

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-E : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.3121/Del/2023
Assessment Year : 2016-17

Deputy Commissioner of
Income Tax,
Central Circle-28,
New Delhi.

(Appellant)

Vs. Shri Nikhil Madan,
(Legal Heir of Late Shri Naveen
Madan),
19/14, East Punjabi Bagh,
New Delhi – 110 026.
PAN : AAWPM1160H.
(Respondent)

Appellant by : Ms. Baljeet Kaur, CIT-DR.
Respondent by : Shri Ashok Khandelwal, CA.

Date of hearing : 13.11.2024
Date of pronouncement : 13.11.2024

ORDER

Per Mahavir Singh, Vice President :

This appeal by the Revenue is arising out of the order of learned Commissioner of Income-tax (Appeals)-27, New Delhi dated 18th August, 2023 for the assessment year 2016-17.

2. The assessment was framed by the DCIT, Central Circle, New Delhi for the relevant assessment year 2016-17 under Section 153C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 21st January, 2022.

3. At the outset, learned CIT-DR pointed out that in the case of the assessee i.e., Late Shri Naveen Madan represented through Legal Heir Shri Nikhil Madan, assessment is framed on protective basis and substantive addition was made in the hands of Shri Naman Madan. She drew our attention to the first ground of appeal, which reads as under :-

- “1. That on the facts and in the circumstances of the case, the Id.CIT(A) has erred in deleting the Rs.2,72,38,000/- made on protective basis in the hands of assessee i.e. Late Sh. Naveen Madan.”
4. She raised the objection that the appeal relating to protective and substantive addition should be heard together. The main substantive appeal is pending with the CIT(A). She also stated that there are three assessees in the case of the assessee where interlinked additions are there i.e., in the case of Smt. Gauri Madan also. Learned CIT-DR pointed out that the assessee’s appeal in this case has already been set aside by the Tribunal to the file of the Assessing Officer. But, she stated that in the case of Shri Naman Madan, where substantive addition is made, is now with the learned CIT(A). Hence, for the purpose of correct decision, the matter should be restored back to the file of the learned CIT(A) and he be directed to decide these two appeals together so that it can be decided whether substantive addition is to be confirmed or protective addition is to be confirmed.
5. When these facts were confronted to the learned counsel for the assessee, he could not controvert the above factual position.
6. We have heard rival contentions on this preliminary issue and gone through the facts and circumstances of the case. We noted the fact that protective addition is made in the hands of Late Shri Naveen Madan represented by Legal Heir Shri Nikhil Madan, whereas substantive addition is actually made in the hands of Shri Naman Madan. Without adverting to any facts on merits and any observation, we restore this issue back to the file of learned CIT(A), who is directed to decide these two appeals together, whether addition is to be confirmed in the case of protective assessee or substantive assessee. In case on merits none of the additions is to be made, then learned CIT(A) will take a call as per law. In terms of the above, this appeal of the Revenue is restored back to the file of the learned CIT(A).

7. In the result, the appeal of the Revenue is allowed for statistical purposes.

Above decision was pronounced in the open Court on 13th November, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

VK.

Copy forwarded to: -

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

Assistant Registrar