

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT
AND SHRI MAHAVIR SINGH, JUDICIAL MEMBER**

**I.T.A. No.177/Nag/2017
Assessment Year : 2009-10**

Shri Laxman Pandurang Dudhe, Plot No.1064, Prasad Apartment, Saurabh Nagar, Lane No.1, Shukrawar Peth, Pune – 411 002. PAN : AAOPD6782G.	Vs.	Principal Commissioner of Income-tax-2, Nagpur.
(Appellant)		(Respondent)

Appellant by : Shri Kapil Hirani, CA.
Respondent by : Shri Gitesh Kumar, Senior DR.

Date of hearing : 05.03.2018
Date of pronouncement : 05.03.2018

ORDER

PER BENCH :

This appeal by the assessee is arising out of the revision order of Principal Commissioner of Income Tax-2, Nagpur under Section 263 of the Income-tax Act, 1961 (hereinafter 'the Act') dated 9th March, 2017. Assessment was framed by the ITO, Ward-1, Wardha under Section 143(3) of the Act for assessment year 2009-10 vide his order dated 4th February, 2015.

2. The only issue in this appeal of the assessee is against the revision order of Principal CIT-2, Nagpur passed u/s 263 of the Act revising the assessment in relation to long term capital gain valuing the

property as on 1.4.1981 and also regarding disallowance of dalali expenses. For this, the assessee has raised following six grounds :-

"1. The notice issued u/s 263 and the order passed u/s 263 are illegal as the same are not in conformity to the basic requirements of section 263.

2. Without prejudice to above, the notice and proceedings u/s 263 are invalid as the order passed by AO u/s 143(3) r.w.s. 147 was neither erroneous nor prejudicial to the interest of revenue.

3. The Id.AO having examined the claim of the appellant in relation to the Long Term Capital Gains and further made an addition of Rs.15,41,716/- after independently recomputing the capital gains, the order of the AO is not amenable to be revised u/s 263.

4. The Pr. Commissioner of Income Tax-1 grossly erred in holding that the Id.AO ought to have referred the property sold to DVO for valuation and further erroneously basing the revision u/s 263 on the same. The AO has been granted an option to refer the valuation of property to the DVO in cases where the AO feels the need to do so. The AO in the present case being satisfied with the valuation as submitted by the appellant accepted the valuation and assessed the capital gains. The Id.AO having taken a view in accordance with law, the order of the AO cannot be held to be amenable to be revised u/s 263 for failure to refer the valuation to the DVO.

5. The AO while passing his order u/s 143(3) r.w.s. 147 held the valuation as per the valuation report to be proper and thus adopted one of the possible two views and therefore his order cannot be termed as erroneous and is not amenable to be revised u/s 263.

6. The Id.AO having examined the claim of the appellant in relation to the Long Term Capital Gains including the transfer expenses of Rs.3,40,000/- while independently calculating the Long Term Capital Gains in the assessment order and specifically granting the benefit of the transfer expenses of Rs.3,40,000/-, the order of the AO is not amenable to be revised u/s 263

on the ground of insufficient enquiry relating to allowance of Rs.3,40,000/-."

3. Briefly stated, facts are that the assessee along with two other co-owners sold an immovable property situated at Plot No.2/3, Municipal No.192, Block No.11, Jagannath Ward, Hinganghat, District Wardha, known as Shriram Talkies. Admittedly, this property was acquired by the assessee along with other co-owners before 1981. The assessee has 59% share in the above sold property. Assessee during the course of assessment proceedings filed valuation report from the registered valuer N.V. Tiwaskar dated 6th November, 2008 estimating the value of the property as on 1.4.1981 at ₹23.62 lakhs. The assessee further claimed that he has incurred an amount of ₹15.11 lakhs towards improvement expenses in the year 1998-99 and Assessing Officer has accordingly valued the Long Term Capital Gain vide his assessment order dated 4th February, 2015 passed u/s 143(3) read with Section 147 of the Act. The Assessing Officer computed the Long Term Capital Gain as under :-

Total sale consideration as per section 50C	:	Rs.1,70,00,000/-
As per details submitted by you The cost of acquisition valued at	:	Rs.19,32,000/- on 01.04.1981
Indexed cost of acquisition	:	Rs.1,12,44,240/-
Cost of improvement (As shown in valuation report)	:	Rs.15,11,000/- in 1998-99
Indexed cost of improvement	:	Rs.23,08,141/-
Expenses on transfer	:	Rs.03,40,000/-
Long Term Capital Gain	:	Rs.31,07,619/-
Your share (59%)	:	Rs.18,33,495/-

4. Subsequently, CIT, on examination of records, noted that the assessee has claimed indexed cost of improvement at ₹24,18,690/- but assessee has not submitted any supporting evidence in respect of these expenses. Further, CIT was of the view that the Assessing Officer has erroneously allowed dalali expenses of ₹3.40 lakhs without any

documentary evidence. Furthermore, according to CIT, the Assessing Officer has passed assessment order without making any enquiry or verification in regard to computation of capital gain relying upon registered valuer's report ascertaining the correct fair market value as on 1.4.1981. Accordingly, the CIT directed the Assessing Officer to revise the assessment accordingly. Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the assessee along with other co-owners sold an immovable property for a total consideration of ₹1.70 crores. Admittedly, the assessee became owner of the said property before 1981. Admitted facts are that the registered valuer's report determining the fair market value of the property as on 1.4.1981, which is determined at ₹23.62 lakhs was filed before him. Admittedly, the assessee incurred an amount of ₹3.40 lakhs towards expenses on sale of this property i.e., dalali expenses and assessee, in regard to above details and as per law, computed the capital gain on sale of the property. During assessment proceedings, all the details as desired by the Assessing Officer were furnished from time to time and Assessing Officer, vide his order dated 4th February, 2015 u/s 143(3) read with Section 147 of the Act, enhanced the Long Term Capital Gain to the assessee to ₹18,33,495/- thereby making an addition of ₹15,41,716/-. This addition is under challenge before CIT(A) as informed by the learned counsel for the assessee. It was explained before us and we have also gone through the records and noticed that the CIT's first observation that the assessee has claimed indexed cost of improvement of ₹24,18,619/- is totally wrong because the Assessing Officer has taken cost of improvement at ₹15,11,000/- and not ₹24,18,619/- as alleged by the CIT. However, another observation of CIT that the valuation report neither contained any such value of ₹15,11,000/-, learned counsel for the assessee drew our attention to

the valuation report dated 6th November, 2008 of the registered valuer at page 29 of the assessee's paper book, inner page 10 of the report, item No.4.6, wherein value as on 1.4.1981 is taken at ₹15,11,000/-. This fact is proved by the assessee before us.

6. In view of the above facts and circumstances, we find that first with respect to the indexed cost of acquisition of ₹24,18,619/-, we are of the view that the Assessing Officer has not allowed the above stated claim, rather the Assessing Officer has taken the cost of improvement at ₹15,11,000/- in the year 1998-99 as supported by the valuation report of the registered valuer. With respect to grant of indexed cost of improvement, considering the amount of ₹15,11,000/- pertaining to construction of shops in 1998-99, the Assessing Officer himself has recorded this fact in the assessment record and the relevant computation we have already reproduced above. With respect to the amount of ₹3.40 lakhs towards expenses on transfer i.e., dalali expenses, Assessing Officer has allowed the said claim after going through the documents and after being satisfied about the claim. In such circumstances, we are of the view that the assessee's issue is squarely covered in his favour by the decision of Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. – (2007) 213 CTR 266 (SC). Accordingly, we are of the considered view that this is not a fit case for revision as the assessment order is neither erroneous nor prejudicial to the interest of the Revenue.

7. In the result, the appeal of the assessee is allowed.

Decision pronounced in the open Court on 05.03.2018.

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Dated : 05.03.2018
VK.

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R.

Assistant Registrar