

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Kuldip Singh, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 8239/Del/2019 : Asstt. Year : 2013-14**

Meera Goyal, B-45, Maharani Bagh, New Delhi-110065	Vs	Income Tax Officer, Ward-10(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AGQPG7373J</b>		

**ITA No. 1198/Del/2019 : Asstt. Year : 2013-14**

Income Tax Officer, Ward-10(2), New Delhi	Vs	Meera Goyal, B-45, Maharani Bagh, New Delhi-110065
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AGQPG7373J</b>		

**Assessee by : Sh. R. S. Singhvi, CA**

**Revenue by : Ms. Pramita M. Biswas, CIT DR**

<b>Date of Hearing: 23.11.2020</b>
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<b>Date of Pronouncement: 14.12.2020</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee and revenue against the orders of the Id. CIT(A)-22, New Delhi, dated 29.11.2018.

2. In ITA No. 8239/Del/2019, following grounds have been raised by the assessee:

*"1(i) That on the facts and circumstances of the case, the CIT(A) was not justified in passing the*

*rectification order u/s 154 r.w.s. 250(6) of the Income Tax Act, 1961 after making addition to the extent of Rs.12,19,83,470/- merely based on change of opinion and reappraisal of facts already on record.*

*(ii) That there is no case of any apparent mistake on record and provisions of Section 154 have been applied on illegal and arbitrary basis.*

*(iii) That the issue of taxability of forfeiture amount being a subject matter of appeal before the Hon'ble ITAT, the rectification order passed by the CIT(A) is without valid jurisdiction and against the principles of doctrine of merger.*

*(iv) That in any case, complete facts regarding forfeiture being already on record and duly discussed by the Assessing Officer and there being no mistake apparent from record, the rectification order falls outside the scope of Section 154 of the Act.*

*2. That addition to the extent of Rs.12,19,83,470/- is even not in conformity with provisions of Section 51 of the Income Tax Act, 1961 and is bad in law.*

*3. That there is no case of any surplus as alleged by CIT(A) as whole issue is under dispute and even otherwise, surplus if any is of capital nature and no liable to tax, the impugned addition is misconceived and not sustainable.*

*4. That further till the property is sold, the issues of any such gain or income is not relevant.*

*5. That orders passed by lower authorities are not justified on facts and same are bad in law."*

3. In ITA 1198/Del/2019, following grounds have been raised by the revenue:

*"1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.12,50,00,000/- made by the AO on account of treatment of the earnest money*

*forfeited in respect an agreement for sale of property as assessee's income under the head "Income from Other Source",*

*1.a) Whether the Ld. CIT(A) has erred in holding that the amount forfeited is in the nature of capital receipt in terms of Section 51 which is required to be adjusted against the cost of the property while computing capital gains on sale of the such property in future, not appreciating the fact that the said section is meant to apply to genuine transactions and therefore, where the act of forfeiture is being used as a device in view of similar forfeiture in respect of the same property in the past, the AO was justified in treating the amount forfeited as income of the assess u/s 56 of the Act.*

*1.b) Whether the Ld. CIT(A) has erred in relying upon the decision of the jurisdictional High Court in assessee's own case for A.Y. 2007-08, not appreciating the fact that the decision of Hon'ble High Court in the said Assessment Year proceeded on entirely different premises, namely*

- i) that the AO had failed to comply with the direction given by the Addl. Commissioner of Income Tax u/s. 144A of the Act, which were binding on him.*
- ii) that the plea of applicability of the provisions of section 56(2)(vi) of the Act was not raised before the Tribunal.*

*1.c) Without prejudice to the foregoing, whether the Ld. CIT(A) has, in deleting the addition made by the AO in the year under consideration, has ignored the fact that the property was purchased by the assessee for a consideration of Rs.18,30,16,530/- and the cost of acquisition of the asset already stood reduced to Rs. 30,16,530/- only in terms of section 51 of the Act on account of deduction of an amount of Rs. 18,00,00,000/- (being the amount of advance forfeited in A Y 2007-08 in respect of the same property) from the said original cost, and, therefore, the aforesaid further forfeiture of*

*Rs.12,50,00,000/- had resulted in the assessee having received a benefit of Rs. 12,19,83,470/- (i.e. Rs.12,50,00,000/- minus Rs.30,16,530/-) without consideration which was liable to be treated as income of the assessee during the year under assessment."*

4. The relevant facts examined for the adjudication are that, the assessee entered into an agreement to sell the property no. 37, Friends Colony, New Delhi on 24.12.2011 with Ms. Priti Saraf for a consideration of Rs.63.28 crores. The buyer namely Ms. Priti Saraf has paid an amount of Rs.12.50 crores to the assessee as advance. Since, the remaining payments could not be completed on the part of the buyer, the agreement has been terminated and an amount of Rs.12.50 crores has been forfeited. The AO held that the assessee has forfeited an amount of Rs.12.50 cr., but has not paid any tax on the forfeited amount and brought the amount of Rs.12.50 crores to tax under the head "income from other sources". The AO has also observed that the assessee has received an amount of Rs.18 crores during the Financial Year 2006-07 for the same property and has not paid any amount towards the tax for the forfeiture.

5. The Id. CIT (A) initially deleted the addition on the grounds that there is no provision to tax the amount forfeited in the Income Tax Act. The Id. CIT(A) held that the provisions of Section 51 and the provisions of Section 56(2)(ix) are not applicable to the facts of the assessee in the current year. The relevant portion of the Id. CIT(A) is as under:

*"6.7 Even though there may be merit in the observation of the AO that in respect of the very same property, earlier also there was a claim of*

*forfeiture and as such the claim of forfeiture in respect of the very same property in the year under consideration is a willful attempt to avoid payment of tax on forfeited amount. However, in the absence of any adverse observation regarding genuineness of agreement to sale, the matter is required to be considered on legal principles.*

*6.8 The AO has not disputed the source and genuineness of receipt of earnest money as same was on the basis of execution of agreement to sell and once there is a legal transaction between the parties, there cannot be any ground or basis to presume that receipt of Rs. 12,50,00,000/- as in the nature of income from other sources. There is thus no primary basis for holding the receipt of Rs. 12,50,00,000/- as income from other sources.*

*6.9 However, regarding the fact, whether receipt of amount Rs. 12,50,00,000/- forfeited by the appellant could be considered as income and chargeable to tax in terms of provisions of sec. 51 of I.T. Act, 1961 which deal with the issue of receipt of any advance in respect of any capital asset. The scope of sec. 51 has been dealt with in appellant's own case for A.Y. 2007-08 by ITAT & Delhi High Court and as the very same provisions are relevant in the year under reference also, the legal principles stand well settled. However, the AO has made an attempt to go into intention of legislature by making reference to newly inserted proviso to section 51 applicable w.e.f. 01.04.2015 as per which such forfeited advance is to be treated as income in terms of provisions of sec. 56(2)(ix).*

*6.10 It is further noticed that there is a dispute between buyers (appellant) and seller and matter is pending before judicial authorities as per sequence of events submitted in the written submission of the appellant. As per the relevant details, matter is still pending for final settlement. The Hon'ble Delhi High Court appointed sole arbitrator to adjudicate the disputes between the parties. Thus there is no material to hold that impugned transactions is non*

*genuine and merely an attempt to avoid payment of tax. However, considering the various judicial orders passed in the appellant's own case by CIT(A), ITAT and Hon'ble Delhi High Court, there is no case for invoking amended provisions in the year under reference.*

*6.11 Taking into consideration all the factual and legal position and respectfully following the decision of Hon'ble Delhi High Court and ITAT in appellant's own case, I am of the view that addition made by the AO of forfeiture of advance as income from other sources, is not sustainable. The addition made by the AO is deleted, as a result these grounds of appeal is allowed."*

6. Later, the Id. CIT(A) passed an order u/s 154 modified the order on the grounds that the assessee has furnished incomplete facts and the order passed u/s 154, the Id. CIT(A) held that the forfeiture of advance of Rs.18 crores received during the assessment year 2007-08 is more than the cost of acquisition and hence the amount received by the assessee during the year of Rs.12.50 crores is treated as received without consideration. The Id. CIT(A) held that since the amount has been received without consideration, the entire receipt minus the cost of acquisition is taxable.

7. Before us during the arguments, the Id. AR argued that the order u/s 154 is beyond the provisions and scope of Income Tax Act and the merits of the issue. The Id. AR argued that the provisions of Section 51 and provisions of Section 56(2)(ix) are not applicable for the assessed for the instant year.

8. The Id. DR on the other hand, argued that the assessee has been habitually receiving money and forfeiting it. He argued that on the earlier occasion, the assessee received Rs.18 crores

and subsequent he received Rs.12.50 crores against the property of value of Rs.30.16 lacs. Hence, the amount has been rightly held to be taxable by the Id. CIT(A).

9. Heard the arguments of both the parties and perused the material available on record.

10. We have gone through the provisions of the Act. The provisions of Section 51 are as under:

***"51. Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition:***

*[Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.]"*

11. Further, we have gone through the provisions of section 56 of the Act. The provisions of Section 56(2)(ix) are as under:

"56(2) .....

*[(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—*

*(a) such sum is forfeited; and*

*(b) the negotiations do not result in transfer of such capital asset;]”*

12. We find that both the provision to section 51 has been inserted by the Finance (No.2) Act 204 with effect from 1.4.2015 and so as the provisions of clause (ix) of sub-section (2) of section 56. However, the Assessing Officer chose to apply the provisions inserted from 01.04.2015 to the assessment year 2013-14 which cannot be held to be legally valid. The pre-amended provisions applicable to the case of the assessee for the instant assessment year directs as to how the advance or other money received is to be treated. As per the provisions in existence, any money or other money received in connection with negotiations of any capital asset and retained by the assessed shall be deducted from the cost for which the asset was acquired in computing the cost of acquisitions while determining the capital gains.

13. Thus, going through the provisions of Sections amended and pre-amended, we find that till the assessment year 2015-16, the amount of forfeiture is not liable to be taxed but will go only in reducing the value of the asset while computing the taxability of the assessee under the head “capital gains”. There is no taxability of the forfeited amount in the current year. The revenue may monitor or keep track of determination of capital gains as and when the asset is finally sold.

14. Not to leave the issue raised by the revenue of receipt of advance money from M/s Shine Star Built Co. Pvt. Ltd. of Rs.18 crores during the assessment year 2007-08, we find that the Hon’ble High Court vide order dated 17.01.2013 deleted the addition made by the AO on similar grounds and held that the amount received should be treated in accordance with Section

51 of the Income Tax Act, thus, resting the arguments of the revenue.

**ITA No. 8239/Del/2019 (Assessee's Appeal)**

15. Since, the matter has been adjudicated on merits of the issue in the appeal of the revenue, the appeal of the assessee against the order of the Id. CIT (A) passed u/s 154 becomes infructuous and hence dismissed.

16. In the result, the appeal of the revenue is dismissed and that of assessee is dismissed.

Order Pronounced in the Open Court on 14/12/2020.

Sd/-

**(Kuldip Singh)**  
**Judicial Member**

**Dated: 14/12/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**