

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-3003/Del/2016
(ASSESSMENT YEAR-2012-13)**

Sarla Devi, MP-48, Pitampura, New Delhi-110034. PAN-AEMPD1047C (APPELLANT)	Vs	ITO, Ward-40(5), New Delhi. (RESPONDENT)
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Assessee by	Ms.Shilpi Jain, CA
Revenue by	Sh.Anil Sharma, Sr.DR
Date of Hearing	29.09.2016
Date of Pronouncement	17.11.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 30.03.2016 of the CIT(A)-14, New Delhi pertaining to 2012-13 on the following grounds:-

1. *"That the assessee had filed its return claiming deduction of Rs.1,13,65,428 u/s 54 of the Income Tax Act. The assessee had sold a property for Rs.1,25,00,000 and had long term capital gain of Rs.1,14,90,428 (sale consideration Rs.1,25,00,000- Indexed cost of property Rs.10,09,572) and sought deduction u/s 54 on account of purchase of new house amounting Rs.94,60,500 (including Stamp Duty of Rs.3.60,400 and Registration charges of Rs.90,100) and Construction of new house amounting Rs. 26,91,700.*
2. *That the Ld. Assessing officer denied the entire construction carried out on the property stating that no new house was constructed and assessed income at Rs.20.29,930.*
3. *That the assessee challenged the addition before CIT (A)-14.*
4. *That the Ld. CIT (A)-14 believed that a new house was constructed and allowed only 75% (Rs. 1522447) of the income assessed by Assessing officer on adhoc basis and has not mentioned any specific reason for the same.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds arc without prejudice to each other."*

2. Ld. AR inviting attention to the impugned order, submitted that considering the claim of the assessee in regard to deduction u/s 54F, the Assessing Officer did not accept that construction cost amounting to Rs.26,91,700/- was incurred by the assessee. As a result thereof, an addition of Rs.20,29,930/- was made as long-term capital gain in the hands of the assessee. It was submitted that full facts were made available before the Assessing

Officer and were also relied upon before the CIT(A). These have been extracted by the CIT(A) in his order. The same are reproduced hereunder for ready reference:-

"The Ld. AO disallowed the claim of construction of the house amounting Rs.26,91,700 whose break up is as follows:

<i>Commission paid on sale of Old House</i>	<i>Rs. 125000/-</i>
<i>Commission paid on purchase of New House</i>	<i>Rs. 90100/-</i>
<i>Building Plan approval Charges Paid to M.C.D.</i>	<i>Rs. 224800/-</i>
<i>Building Material</i>	<i>Rs. 242800</i>
<i>Steel</i>	<i>Rs. 394043</i>
<i>Wood</i>	<i>Rs. 272250</i>
<i>Stone</i>	<i>Rs. 336899</i>
<i>Tiles</i>	<i>Rs. 73440</i>
<i>Misc. Items</i>	<i>Rs. 84600</i>
<i>Carpenter</i>	<i>Rs. 124000</i>
<i>Painter</i>	<i>Rs 180000</i>
<i>Electric Work</i>	<i>Rs. 80000</i>
<i>Sanitary Work</i>	<i>Rs. 90000</i>
<i>Construction Labor</i>	<i><u>Rs. 373768</u></i>
<i>Total</i>	<i><u>Rs. 2691700/-</u></i>

3. In support of the same, it was submitted that the evidence available on record have also been extracted by the CIT(A) at page 4 of the impugned order. Despite this fact, the relief has been restricted to the extent of 75% by which the assessee is aggrieved. The evidence relied upon is extracted from page 4 of the impugned order and is reproduced hereunder for ready reference:-

- *"Photograph of the newly constructed house as page No. 3*
- *Building Plan of the property approved by the Municipal Corporation of Delhi as page No. 4 (it is necessary to mention here that the Building Plan can only be approved if the plot is vacant).*
- *Building Plan Approval letter as page No. 5.*
- *Receipt of payment made to Municipal Corporation of Delhi as Building Plan approval Charges as page No. 6.*
- *Temporary Electricity Connection bill as Page No 7 (it is point out here that only a new house under construction may be given a temporary electricity connection.)*
- *Permanent Electricity Connection Bill as Page No 8 & 9.*
- *Receipt from Carpenter of Rs. 1, 24,000 as page No. 10.*
- *Receipt from Painter of Rs. 1,80,000 as page No. 11.*
- *Receipt for sanitary Work of Rs. 90,000 as page No. 12,*
- *Receipt for Electric Work of Rs 80,000 as page No. 13.*
- *Bills of material used for construction of new house like building Material, Steel wood, Stone, Tiles etc.. from Page No. 14 to 27."*

4. Partial relief it was submitted has been based on the reasoning that the two concerns from whom wood and steel were purchased denied having issued the bill. Apart

from that a notice sent to another concern apparently returned unserved. Reading from the impugned order, it was submitted that the person who denied issuing the bill for sale of steel and wood should be confronted to the assessee and opportunity to cross-examine him which had been sought for from the Assessing Officer may be provided. It was his submission that addition based on a statement of a person who has not been confronted to the assessee cannot be upheld. The evidence relied upon must be confronted. It was submitted that the assessee in support of its claim had submitted the details available from the public domain showing that the said concerns were registered with VAT Department and were in existence. Accordingly, it was the prayer that either the entire amount should be allowed or the issue be restored to the file of the CIT(A) for re-adjudication on the basis of facts and legal principles instead of relying on ad-hocism.

4.1. The Ld. Sr.DR considering the prayer made was unable to defend the conclusion arrived at and stated that the matter may be remanded.

5. Having heard the rival submissions and perused the material available on record, I find that there is no discussion in the impugned order to justify why the issue was to be decided by resorting to estimating the cost of construction. The details in support of the claim that the specific house property purchased was completely demolished and thereafter has been constructed a new have been made available to the tax authorities. The Assessing Officer considering the fact that it was a relatively new construction being only 6 years old could not have been demolished has evidently made certain queries and relying on the same has disbelieved the assessee's claim. The assessee has assailed the action on the grounds that the material relied upon has not been confronted to him and opportunity to cross examine the persons that the bill(s) were not issued by them has not been made available. The assessee has also insisted that the issue can be decided on the basis of facts and evidences and did not merit adhoc estimation. The existence of the concerns who have issued the Bills is claimed to be demonstrated by their VAT Registration Numbers stated to be made available from the public domain. In the afore-mentioned peculiar facts

and circumstances, I am of the view that considering the departmental stand and the prayer of the assessee that the impugned order cannot be upheld the issue is set aside and is restored back to the file of the CIT(A) for a re-adjudication on facts. While so directing the grievance of the assessee that the evidence relied upon be confronted to the assessee and opportunity to cross-examine the parties who have denied the issuance of the Bills may be provided by directing a Remand if need be. Needless to say that a reasonable opportunity of being heard is to be provided to the assessee. The said order was pronounced in the presence of the parties at the time of hearing.

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

The order is pronounced in the open court on 17th of November, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI