

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-B” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.1712/Bang/2016
(Assessment year: 2008-09)

Mr. Hemant Mallapur, F-1, Teja Villa, No.87/108, 3 <sup>rd</sup> Main, Ejipura, Bangalore. <b>PAN : AATPM9374L</b>	Vs.	Income Tax Officer, ITO Ward 5(3)(3), Bangalore.
Appellant		Respondent

Assessee by	:	Shri. Mukesh Kumar Jain J, CA
Revenue by	:	Shri. Saravanan B, Addl. CIT

Date of hearing	:	29.11.2016
Date of Pronouncement	:	02.12.2016

**ORDER**

***Per George George K, JM :***

This appeal at the instance of assessee is directed against CIT(A)'s order dated 3.6.2016. The relevant AY is 2008-09.

2. The grounds raised reads as follows:

1. *The learned CIT Appeals has erred in passing the order in the manner passed by him. The order being bad in law is liable to be quashed.*
2. *The learned CIT Appeals has erred in passing the order on the basis of Tribunal judgment of Harsh Krishnakanth Bhatt and Mohanlal M Shah which is not relevant to the instant case of the assessee.*
3. *The learned CIT Appeals did not adjudicate all grounds of appeal.*
4. *The learned CIT Appeals did not adjudicate on alternate grounds of appeal.*
5. *The learned Assessing officer has erred in not allowing the registration expenses, brokerage and wood work expenses (incurred at the time of acquisition of house property) as the cost of acquisition and also has erred in not allowing the cost of improvement of house property (incurred during the year of transfer) as a deduction.*
6. *The learned Assessing officer has erred in not appreciating the provision of law.*
7. *The learned Assessing officer has not appreciated the facts of the case correctly.*
8. *In view of the above and on other grounds to be adduced at time of hearing, it is requested that the impugned order be*
  - i. *Quashed.*
  - ii. *The additional tax liability raised to be deleted.*
  - iii. *Consequential interest to be deleted.*
  - iv. *Penalty proceedings u/s 271 (1)(c) to be dropped.*

3. Briefly stated, the facts of the case are as follows:

The assessee is an individual. For the assessment year 2008-09, the return of income was filed declaring total income of Rs.6,43,667/-. During the year under consideration, the assessee had sold house property. The sale consideration received was Rs.30,00,000/-. The assessee had claimed the following deduction:

a)	Indexed cost of acquisition (Down Payment Rs. 4,45,000)	Rs. 6,98,561/-
b)	Indexed cost repayment principal and Interest	Rs. 10,18,180/-
c)	Indexed Cost of Registration expenses	Rs. 1,51,643/-
d)	Indexed cost of Brokerage	Rs. 32,966/-
e)	Indexed cost of Wood work expenses	Rs. 1,20,231/-
f)	Cost of improvement prior to sale	Rs. 96,000/-
	<b>Total</b>	<b><u>Rs. 21,17,581/-</u></b>

4. While computing the assessment under section 143(3) of the Act, the AO had allowed deduction of only Rs.21,17,581/-, claimed by the assessee. The difference is on account of the following:

- a) The Assessing Officer has only allowed indexed cost of acquisition of Rs.9,25,000 as per purchase deed.
- b) The Assessing Officer has not allowed registration Expenses, Brokerage, Woodwork expenses, Repair cost.
- c) The Assessing Officer has also not given the benefit of "Borrowing Cost" being interest on loan taken for the purpose of acquisition of property.

5. Aggrieved by the Assessment Order, assessee preferred an appeal to the CIT(A). The CIT(A) rejected the

contention of the assessee and confirmed the computation made by the AO.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the tribunal. The learned counsel for the assessee reiterated the submissions made before the income tax authorities. The learned DR strongly supported the order of the assessment of the CIT(A).

7. I have heard the rival submissions and perused the material on record. On perusal of the CIT(A)'s order, I notice that the CIT(A) has not appreciated the facts correctly. The stamp duty, registration fees and other incidental expenses have not been considered as cost of acquisition by the AO. The CIT(A) has merely confirmed the computation made by the AO. The CIT(A)'s order has not adjudicated all the grounds and has not dealt with the facts relevant to the case. The precedence relied by the assessee is not been properly considered. The order of the tribunal relied on by the CIT(A) while dismissing the appeal of the assessee is not regarding the capital gains computation but with regard to disallowance of deduction by invoking the provisions of section 14A read with rule 8D of the Income Tax rules. Therefore, I am of the view there is no proper appreciation of facts nor adjudication of the issue. Therefore the matters needs fresh consideration by the CIT(A). Accordingly, the appeal is restored to the CIT(A). The CIT(A) shall pass a speaking order and shall consider all the issues that are raised by the assessee before him. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 02.12.2016.*

Sd/-  
**(GEORGE GEORGE K.)**  
**JUDICIAL MEMBER**

Place : Bangalore  
Dated : 02/12/2016  
/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore