel for the assessee submitted that the ld. CIT(A) had decided the appeal of the assessee for assessment year 2006-07, following his orders for preceding assessment years, i.e., 2003-04 and 2004-05; that the orders of the ld. CIT(A) for assessment years 2003-04 and 2004-05 were set aside by the Tribunal vide its order dated 28/9/2016 and the matter was remitted to the file of the Assessing Officer; that pursuant to the direction of the Tribunal, the Assessing Officer passed order dated 30/12/2017 for assessment year 2003-04 and order dated Nil for assessment year 2004-05 (copies placed on record); and that since the issue involved in the year under consideration too is identical to the issue involved in assessment years 2003-04 and 2004-05, the order of the ld. CIT(A) may be set aside and the matter may be remitted to the file of the Assessing Officer for deciding the same afresh after affording due opportunity of hearing to the assessee.

4. The ld. D.R., on the other hand, has placed reliance on the order of the ld. CIT(A).

5. Heard. The ld. CIT(A) at page 5 of the impugned order observed that the assessee has raised similar grounds of appeal on the similar facts of the case in the appeal filed for assessment years 2003-04 and 2005-06; that the submission of the assessee on the grounds raised is almost identical; and that he had decided the core issue involving these grounds of appeal for assessment years 2003-04 and 2004-05. The submission of the ld. Counsel for the assessee before us was that the issue involved in the appeal under consideration, as noted by the ld. CIT(A), is identical to the issue involved in assessment years 2003-04 and

2004-05 and since the orders of the ld. CIT(A) in those assessment years were set aside by the Tribunal and remitted the matter to the file of the Assessing Officer for deciding the same afresh after affording due opportunity of hearing to the assessee, the impugned order of the ld. CIT(A) may also be set aside and the matter may be remitted to the file of the Assessing Officer. On considering the request of the ld. Counsel for the assessee and in the interest of justice, we set aside the order of the ld. CIT(A) and remit the matter to the file of the Assessing Officer with a direction to decide the issue afresh on affording due opportunity of hearing to the assessee

6. In the result, for statistical purposes, the appeal of the assessee is treated as allowed.

Order pronounced in the open Court on 12/02/2020.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:12/02/2020  
JJ:1002

Copy forwarded to:

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

By order

Assistant Registrar