

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No.6009/Del/2015
Assessment Year : 2005-06**

Manju Mittal, C/o M/s O.P. Sapra & Associates, C-763, New Friends Colony, New Delhi – 110 025. PAN : ACYPM 9252 G	Vs .	ITO, Ward 2, Meerut.
(Appellant)		(Respondent)

Appellant by	Shri Sanjiv Sapra, CA & Shri Satish Sapra, Adv.
Respondent by	Shri F.R. Meena, Sr.DR
Date of hearing	09-11-2016
Date of pronouncement	29-12-2016

ORDER

PER DIVA SINGH, J.M. :

The present appeal has been filed by the assessee assailing the correctness of the order dated 02.09.2015 of the CIT(A), Ghaziabad pertaining to 2005-06 assessment year on the following grounds :-

- “1. That deduction u/s 54F of the Income-tax Act as claimed by the Appellant ought to have been allowed.
2. That there was no justification on the part of the Ld. CIT(A) to make enhancement of Rs.2,19,000/- towards the assessable income of the Appellant. Rather the Ld. CIT(A) ought to have deleted the addition of Rs.5,62,000/- as made by the AO towards the cost of construction of the flats.
Various observations made by the authorities below with regard to the above issue in their respective orders are either factually incorrect or are legally untenable. Detailed submissions made before them were either ignored or had not been appreciated in their proper perspective.
3. That without prejudice to above grounds, the additions as made by the authorities below are very excessive.
4. That the levy of interest u/s 234A at Rs.17,576/- and 2348 at Rs.2,50,458/- is arbitrary, unjust, illegal and at any rate without prejudice very excessive.
5. That the total income assessed and the Income - tax demand created thereon including interest are very excessive.
6. That the Appellant reserves her right to add, amend/modify the grounds of appeal.”

2. Right at the outset, Id.AR inviting attention to the impugned order, submitted that before resorting to addition by way of an enhancement no notice was given by the Ld. Commissioner to the assessee. Accordingly, it was his limited prayer that the issue may be restored back to the file of the CIT(A) for a decision *de novo*. The Ld. AR inviting attention to the impugned order submitted that the enhancement has been done in view of the fact that in the case of a co-owner, Smt. Arun Prabha Goel who was stated to be a

cousin ignoring the Valuation Officer's Report and relying on a DVO's Report which also at best was an estimate, the benefit of variation in the cost of construction for the co-owner was accepted by the Revenue on the grounds of self supervision and quality of flooring etc. It was his submission that when the overall construction of the said property is seen even as per the DVO's Report, the variation is only 6% when the entire cost of construction from 2005-06 to 2008-09 assessment years is taken into consideration. When this is considered alongwith the acceptance of variation in the quality of construction in regard to flooring and other finishing etc. in the case of the co-owner the CIT(A) has not even cared to address if necessary benefit was available to the assessee. Accordingly, it was his submission that the issue on account of these legal and factual mistakes warrants a remand. Infact, it was submitted that alternatively he was confident that if the facts are considered on the basis of material available on record itself, the addition by way of estimate deserves to be deleted.

3. The Ld. Sr. DR agreeing that specific enhancement notice was not given to the assessee on this issue and had no objection if the issue is restored, however grant of relief without addressing the facts was strongly opposed.

4. Accordingly, in the light of the submissions of the parties before the Bench wherein the primary argument raised on behalf of the assessee was that enhancement notice was not issued by the Ld.CIT(A) which factual and legal deficiency on record was accepted by the Revenue, the impugned order is set-aside and the issue is restored back to the Ld.CIT(A). While so restoring it is directed that following the procedural requirements the CIT(A) shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard especially on the issue of enhancement and address the facts qua the same property as considered and accepted in the case of the co-owner.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 29th December, 2016.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated : 29-12-2016.
Sujeet/Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI