

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI G.S PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.3052/Del/2019
ITA No. 1753/Del/2020
Assessment Year: 2013-14

M/s. Best Auto Limited, C-5/21, Safdarjung Development Area, New Delhi 110016 C/o L.N. Malik & Co. (CA), Ganga Plaza, 18/13, WEA, Pusa Lane, Karol Bagh, New Delhi 110005 PAN AABCB 9642 F	vs.	The DCIT, Circle-4(2), New Delhi 11002
(Appellant)		(Respondent)

For Assessee :	Shri Satish Khosla, Adv. Shri Manish Malik, Adv.
Revenue For :	Ms. Anubhaa Tah, Sr. DR

Date of Hearing :	05.10.2023
Date of Pronouncement :	05.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

ITA No. 3025/Del/2019 for AY 2013-14

1. This appeal has been filed by the assessee against the order of CIT(A)-2, New Delhi dated 28.02.2019 wherein first appeal of assessee has been dismissed by observing that he computation of long term capital gain cannot be considered as an error rectifiable u/s. 154 of the I.T Act 1961 (for short the 'Act') as there was no mistake is apparent from the record.

2. The assessee has raised following grounds of appeal:-

1. That in the facts and circumstances of the case the Ld. CIT(A) grossly erred in not rectifying the error committed by the A.O. in the calculation of Long Term Capital Gains u/s. 154 of the IT Act 1961.

2. *That in the facts and circumstances of the case the Ld. CIT(A) grossly erred in not accepting the calculation of Long Term Capital Gains worked out by the appellant in the application u/s. 154 of the IT Act, 1961.*

3. The Id. counsel submitted that the assessee before the Assessing Officer submitted copy of return of income along with computation of taxable income for AY 2013-14 and in the computation also claimed indexed cost of acquisition of the property sold by the assessee during FY 2012-13 and hence the Id. CIT(A) was not correct and justified in holding that no evidence has been filed to show that the working of cost and indexation was furnished before the Assessing Officer thus there was error in the computation of long term capital gain. The Id.counsel vehemently pointed out that the authorities below have ignored claim of indexation placed by the assessee in the computation of Income and other relevant documentary evidence on record establishing and clarifying working of cost of indexation. The Id. counsel thus submitted that it was mistake apparent from assessment order which could have been rectified by way of passing rectification order u/s. 154 of the Act but the authorities below have dismissed prayer of assessee ignoring and keeping aside the material already on record and contrary to the mandate of Sec 154 of the Act. Therefore cost of indexation as claimed by the assessee in the computation may kindly be allowed.

4. Replying to the above the Id. Senior DR submitted that the working of cost and indexation of property sold by the assessee requires verification and examination by the Assessing Officer therefore the claim of assessee regarding cost and indexation may kindly be restored to the file of Assessing Officer for verification.

5. On careful consideration of above submissions we are of the view that when the assessee has placed all the details in the computation of income filed along with return of income for AY 2013-14 then the authorities below were not correct in dismissing the application of assessee seeking rectification in the assessment u/s. 154 of the Act. On the other hand, we are in agreement with the contention of Id. Senior DR that the verification and examination of working of cost and indexation placed by the assessee in the computation is required to be done by the Assessing Officer. Therefore the issue

is restored to the file of Assessing Officer for a limited purpose with a direction to allow cost and indexation of property sold after verification and examination of the working placed by the assessee in the computation of income after allowing due opportunity of hearing to the assessee. Accordingly, grounds of assessee are allowed for statistical purposes.

ITA No. 1753/Del/2020

6. This appeal has been filed by the assessee against the order of CIT(A)-2, new Delhi dated 09.09.2020 for AY 2013-14.

Application of assessee filed on 13.07.2023 seeking admission of additional ground under Rule 11 of ITAT Rules 1963

7. The Id. counsel submitted that the Departmental Valuation Officer has prepared report in violation of principles of natural justice without considering the submissions of assessee none of those were controverted or referred by the Departmental Valuation Officer and he prepared a cryptic report by only considering the circle rate and without allowing opportunity of being heard to the assessee. The Id. counsel submitted that therefore, the assessee request to admit additional grounds of appeal which can be adjudicated on the basis of material already available on record. The Id. Senior DR oppose to the admissions of additional ground.

8. At the very outset, we note that the assessee seeks to raise following additional ground of appeal:-

1) That the Id. Commissioner of Income-Tax (Appeals) erred in relying upon the report of the Departmental Valuation Cell, which suffers from the vice of a violation of natural justice.

9. On careful consideration of said application of assessee, we note that the assessee seeks to challenge the acceptability of report of Departmental Valuation Officer (DVO) by contending that all relevant material for adjudication of said grievance of assessee are already on record. Therefore, we deem it just and proper to allow prayer of assessee thus said additional ground is admitted for adjudication by

respectfully following the preposition rendered by Hon'ble Supreme Court in the case of *NTPC vs CIT 229 ITR 383(SC)*. Accordingly, the application of assessee is allowed.

10. The Id. counsel submitted that the Id. CIT(A) has erred in directing the Assessing Officer to make a reference u/s. 50C(2) of the Act in the remand proceedings u/s. 250(4) of the Act to the Departmental Valuation Officer and get the report from the Departmental Valuation Officer. The Id. counsel also submitted that the Id. CIT(A) has also grossly erred on facts and in law in accepting the valuation report obtained by the Assessing Officer during remand proceedings as the Id. First Appellate Authority has failed to appreciate that the report of Departmental Valuation Officer is devoid of merits as the same was based on his estimate of value of property on the circle rate of property and was not based on the factual analyses and evaluation of the property. Therefore the Id. counsel submitted that the report of Departmental Valuation Officer prepared only on the basis of circle rate ignoring the relevant material and facts on record, which was prepared on the back of assessee without allowing opportunity of being of heard and in violation of principles of natural justice may kindly be dismissed.

11. Replying to the above, the Id. Senior DR supported the action of the Assessing Officer as well as Departmental Valuation Officer. However, in all fairness, the Id. Senior DR submitted that the Department has no serious objection if it is found just and proper to restore the matter to the file of Assessing Officer.

12. In view of above submissions of counsel of assessee as well as Senior DR we note that the Departmental Valuation Officer has prepared report in a cryptic manner by only considering the circle rate and keeping aside and ignoring the factual position emerged from the documentary evidence and explanation filed by the assessee without allowing the due opportunity of hearing to the assessee. Therefore the report of DVO is set aside. The matter is restored to the file of Assessing Officer for limited purpose i.e. for readjudication of grievance of assessee regarding invocation of provision of sec 50C of the Act after calling afresh report of Departmental Valuation Officer and allowing due opportunity of hearing to the assessee. Accordingly, additional ground of assessee is

allowed and the matter is restored to the file of Assessing Officer with the directions as noted above.

13. The grievance of assessee raised in main grounds of appeal is also restored to the file of Assessing Officer for afresh adjudication as per directions given hereinabove.

14. In the result, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the open court on 05.10.2023.

Sd/-
(G.S PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 05th October, 2023

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi