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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 18/2024, CM APPL. 49974/2024 & CM APPL. 80548/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC and Mr.
Anant Mann, JSC

versus

LATE SH. DIPANKAR MOHAN GHOSH(THROUGH LEGAL
HEIR MRS.SAGARIKA GHOSH)

.....Respondent

Through: Mr. Sumit Lalchandani, Adv.

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+ W.P.(C) 11971/2023

SAGARIKA GHOSH-LEGAL HEIR OF LATE SH. DIPANKAR
MOHAN GHOSH- THROUGH HER SPA HOLDER UPENDRA
NATH MARWAH

.....Petitioner

Through: Mr. Sumit Lalchandani, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-1-3-1,
INTL. TAXN & ANR.

.....Respondent

Through: Mr. Ruchir Bhatia, SSC and Mr.
Anant Mann, JSC

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+ W.P.(C) 8815/2024

SAGARIKA GHOSH - LEGAL HEIR OF LATE SH. DIPANKAR
MOHAN GHOSH THROUGH HER SPA HOLDER UPENDRA
NATH MARWAH

.....Petitioner

Through: Mr. Sumit Lalchandani, Adv.



versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
1(3)(1), (INTERNATIONAL TAXATION), NEW DELHI & ANR.

.....Respondent

Through: Mr. Ruchir Bhatia, SSC and Mr.
Anant Mann, JSC

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

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18.05.2026

1. This case has a checkered history of twelve years, in which, the petitioner, widow of late Mr. Dipankar Mohan Ghosh-the assessee, despite having taken a number of legal courses, is still at square one. The reason is, the sale of a house property effected by her late husband - Mr. Dipankar Mohan Ghosh.
2. Said transaction rather taxability of the transaction has been a subject matter of multiple rounds of litigations, starting with proceedings before the Authority of Advance Ruling (AAR), then reassessment proceedings under Section 147 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), three rounds of rectification proceedings for refund, two rounds of revisionary proceedings under Section 263 of the Act of 1961, penalty proceedings under Section 271(1)(c) of the Act of 1961, three appeals before Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*) and five writ petitions and one Income Tax Appeal before this Court.
3. By way of the appeal (being ITA No.18/2024), the appellant has challenged the order dated 28.06.2023 passed by the Tribunal, whereby the order of Commissioner of Income Tax, International Taxation-I, Delhi



(hereinafter referred to as 'the Commissioner') under Section 263 of the Act of 1961 was set aside and by way of writ petition she has challenged order of assessment and order of Commissioner of Income Tax (Appeals), Delhi (hereinafter referred to as 'the CIT(A)').

4. Though questions of law have been framed by this Court in the appeal, on 08.01.2024, but the fact situation as it stands today is full of complexity – pursuant to the contentious order of the Commissioner, the Assessing Officer (AO) passed an assessment order dated 28.10.2022, whereafter two-three rounds of rectification proceedings were undertaken. The matter then went before the CIT(A), who however dismissed the appeal vide order dated 08.07.2025 as infructuous, because in the meantime, the Tribunal had set aside the order of the Commissioner passed under Section 263 of the Act of 1961.

5. Resultantly, the assessment order dated 28.10.2022 (subsequently rectified vide order dated 15.03.2024) passed in the petitioner's case wherein the petitioner's income from sale of property has been assessed at Rs.59,05,55,783/- stands alive.

6. The petitioner's grievance against this assessment order encompasses various issues, out of which the basic issue is, that the AO did not give benefit of prepaid taxes (advance tax and TDS) apart from other issues relating to merit of the valuation etc.

7. The reason for which the Assessing Officer did not give credit of prepaid taxes is, that the petitioner-assessee had not filed return of income under Section 139 of the Act of 1961 and the same came to be filed pursuant to a notice issued under Section 148 of the Act of 1961. According to the assessee, the return was not filed as she was awaiting the decision of AAR.



8. The respondents have refused to grant the benefit of prepaid taxes in light of judgment of Hon'ble the Supreme Court rendered in the case of **Commissioner of Income-tax v. Sun Engineering Works (P.) Limited** reported in (1992) 198 ITR 297.

9. According to us, the same is not a correct view, given the present factual situation, as the petitioner had *bona-fidely* filed an application before the Authority for Advance Ruling (AAR) for adjudication of the very question *qua* which the demand later came to be raised.

10. Be that as it may. We are of the firm view that the respondents or the Union of India cannot deny the credit of huge amount of tax deducted at source or prepaid taxes of approximately Rs.16,58,02,551/-.

11. As per the AO, the respondent-assessee is entitled for adjustment of prepaid taxes to the extent of the outstanding demand (Rs.12,15,85,401/-) but the refund of Rs.5,15,63,080/- cannot be granted.

12. The correctness of the tax liability created against the assessee is yet another bone of contention, which is yet to be examined. The petitioner has not been given refund of the balance prepaid taxes (Rs.5,15,63,080/-). The amount of Rs.5,15,63,080/- is lying with the respondents. According to us, if the same is not refunded, it will remain with the Union of India till eternity as it cannot be treated as Tax Revenue.

13. In order to give quietus to a seemingly unending dispute litigation, which is being fought at various fronts, in the peculiar facts of this case, we propose to direct the AO to treat the return filed by the petitioner as a return under Section 139 of the Act of 1961, with a corresponding direction to give benefit of prepaid taxes and pass a fresh assessment order. Whereafter in case any grievance in relation to the additions made or income assessed still



remains, she can be given a liberty to file an appeal before the Appellate Authority against the order so passed.

14. Both the counsel for the parties pray for some time to complete their instructions.

15. List this case on 25.05.2026.

DINESH MEHTA, J

VINOD KUMAR, J

MAY 18, 2026/cd