

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.7486/Del/2019
निर्धारणवर्ष/Assessment Year:2011-12

Sankoch Kumar Village-Atoota, Hapur, C/o R K Garg, T-314, Ganga Plaza, Begum Bridge Road, Meerut, Uttar Pradesh	बनाम Vs.	ITO Ward 3(5) Hapur.
PAN No. DCYPK0324J		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	An application
Revenue by	Shri Kumar Parnav, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	16.03.2023
उद्घोषणाकीतारीख/Pronouncement on	23.05.2023

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), Ghaziabad dated 31.07.2019 for the AY 2011-12 in sustaining the action of the AO in holding that the land sold by the assessee is not agricultural land and is a capital asset under the provisions of Section 2(14)(iii).

2. At the time of hearing, Ld. Counsel for the assessee Shri R.K. Garg through letter dated 10.03.2023 requested for some time as he was

suffering from viral infection and advised bed rest or the appeal be decided in the lines of the decision of the Tribunal in the case of assessee's brother and was also a co-owner of the land sold in question in ITA No. 7620/Del/2019 dated 16.01.2023, wherein the Tribunal restored the matter back to the file of the Ld.CIT(A) to consider the additional evidences furnished in the course of hearing and decide the appeal on merits. Copy of the order of the Tribunal was placed on record. We are perused the order of the Tribunal and find that the assessee in appeal before us i.e. Shri Sankoch Kumar and Shri Vipin Kumar in whose case the Tribunal restored the matter back to the file of the Ld.CIT(A) are both brothers and co-owners of the property which was sold and subject matter of dispute in these appeals. We observe that the Tribunal restored the appeal of the assessee in the case of Shri Vipin Kumar to the file of the Ld.CIT(Appeals) and to let the assessee file additional evidences and established that the land falling in the share of the assessee which was sold by the impugned sale deed was not converted to non-agricultural purposes by any order of Revenue authorities. The Tribunal restored the appeal to the Ld.CIT(A) to pass the afresh order in terms of its observations made therein. The assessee in appeal before us being the co-owner of the property in dispute this appeal of the assessee also should go back to the Ld.CIT(Appeals) for fresh adjudication in the light of the observations made by the Tribunal in the case of Shri Vipin Kumar who is the brother of the assessee Shri Sankoch Kumar. Thus,

following the order of the Tribunal in the case of Shri Vipin Kumar in ITA No. 7620/Del/2019 dated 16.01.2023, we restored the appeal of the assessee to the file of the Ld.CIT(A) for passing afresh order in terms of the observations made by the Tribunal in the case of Shri Vipin Kumar.

3. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.05.2023

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

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

Dated: 23.05.2023

**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