

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.7884/Del/2019
निर्धारणवर्ष/Assessment Year:2010-11

Vidhyawati Khanna Trust, S-101, Pachshila Park, New Delhi.	बनाम Vs.	ACIT Circle 29(1) New Delhi.
PAN No. AAATV9898B		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri L.K. Paonam, Adv. & Mr. Jitender Kumar, AR
राजस्वकीओरसे /Revenue by	Shri Kanv Bali, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	17.03.2023
उद्घोषणाकीतारीख/Pronouncement on	25.04.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-33, New Delhi dated 31.07.2019 for the AY 2010-11. The assessee has raised the following grounds in its appeal: -

- 1.(A) *That the Ld.CIT(A) has erred in law and on facts in upholding the reopening of the assessment without appreciating that there was no escapement of income warranting issuance of notice under section 148 of the I.T. Act.*

- (B) *That on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in sustaining the order passed by the AO under section 147/143 of the I.T. Act without appreciating that when the reason recorded had ceased to survive, there was no jurisdiction with the AO to proceed further to pass the impugned order.*
 - (C) *That on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in sustaining the order passed by the AO under section 147/143 of the I.T. Act without appreciating that validity of reassessment order has to be tested only by reference to recorded reasons and where the basis of the reassessment order was different from the reason recorded, reassessment order is invalid and unsustainable.*
 - (D) *That the Ld.CIT(A) has failed to adjudicate the grounds as urged in grounds B and C above.*
- 2.(A) *That the Ld.CIT(A) has failed to appreciate that mode of assessment provided under sections 161 and 166 of the I.T. Act is alternative to each other and in the case of specific trust, income of the trust can be taxed either in the hands of trustees (representative assessee) or the beneficiaries. Thus, conclusion of the Ld.CIT(A) holding the assessment of income of the trust in the hands of beneficiaries under section 166 as invalid, is erroneous and liable to be quashed being contrary to the provisions of law.*
- (B) *That on the facts and circumstances of the case, the Ld.CIT(A) has failed to appreciate that the Revenue having exercised option to tax the income of the trust in the hands of the beneficiaries, it was not open to the AO to tax the same income again in the hands of the trust represented by the trustees as it would be against the principle to charge all income only once. Action of the authorities below to tax the income again in the hands of the trust is contrary to various judicial precedents and circular of CBDT.*
 - (C) *That on the facts and circumstances of the case, the Ld.CIT(A) has failed to appreciate that it is only the beneficiaries who are the real and actual co-owners of the properties of the trust and where the share of each beneficiary in the property income is definite and*

ascertainable, share of each of such co-owner computed in accordance with sections 22 to 25 of the I.T. Act is to be included in his total income in terms of section 26 of the IT Act. The approach of the Ld.CIT(A) holding otherwise on the basis of lease deed executed between the trust and the tenants is misconceived, perverse, unsustainable and liable to be quashed.

- (D) *That on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that taxes paid by the beneficiaries are less than the tax chargeable in the case of the trust and such a finding is against the provisions of section 161(1) of the IT Act which mandate that the trustees cannot be assessed on the aggregate income of the trust as a single unit and the AO should make as many assessments in the name of the trustees as there are beneficiaries and levy the tax appropriate to such income at the rate of tax applicable to the income of each beneficiary. Thus, the premise on which conclusion of income have escaped on account of non declaration of income in the hands of trust was drawn by the first appellate authority, is wholly erroneous, unsustainable and the impugned order is liable to be quashed.*
3. *That the appellant craves leave to add, alter, modify or delete any ground of appeal at the time of hearing of the appeal and grounds of appeal are without prejudice to each other.”*

2. Briefly stated the facts are that the assessee is a private specific trust and is in possession of the house property at 70-Janpath, New Delhi which was settled by Late Shri Gyan Chand Khanna vide registered trust deed dated 11.04.1949 for the benefits of his family members and the income was derived by the trust by letting out of the said property. For the AY 2010-11 the year under consideration notice u/s 148 of the Act was issued to the assessee trust as income escaped assessment for the AY 2010-11. Copy of reasons were provided to the assessee stating that assessee has not filed return of income for the AY 2010-11 and the

assessee has received rental income of Rs.69,36,480/-, wherein TDS was also deducted u/s 194I during the FY 2009-10 and, therefore, the Assessing Officer has reasoned to believe that the assessee has not disclosed fully and truly material facts necessary for assessment and there has been escapement of income to the tune of Rs.48,55,536/-. In response to notice u/s 148 of the Act, the assessee filed return of income on 25.04.2017 showing nil income. In the course of reassessment proceedings the assessee submitted before the Assessing Officer that assessee trust is a specific trust, the income generated from the property held by the trust was passed on to the beneficiaries of the trust and all the beneficiaries have filed return of income for the AY 2010-11 declaring rental income from the property held by the trust in their individual hands as beneficiaries as per the trust deed. The assessee also furnished copies of Income tax returns on all the beneficiaries of the trust for the assessment year under consideration. However, the Assessing Officer brought to tax the gross rental income of Rs.87,68,124/- in the hands of the assessee trust observing that the trust is liable to get its income taxed in its own hands for the AY 2010-11 rather than through beneficiaries or trustees.

3. On appeal by the assessee the Ld.CIT(Appeals) sustained the action of the Assessing Officer in bringing to tax the rental income in the hands of the assessee trust observing that the beneficiaries are the individual enjoying the benefit of basic exemption and slab rates and, therefore, it

cannot be stated that taxes paid by them are equal to taxes to be paid by the assessee trust and *prima facie* the taxes chargeable in the case of trust could be more than the taxes paid by the individual beneficiaries.

4. The Ld. Counsel for the assessee submits that the reasons for reopening of the assessment in the case of the assessee trust was that there is an escapement of income because of no live link between the rental income of the assessee and rental income declared by the beneficiaries. The Ld. Counsel submits that assessee is a private trust beneficiaries are specified in the trust deed and the rental income received by the trust has been passed on to the beneficiaries and the beneficiaries filed their returns of income for the AY 2010-11 declaring the share of rental income received from the trust and, therefore, there is no escapement of income as alleged by the Assessing Officer. The Ld. Counsel submits that when once the income is shown in the hands of the beneficiaries the very same income cannot be assessed in the hands of the trust. The Ld. Counsel referring to page 33 and 34 of the Paper Book which is the circular of the CBDT submits that it has been clarified by the Board once choice is exercised to tax the beneficiaries the trust cannot be taxed on the very same income. Therefore, the Ld. Counsel submits that the reasons for reopening seized to exist as the beneficiaries have already filed their Income tax returns for the AY 2010-11 which are placed at pages 11 to 32 as there is no escapement of income.

5. Ld. DR strongly placed reliance on the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below and the materials placed before us. In this case, assessment was reopened for the reason that assessee trust has not filed return of income for the AY 2010-11 and, therefore, there is escapement of income in respect of rental income received by the assessee trust from the property at 70-Janpath, New Delhi. We observe that even before recording of the reasons a letter dated 20/02/2017 was issued to the assessee requiring the assessee to file copy of return for the AY 2010-11 along with the reply to the query raised in the said letter on the transactions. In response the assessee filed several replies contending that the property for which rental income was received owned by the trust but the income was passed on to the beneficiaries of the trust as per the trust deed their beneficiaries have shown their respective share of rental income from the said property in the returns and also claimed TDS credits. However, the Assessing Officer records reasons for reopening stating that the assessee could not provide live link between rental income either earned by the trust and the rental income shown by the beneficiary. Therefore, the Assessing Officer was of the view that since there is no live link between the material available on record and the escaped income and accordingly the assessment of the assessee trust was reopened stating that income to the tune of Rs.48,55,536/- or more

chargeable to tax for the AY 2010-11 escaped assessment. We observe from the reasons that the Assessing Officer noted that the assessee trust has received rental income of Rs.69,36,480/- and while completing the reassessment considers the rental income of Rs.87,68,124/- as income escaped assessment.

7. On perusal of the Income tax returns of the beneficiaries which were also available with the Assessing Officer at the time of reassessment proceedings as has been recorded a finding in the reassessment order that the assessee has produced the Income tax returns of the beneficiaries. We noticed that the beneficiaries have shown their share of rental income of the property held under the trust and in such case there is no escapement of income by the assessee trust as the trust was formed as a specific trust for the benefit of the beneficiaries of the family of Late Shri Gyan Chand Khanna. Therefore, we observe that there is a direct live link between the rental income received by the trust and the income shown by the beneficiaries in the respective returns as per their respective share of rental income as specified in the trust deed and, therefore, there is no escapement of income at all. In the circumstances, we hold that the reopening of the assessment is bad in law. Hence, we set aside the order of the Ld.CIT(Appeals) and quash the reassessment made by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act for the AY 2010-11.

8. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 25/04/2023

**Sd/-
(G.S. PANNU)
PRESIDENT**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 25/04/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi