

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. M. BALAGANESH , ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 581/Del/2020, A.Y. 2008-09

DCIT, Central Circle-26, New Delhi PAN : AAEP0681R	Vs.	Smt. Aruna Chaudhary 39, Gadaipur, Mahrauli, New Delhi
Appellant		Respondent

Appellant by	Sh.C S Anand, Adv.
Respondent by	Sh. Dayainder Singh Sidhu, CIT DR
Date of hearing:	26.07.2023
Date of Pronouncement:	31.07.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Revenue against the order dated 05.11.2019 of CIT(A)-31, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 294/19-20/356/18-19 arising out of an appeal before it against the order dated 30.03.2016 passed u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-26, New Delhi (hereinafter referred as the Ld. AO).

2. The revenue is in appeal raising following ground ;

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 75, 24,990/- made by the Assessing officer on account of Capital Gain on sale of Singapore Property the year under consideration.

2. *That the grounds of appeal are with prejudice to each other.*

3. *That the appellant crave to leave, to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

3. Heard and perused the record.

4. During the course of hearing it comes up that earlier in appeal no. 150/2017-18/CIT(A)-29 order dated 09.03.2018 for A.Y. 2007-08 addition made in assessment order u/s 147/143(3) of the Act dated 30.11.2017 was deleted by Ld. CIT(A). The issue determined in favour of the assessee in that appeal was that the disputed property was found to be owned by Ms. Bhati Naintara and assessee was merely a trustee of the property holding it on account of Ms. Bhati Naintara who was having matrimonial dispute. In that appeal, Ld. CIT(A) has thrashed all the material evidences to conclude that assessee had never paid or received any consideration. Ld. CIT(A) had also examined the fact that Ms. Bhati Naintara had sold the property on 26.12.2017 to a third party, through assessee who was a trustee, and that the consideration of SGD 7,80,000/-, was received by Ms. Bhati Naintara and the assessee was discharged from all the responsibilities by letter dated 03.01.2008.

5. The Revenue had preferred a appeal against that order dated 09.03.2018 and that appeal ITA No. 4247/Del/2018 was dismissed by the Co-ordinate Bench for having low tax effect vide order dated 21.02.2023 and further by order dated 25.04.2023 it was also made clear by way of corrigendum that the CBDT Circular no. 23 dated 06.09.2019 and subsequent Office Memorandum dated 16.09.2019 which came into effect from 16.09.2019 having the prospective effect will not be applicable in the case of assessee and the exceptions mentioned thereon will also not come in the way upon dismissal of the appeal for having low tax effect.

6. In the case in hand primarily the issue of capital gain in hands of assessee has been considered by the Ld. CIT(A) in favour of the assessee on the basis of the earlier order dated 09.03.2018 of Ld. CIT(A)-29 (supra) where addition on account of unexplained investment in the purchase of said property was deleted.

7. In the light of aforesaid as finality stands attached to said order dated 09.03.2018, holding that assessee was not the owner of property so no error was committed by Ld. CIT(A) in deleting the present addition of short term capital gain from the said property imputed by Ld. AO upon the assessee. The grounds raised have no substance. **Consequently, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 31st July, 2023.

Sd/-

Sd/-

(M.BALAGANESH)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-31st.07.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI