

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

Before Sh. Saktijit Dey, Judicial Member

Sh. Pradip Kumar Kedia, Accountant Member

ITA No. 3098/Del/2017 : Asstt. Year : 2007-08

ITA No. 3099/Del/2017 : Asstt. Year : 2011-12

ITA No. 3100/Del/2017 : Asstt. Year : 2012-13

ITA No. 3101/Del/2017 : Asstt. Year : 2013-14

Sh. Surender Yadav, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Circle-4, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAHPY7699A		

ITA No. 3050/Del/2017 : Asstt. Year : 2011-12

ITA No. 3052/Del/2017 : Asstt. Year : 2013-14

DCIT, Circle-4(1), Gurgaon	Vs	Sh. Surender Yadav, Yadav Niwas, Opp. S.P. Office, Alwar Road, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAHPY7699A		

ITA No. 3089/Del/2017 : Asstt. Year : 2007-08

ITA No. 3090/Del/2017 : Asstt. Year : 2011-12

ITA No. 3091/Del/2017 : Asstt. Year : 2012-13

ITA No. 3092/Del/2017 : Asstt. Year : 2013-14

Late Sh. Phool Singh Through L/H Smt. Roshni Devi C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Circle-3, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AVLPD7108G		

ITA No. 3053/Del/2017 : Asstt. Year : 2011-12
ITA No. 3054/Del/2017 : Asstt. Year : 2012-13
ITA No. 3055/Del/2017 : Asstt. Year : 2013-14

DCIT, Circle-3, Gurgaon	Vs	Late Sh. Phool Singh Through L/H Smt. Roshni Devi Yadav Niwas, Opp. S.P. Office, Alwar Road, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AVLPD7108G		

ITA No. 3093/Del/2017 : Asstt. Year : 2007-08

Sh. Dharampal Singh, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Circle-1, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AIBPS1978A		

ITA No. 3094/Del/2017 : Asstt. Year : 2007-08
ITA No. 3095/Del/2017 : Asstt. Year : 2011-12
ITA No. 3096/Del/2017 : Asstt. Year : 2012-13
ITA No. 3097/Del/2017 : Asstt. Year : 2013-14

Sh. Dharampal Singh (HUF), C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Circle-3, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AABHD5474J		

ITA No. 3056/Del/2017 : Asstt. Year : 2011-12
ITA No. 3057/Del/2017 : Asstt. Year : 2012-13
ITA No. 3058/Del/2017 : Asstt. Year : 2013-14

DCIT, Circle-3, Gurgaon	Vs	Sh. Dharampal Singh (HUF) Through Karta Sh. Dharampal Singh Yadav Niwas, Opp. S.P. Officer, Alwar Road, Gurgaon, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. AABHD5474J		

ITA No. 3102/Del/2017 : Asstt. Year : 2007-08
ITA No. 3103/Del/2017 : Asstt. Year : 2011-12
ITA No. 3104/Del/2017 : Asstt. Year : 2012-13
ITA No. 3105/Del/2017 : Asstt. Year : 2013-14

Sh. Virender Singh, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Circle-4, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AIFPS0761B		

ITA No. 3047/Del/2017 : Asstt. Year : 2011-12
ITA No. 3049/Del/2017 : Asstt. Year : 2013-14

DCIT, Circle-4(1), Gurgaon	Vs	Sh. Virender Singh, Yadav Niwas, Opp. S.P. Officer, Alwar Road, Gurgaon, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. AIFPS0761B		

**Assessee by : Sh. Rakesh Gupta, Adv.,
Sh. Somil Aggarwal, Adv. &
Sh. Deepesh Garg, Adv.**
**Revenue by : Sh. M. Baranwal, CIT DR &
Sh. B. K. Singh, Sr. DR**

Date of Hearing: 27.12.2022	Date of Pronouncement: 20.01.2023
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ORDER

Per Bench:

These are bunch of 27 appeals relating to 5 different assesses. These appeals have been filed both by the assessee and the revenue and arise out of a common order dated 03.03.2017 of Id. CIT(A)-I, Gurgaon and pertain to A.Y. 2007-08, A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14. Since, the appeals have, more or less, common grounds and issues are overlapping, they have been clubbed together and

disposed off in a consolidated order, for the sake of convenience.

2. Briefly the facts are, four of the appellants are resident individuals, whereas, one is a Hindu Undivided Family (HUF). The assesses are family members and closely related to each other. On 23.11.2012, a search and seizure operation under section 132 of the Income Tax Act, 1961 was conducted in case of M/s CHD Developers Pvt. Ltd. In the course of search & seizure operation some incriminating materials including a collaboration agreement dated 13.02.2010 was seized. Based on such information/material found during search and seizure operation, a survey action under section 133A of the Act was conducted in the office premises of M/s Roots Developers Pvt. Ltd., a company carrying on real estate projects. In course of survey operation, another collaboration agreement dated 17.07.2006 was found. On perusal of the said collaboration agreement, it was found that the present appellants were owners of land measuring 16.46 acres at Village-Fazilpur, Jhasra, Sector-70A, Gurgaon.

3. Through the aforesaid collaboration agreement, the appellants with M/s Roots Developers Pvt. Ltd. intended to develop a group residential housing project and applied for necessary permission from competent authorities. The Directorate of Town Planning, Haryana by order dated 24.12.2007 granted license to the appellants for development of the project. Subsequently, M/s CHD Developers Pvt. Ltd. got the plot of land from appellants and sold their allotted unit on behalf of them. The amount collected on sale of land was paid to the appellants through M/s Roots Developers Pvt. Ltd. From

the perusal, the seized/impounded documents and the other materials on record, the Assessing Officer found that though substantial amounts were received by the assesseees on sale of land, however, in the Income Tax Returns filed for different Assessment Years, the concerned assesseees have not offered the income. Accordingly, the Assessing Officer reopened the assessments under section 147 of the Act in all cases. From the collaboration agreement entered by the appellants and M/s Roots Developers Pvt. Ltd. with M/s CHD Developers Pvt. Ltd., it was found that M/s CHD Developer Pvt. Ltd. agreed to pay sum of Rs.25 crores to M/s Roots Developer Pvt. Ltd. as non-refundable and non-adjustable deposit. Additionally, M/s CHD Developer Pvt. Ltd. agreed that share of the appellants and M/s Roots Developer Pvt. Ltd. would be 34.5% of the saleable area. Thus, in terms of the collaboration agreement reached with M/s CHD Developer Pvt. Ltd., the appellants had received amounts towards their share in the saleable area which were not offered to tax. In course of reassessment proceedings, he called upon the appellants to explain the reason for not offering the amount received from M/s CHD Developer Pvt. Ltd. as income. Though the appellants objected to the proposed action of the Assessing Officer. However, the Assessing Officer remained unconvinced. Ultimately, he proceeded to complete the assessment in case of the present appellants as well as M/s Roots Developers Pvt. Ltd. in different Assessment Years by making additions as under:

Name	AY 2007-08	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14
Dharampal (HUF)	R.IACCEPTED		B.I=21,59,72,826 C.G=5,04,85,812	B.I=7,89,86,037	B.I=16,74,56,952
Surander Yadav	R.IACCEPTED		B.I=2,87,18,749 C.G=94,91,400	B.I=1,41,46,022	B.I=3,12,40,420
Smt. Roshni Devi W.o Lt. Sh/ Phool Singh Yadav	R.IACCEPTED		B.I=25,90,06,971 C.G=6,94,68,611	B.I=10,87,06,354	B.I=23,04,66,490
Virender Singh	R.IACCEPTED		B.I=2,62,18,749 C.G=94,91,400	B.I=1,30,84,570 C.G=94,850	B.I=3,12,40,420
M/s Roots Developers P Ltd		B.I= 13,00,00,000	B.I=12,00,00,000		
Dharampal singh yadav	R.IACCEPTED				

4. Against the Assessment Order so passed, the present appellants and M/s Roots Developer Pvt. Ltd. filed appeals before the First Appellate Authority.

5. While deciding the appeals, in so far as the present appellants are concerned, Id. Commissioner (Appeals) directed the Assessing Officer to assess the entire income in Assessment Year 2010-11. Whereas, in case of M/s Roots Developer Pvt. Ltd., he directed the Assessing Officer to make the additions in assessment years 2010-11, 2011-12, 2013-14, 2014-15, 2015-16 and 2016-17. The additions to be made in respect of the present appellants and M/s Roots Developer Pvt. Ltd. as tabulated by learned Commissioner (Appeals) in his order are as under:

Name	AY 2007-08	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
Dharampal (HUF)	No addition	27,21,71,812 C.G	No addition	No addition	No addition			
Surander Yadav	No addition	5,11,53,900 C.G	No addition	No addition	No addition			
Smt. Roshni Devi W.o Lt. Sh/ Phool Singh Yadav	No addition	37,44,79,611 C.G	No addition	No addition	No addition			
Virender Singh	No addition	5,11,53,900 C.G	No addition	No addition	No addition			
M/s Roots Developers P Ltd	-	12,00,00,000 B.I	13,00,00,000 B.I		2,55,73,814 B.I	8,37,00,000 B.I	3,96,00,000 B.I	1,00,00,000 B.I
Dharampal	No addition	NA	NA	NA	NA			

6. Thus, in sum and substance, in so far as the present appellants are concerned, learned Commissioner (Appeals) directed the Assessing Officer to make the entire additions in Assessment year 2010-11, whereas, in case of M/s Roots Developer Pvt. Ltd., the additions were to be made in six different Assessment Years.

7. While giving effect to the aforesaid directions of learned Commissioner (Appeals), the Assessing Officer passed assessment orders in respect of the present appellants by making additions in Assessment Year 2010-11. The appellants contested the addition made by the Assessing Officer by filing appeals before learned Commissioner (Appeals).

8. During the pendency of appeals before the First Appellate Authority, the appellants filed declarations under the Direct Tax Vivad-se-Viswas Scheme 2020 for settling the dispute. After acceptance of declarations filed under Vivad-se-Viswas Scheme and payment of requisite tax computed, the dispute was settled with issuance of Form 5 by the competent authority.

9. Keeping in view the aforesaid factual backdrop, we proceed to decide the present appeals.

10. We have heard Sh. Rakesh Gupta, learned Counsel appearing for the assessee and Sh. M. Baranwal, learned CIT DR. Learned Counsel appearing for the assessee submitted that the dispute between assessee and the revenue having been settled under the Vivad-se-Viswas Scheme, the present appeals

filed both by the assessee and the revenue have become academic, hence have to be dismissed.

11. The learned CIT DR though agreed with the submissions of the assessee that in so far as the present appellants are concerned, the dispute has been settled under Vivad-se-Viswas Scheme, however, he expressed his apprehension that unless the appeals are decided on merits it may have some impact on the appeals of M/s Roots Developer Pvt. Ltd.

12. We have considered rival submissions and perused material on record. As discussed earlier, while completing assessment in respect of present appellants as well as M/s Roots Developer Pvt. Ltd., the Assessing Officer had made the additions on account of amount received towards share in sale of land in different Assessment Years. However, while deciding the appeals filed by the present appellants as well as M/s Roots Developer Pvt. Ltd., learned Commissioner (Appeals) directed the Assessing Officer to consolidate all the additions made in respect of the present appellants in different Assessment Years and make the additions in Assessment Year 2010-11. It is a fact on record that while implementing the aforesaid directions of learned First Appellate Authority, the Assessing Officer has passed fresh Assessment Orders in respect of the present appellants by making substantive additions, which were made in different Assessment years, in a single Assessment Year i.e. Assessment Year 2010-11. Against the Assessment Orders so passed, the appellants went in appeal before learned Commissioner (Appeals). During the pendency of the appeals before learned First Appellate Authority, the

appellants have filed declarations under Vivad-se-Viswas Scheme and paid the requisite tax demand computed by the competent authority. On payment of tax demands, the competent authority has accepted the declarations filed by the appellants and issued Form 5 in favour of the appellants. This is evident from the copies of Form 3 and Form 5 filed before us. In fact, learned Departmental Representative has accepted the aforesaid factual position.

13. Thus, as on date, the dispute between the appellants and the revenue in the matter of taxability of amount received from M/s CHD Developer Pvt. Ltd. on sale of land stands settled under Vivad-se-Viswas Scheme. Nothing further remains to be decided in the present appeals. It is also necessary to observe, the dispute between the department and M/s Roots Developer Pvt. Ltd. still subsists as it has not been settled under the Vivad-se-Viswas Scheme. The decision taken in the present appeals will have no impact on the pending appeals of M/s Roots Developer Pvt. Ltd. which have to be decided on their own merits. Therefore, the apprehension of learned Departmental Representative, in our view, is unfounded. Thus, considering the fact that the dispute between the present appellants and the department qua the issue of taxability of amount received on sale of land has been settled under the Vivad-se-Viswas Scheme, in our view, the present appeals filed both by the assessee and the revenue are of mere academic importance, hence infructuous. Therefore, we dismiss all these appeals.

14. Before parting, we must observe, the appeal in ITA No. 3093/Del/2017 filed in case of Dharampal Singh, individual has also become infructuous, as, while completing the assessment,

the Assessing Officer has accepted the returned income and no addition was made.

15. In the result, all the appeals are dismissed.

Order Pronounced in the Open Court on 20/01/2023.

Sd/-

(Pradip Kumar Kedia)
Accountant Member

Dated: 20/01/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Saktijit Dey)
Judicial Member

ASSISTANT REGISTRAR