

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.997/Del/2012
Assessment Year : 2006-07

Dr. Ashok Mohan Dwarkadas, Vs. Income Tax Officer,
Legal Heir of Ward-45(4),
(Late) Dr. Nirmala New Delhi.
Dwarkadas,
B-6/61, Safdarjung Enclave,
New Delhi – 110 029.
PAN : AAAPD0044R.
(Appellant) (Respondent)

Appellant by : Shri R.K. Gupta, CA.
Respondent by : Shri S.K. Jain, Senior DR.

Date of hearing : 05.01.2017
Date of pronouncement : 25.01.2017

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the assessee for the assessment year 2006-07 is directed against the order of learned CIT(A)-XXVIII, New Delhi dated 2nd January, 2012.

2. The assessee has raised the following revised/amended grounds of appeal :-

"1. That under the facts and circumstances, the Id. AO grossly erred in law as well as on merits in calculating short term capital gain on sale of property of 410 sq. yds. In Ghaziabad at Rs.56,39,553/- against correctly at Rs.10,89,553/- by not including the un-paid purchase consideration of Rs.45.50 lacs in cost of acquisition while calculating capital gain.

2. *That under the facts and circumstances, the Id. AO grossly erred in law as well as on merits in calculating the long term capital gain on sale of property of 396 sq. yds. in Ghaziabad at Rs.33,68,063/- against correctly at Rs.12,80,693/- by :-*

a. *Wrongly treating the year of acquisition as 1997 against correctly as 1958, thus, deemed year of acquisition to be taken as 1981-82 (as on 01.04.1981).*

b. *Wrongly applying the indexation factor of acquisition year as 331 which is applicable for A.Y. 1997-98 against correctly applying the indexation factor as 100 applicable for as on 01.04.1981.*

c. *Wrongly taking the cost of acquisition at Rs.15,45,365/- (before indexation) against correctly at Rs.8,86,872/- (before indexation) as per Govt. Approved valuers report for valuation as on 01.04.1981.*

3. *That order of both the lower authorities on the above points is unsustainable in law as well as on merits."*

3. We have heard the arguments of both the sides and perused the material placed before us. The only dispute in this case is with regard to computation of capital gain from sale of a plot of land admeasuring 806 sq.yards for a sum of ₹1,15,78,000/-. Since the plot was acquired in two different pieces, the assessee worked out the capital gain for two pieces of plot separately, one as short term capital gain and another long term capital gain. So far as computation of short term capital gain is concerned, the only dispute is with regard to non-consideration of unpaid purchase consideration of ₹45,50,000/- in the cost of acquisition. Out of 806 sq. yards sold by the assessee, 410 sq. yards were purchased by the assessee from M/s Ragi Realtors on 8th January, 2005 for a sum of ₹48,00,000/-, out of which, the sum of ₹45,50,000/- remained unpaid. The Assessing Officer reduced the same from the cost of acquisition.

4. We have considered the rival submissions and perused the material placed before us. In our opinion, the cost of acquisition of a

capital asset is the cost for which the capital asset is purchased by the assessee as per sale deed. Admittedly, as per sale deed, the capital asset i.e., plot of land of 410 sq.yards was purchased by the assessee for a sum of ₹48,00,000/-. Thus, the cost of acquisition of the said plot is ₹48,00,000/-. Merely because out of the above purchase consideration of ₹48,00,000/- the sum of ₹45,50,000/- is unpaid, would be no ground for reducing the cost of acquisition. The seller of the land has a right to recover the said money from the purchaser of the land i.e., the assessee. Therefore, we direct the Assessing Officer to consider the cost of land at ₹48,00,000/- and work out the capital gain accordingly. Ground No.1 of the assessee's appeal is allowed.

5. So far as ground No.2 is concerned, as per the assessee, the land was purchased in the year 1958 and therefore, the assessee has taken the market value of such land as on 01.04.1981 and accordingly worked out the indexed cost of acquisition at ₹44,07,753/-. The Assessing Officer adopted the cost of land at the rate at which the assessee purchased 400 sq. yards in the year 1997 and accordingly allowed the indexation from 1997 till the date of sale which worked out at ₹23,20,383/-. Learned DR stated that there is no reliable evidence for the estimated market value disclosed by the assessee as on 01.04,1981. While the adjoining plot was purchased by the assessee in the year 1997 and therefore, the market value of that plot as on 1997 is undisputed and is more reliable basis for determining the indexed cost of acquisition. He further stated that if the indexed cost of acquisition worked out by the Assessing Officer is not acceptable to the ITAT, the matter may be sent back to the Assessing Officer for referring to DVO for determining the fair market value as on 01.04.1981. The learned counsel for the assessee, in the rejoinder, stated that it is an old matter and more than a decade has already passed and the stake involved is also very less because the dispute is between the indexed cost of acquisition taken by the Assessing Officer

at ₹23,20,383/- and ₹44,07,753/- by the assessee. He further suggested that if deemed fit, the ITAT may make a fair estimate of indexed cost of acquisition so as to avoid prolonged litigation.

6. After considering the facts of the case and the submissions of both the sides and to avoid prolonged litigation, we deem it proper to estimate the indexed cost of acquisition at ₹30,00,000/- (Rupees thirty lakhs only) as against ₹23,20,383/- determined by the Assessing Officer and ₹44,07,753/- claimed by the assessee. Accordingly, ground No.2 is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.
Decision pronounced in the open Court on 25.01.2017.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **Dr. Ashok Mohan Dwarkadas,
Legal Heir of (Late) Dr. Nirmala Dwarkadas,
B-6/61, Safdarjung Enclave,
New Delhi – 110 029.**
2. Respondent : **Income Tax Officer, Ward-45(4), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar