IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCHES, NEW DELHI
(CIRCUIT BENCH AT MEERUT)

BEFORE SHRII.C. SUDHIR, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6632/Del./2014
(Asstt. Year:2011-12)

ACIT, Circle-2, Meerut	Vs.	Shanti Devi, C-13, Sports Goods Complex, Delhi Road, Meerut, PAN:ABRPD4384N
(Appellant)		**(Respondent)**

Date of hearing	16/12/2015
Date of pronouncement	15/03/2016

Assessee by: Sh.Sheodan Singh Bhaddoria, Sr. DR
Revenue by: Sh. Rohit Aggarwal, Adv

O R D E R

PER PRASHANT MAHARISHI, A. M.

01. This appeal is preferred by the revenue against the order of the CIT(A), Meerut dated 05.09.2014 for the Assessment Year 2011-12 on the following grounds :

"*1. Whether in the facts and circumstances of the case, the CIT(A) erred in deleting the additionof Rs. 9,91,936/- held to be taxable by the A.O in the hands of the assessee as long termcapital gain ignoring the fact that the assessee owns the assets and the sale consideration wasreceived by the assessee as described in the sale deed.*

2. Whether in the facts and circumstances of the case, the CIT(A) was justified in deleting theaddition of Rs. 1,54,95,000/- made by the A.O on account of difference in the closing balanceas on 31/03/2010 and opening balance as on 01/04/2010 in the capital account of the assesseeas the explanation offered by the assessee regarding the said difference being due to aninadvertent mistake is clearly an afterthought."

02. The first ground of appeal is against deletion of addition of Rs.9,91,936/- as long term capital gain in the hand of the assessee.

03. The brief fact of this ground is that the assessee has sold properties No.A-69 and A-70 for Rs.837,000/- each as proprietress of M/s Indo Rubber & Plastic Works, Meerut on 26.05.2010. On enquiry it was submitted that this amount shall not be chargeable to capital gain because above property was sold by the partnership firm which was converted on 31st August 2009 from property concern of the assessee. In support of this the assessee submitted a partnership deed which was executed on stamp paper on Rs.20/-. The AO held that this is not a valid deed as it is not on prescribed fee. Later on copy of partnership deed was submitted on stamp paper of Rs.700/-. Hence, the AO doubted the genuineness of the partnership deed and computed long-term capital gain of Rs.9,91,936/- in the hands of the assessee.

04. The assessee preferred an appeal before the ld CIT(A), who in turn deleted the addition. The reasons for the deletion was that appellant transferred this capital asset to the partnership firm as her capital contribution applying the provision of section 45(3) of the Act and thereafter in Assessment Year 2011-12 itself this property were sold by the firm and short term capital gain arising thereon was offered by partnership firm in its return of income. Therefore, the ldCIT (A) was of the view that the capital gain arising from transfer of the same property in the hands of the firm and in the hands of the assessee cannot be taxed and therefore same was deleted.

05. The ld DR relied on the order of AO and submitted that the partnership deed is not property executed and hence capital gain is rightly taxed in the hands of the assessee.

06. The LD AR relied upon the orders of LDCIT (A), filed written synopsis, and relied upon written submission filed before the AO on 11.12.2013, 31.01.2014 and on 06.08.2014 before the ld.CIT (A). He further relied on the copies of partnership deed and return filed by the partnership firm for Assessment Year

2011-12. He also referred to the assessment orders passed u/s 143(3) of the act in case of the partnership frim and assessee for various years where capital gain is offered for taxation by assessee and the partnership firm.

07. We have carefully considered the rival contention. Assessee has transferred the above property as her capital contribution to a partnership firm vides partnership deed dated 1st September 2009. At page 49 to 52 of the Paper Book the assessee has offered in Assessment Year 2010-11 the capital gain arising on these properties on transfer to partnership firm u/s 45(3) of the Income tax Act . At Pg. 54 and 55 is the assessment order made in the hands of the assessee for Assessment Year 2010-11, wherein transfer of assets of the above property have already been taxed u/s 45(3). Further, in case of the partnership firm for Assessment Year 2011-12 these properties have been assessed as short-term capital gain on sale of these plots to outsider. In view of the above facts where the AO has accepted the transfer of property u/s 45(3) into the hands of the assessee for Assessment Year 2010-11 and short term capital gain in the hands of the partnership firm in assessment order 2011-12 and assessment have been completed u/s 143(3) of the Act, we are of the view that ldCIT (A) has rightly deleted the addition. Hence, we confirm the order of LDCIT (A) on this count and ground No.1 of the appeal is dismissed.

08. Ground No.2 of the appeal of the revenue is against deletion of addition Rs.1,54,95,000/- made on account of difference in closing balance as on 31.03.2010 and opening balance as on 01.04.2010 in the capital account of the assessee.

09. The brief fact of the issue is that the AO found a difference of Rs.1,54,95,000/- in the closing balance as on 31.03.2010 and opening balance as on 01.04.2010. On enquiry it was submitted that due to mistake loans given to three HUFs amounting to Rs.15495000/- were omitted from the closing balance as on 31.03.2009 and therefore the difference has arisen. However, the AO did not believe the version of the assessee because these items were not reflected in

the balance sheet or capital account of the assessee for Assessment Year 2009-10 as well as for Assessment Year 2010-11, no interest has been received from these HUFs, these HUFs have also not shown loans from the assessee andno confirmation has been filed. The assessee carried the matter before the LDCIT (A) who in turn deleted the addition asloan to these HUFs were given through cheques, which can be identified from the bank statements,and the error has occurred because of mistake.

10. The ld DR relied on the order of the AO. The ld AR submitted copy of the bank statement from where loan has been given to these HUFs and submitted that it is merely an accounting error because of which it has happened. He submitted that the bank account shows that loan is given by the assessee and therefore this accounting error cannot result into the addition.

11. We have considered the rival contention. The ld CIT(A) has decided this issue as per para 5.3 to 5.6 of the order which is as under:-

5.3 I have gone through the rival submissions. During the year under consideration the appellant was deriving income from house property and, interest income. The appellant is an individual who has not derived business income during the year. In this situation there was no obligation on her part to maintain books of accounts. During the course of assessment proceeding she was asked to submit statement of affairs as on 31.03.2010 & 31.03.2011. The AR of the appellant stated in his submission that the statement of affairs were prepared for the first time for submission before the assessing officer. At the time of preparation of such statement of affair loans given to 3 Hindu undivided families during year ending 31.03.2009 were not included in the statement-of affairs on asset side. For this reason the capital balance as on 31.03.2009& 31.03.2010 were declared at a lesser amount by the total of the loans amounting to Rs. 1,54,95,OOO/-. The appellant has also submitted that during the assessment proceeding Corrected statement of affairs were filed after including the loan balances therein. The appellant has also submitted bank statements of the appellant as well as that of the loanees before the assessing officers in support of bank transaction showing the advancement of loan during the financial year 2008-09. The assessing officer however did not consider this detail and considered it as an afterthought. After going through the bank statements of the appellant it is seen that following loans were advanced by the appellant through her bank account in the bank of Baroda:-

1. Deepak Malhotra & Songs HUF
   01-05.2008 Cheque No.368695 Rs.38,30,000/-
   06-06-2008 Cheque No.368699 Rs.15,00,000/-

   Rs. 53,30,000/-
2. Pradeep Kumar Malhotra & Sons HUF
   01-05-2008 Cheque No. 368694 Rs. 38,40,000/-
   06-06-2008 Cheque No. 368698 Rs. 15,00,000/-
   Rs. 53,40,000/
3. Satish Kumar Malholra & Sons HUF
   01-05-2008 Cheque No. 368693 Rs. 33,25,000/-
   06-06-2008 Cheque No. 368697 Rs. 15,00,000/-
   Rs. 48,25,000/-

Total amount - Rs. 1,54,95,000/-

5.4 From the above it is obvious that the loans were totaling up to 1,54,95,000/- i.e the exact amount which is the difference between the closing balance as on 31st March 2010 and the opening balance as on 1st April 2010. In this situation it is difficult to understand as to how could this be an afterthought of the appellant as the above stated loans were advanced much before the proceeding for the assessment of the assessment year 2011-12 had even started. The only conclusion from this discussion seems to be the fact that there was indeed a mistake in preparing the statement of affairs.

5.5 The assessing officer has not mentioned the particular section of income tax act under which this addition was made. Income for being taxable has to be a real income. The assessing officer has nowhere explained as to where this amount is coming from. From the facts of the case it does not appear as if the amount of Rs.1,54,95,000/- has been found credited in the books of account of the appellant so addition under section 68 cannot be made. Similarly no investment, or expenditure could have been made overnight between 31st March 2010 and 1st April 2010.

5.6 The assessing officer has raised five queries in his assessment order while making this addition. The AR of the appellant in his submission dated 25th August 2014 has given point wise reply to the queries raised by the assessing officer which is mentioned above at para 5.2. After considering the of the facts of the case, the assessment order and the submissions made by the AR I have come to a conclusion that a genuine mistake has been committed in preparation of statement of affairs of the appellant. The same was corrected during the course of assessment proceeding itself. The difference in the balance as on 31st March 2010 and 1st April 2010 stands explained once thegiven to the HUFs are considered. In this situation ground of appealnumber four is allowed and addition of Rs.1,54,95,000/- is deleted."

12. The ld DR could not point out any infirmity in the order of the ld CIT(A) and further as the loans are given to those HUFs through cheques, which are uncontroverted, therefore it cannot be said that the assessee has not given a loan to these HUFs. Further non-receipt of interest or non-payment of interest by these HUFs cannot result into addition in the hands of the assessee. Non-showing of loan by these HUFs from assessee also cannot be used against the assessee in view of transactions through cheque; At the most, it can be a question of verification in the hands of these HUFS. In view of this we confirm the finding of ld CIT(A) in deleting all these additions. Hence ground No.2 of the appeal is dismissed.

13. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 15.03.2016.

-Sd/- -Sd/-

(I.C. SUDHIR) **(PRASHANT MAHARISHI)**
Judicial Member Accountant Member

Dated:15.03.2016

*Ajay Kumar Keot

Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT (A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi