

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No. 287/Agra/2018
(ASSESSMENT YEAR:2009-10)**

Shri Bheekam Singh, Vill. Dholpura, Firozabad. PAN: DDMPS1851P (Appellant)	Vs.	ITO, -2(2)(1), Firozabad. (Respondent)
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**S.A. No.09/Agra/2018
(in I.T.A No. 287/Agra/2018)
(ASSESSMENT YEAR:2009-10)**

Shri Bheekam Singh, Vill. Dholpura, Firozabad. PAN: DDMPS1851P (Appellant)	Vs.	ITO, -2(2)(1), Firozabad. (Respondent)
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Appellant by	Shri Sahib P. Satsangi, AR.
Respondent by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	08.08.2018
Date of Pronouncement	14.08.2018

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

This is assessee's appeal for A.Y. 2009-10, taking the following grounds:

- “1. Because the learned authorities below have erred both on facts and in law in initiating proceedings under section 148 on the basis of AIR information without appreciating that no income has escaped assessment.*
- 2. Because the notice under section 148 has been issued without obtaining sanction as envisaged under section 151 of the Income Tax Act, 1961 and application of mind.*
- 3. Because the learned authorities below have erred both on facts and in law in not appreciating that the amount deposited in the bank account of the assessee was out of his share of sale consideration of the land sold as per the registered sale deeds and the long term capital gains were to be computed on the basis of the working with documentary evidences filed.*
- 4. Because the learned CIT(A)-2, Agra has erred both on facts and in law in not appreciating that the Fair Market Value on 01.04.1981 of the land sold was Rs. 75 per Sq. Mtr. duly substantiated by the report of the approved valuer filed during the course of the proceedings along with application under Rule 46A for consideration of the same.*
- 5. Because the learned CIT(A)-2, Agra has erred both on facts and in law in taking the index cost of acquisition at Rs, 67,262 as against Rs. 35,44,380 claimed by the assessee even though the Fair Market Value on*

01.04.1981 at Rs. 75 per Sq. Mtr. duly supported by the report of the approved valuer having been accepted in the indexed cost of acquisition of similar another property sold in the impugned year.

6. Because the learned authorities below have erred both on facts and in law in adding an amount of Rs. 1,41,000/- as unaccounted cash deposit without appreciating that the deposit in bank was the share of total sale proceeds of lands sold in the impugned year.”

2. The assessee has filed an application for correction in Ground No.5. It reads as follows:

“In the appeal filed before the Hon'ble Tribunal in Ground No. 5, the assessee has stated that the learned CIT(A) have accepted the indexed cost of acquisition of similar another property sold in the impugned year at Rs. 75 per Sq. Mtr. supported by the report of the approved valuer.

However, this fact is incorrect and hence it is respectfully prayed that the following revised ground be substituted in lieu of original Ground No. 5 as stated in Form No. 36 filed before the Hon'ble Tribunal.

5. Because the learned CIT(A)-2, Agra has erred both on facts and in law in taking the indexed cost of acquisition at Rs. 67,262 as against the cost of acquisition claimed on the basis of report of

approved valuer without providing any opportunity.

It is respectfully prayed that the aforesaid revised ground of appeal may kindly be admitted.”

3. In view of the above contents of the application, which has not been rebutted by the Department, the application is allowed. The amended Ground No.5 is substituted for the existing Ground No.5

4. Apropos the merits of Ground No.5, the Id. Counsel for the assessee has contended that the learned CIT(A) has erred both on facts and in law in taking the indexed cost of acquisition at Rs, 67,262/- as against Rs.35,44,380/- claimed by the assessee even though the Fair Market Value on 01.04.1981 at Rs. 75 per Sq. Mtr. is duly supported by the report of the approved valuer having been accepted in the indexed cost of acquisition of similar another property sold in the impugned year.

5. As per the assessee, the Id. CIT(A) took the indexed cost of acquisition at Rs.67,262/- on the basis of the working in the assessment made in the case of Bot Singh, assessee's brother, without confronting the assessee with the same.

6. The assessee's objection is found to be correct. In the impugned order, the Id. CIT(A) has observed as follows:

“7.3. As regards cost of acquisition AO has not allowed any benefit of cost of acquisition to the assessee as no details were filed before the AO. Assessee has now filed cost of acquisition working at Rs. 35,44,380/-. But this working is based on the valuation report of a registered valuer. However, it is the part of land that is inherited by the assessee with his brother Sh. Bot Singh from their father. Sh Bot Singh has given a detailed working of this land in the assessment made in his case after providing sale price of land under U P Stamp Rules 1976 for adopting value as on 01.04.1981 which is as below:-

Total area of agricultural land sold

<i>Description of land</i>	<i>Area of land in hectare</i>
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Sale deed 13.01. 2009

<i>Mauja Dholpura Gate No. -447</i>	<i>0.812</i>
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Sale deed dated 13.01.2009

<i>Mauja Dholpura Gate No. -447</i>	<i>0.729</i>
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<i>Total Agricultural sold</i>	<i>1.541</i>
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<i>7/2 share of assessee = 1.541/2</i>	<i>0.7705</i>
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*Sale price of land under UP Stamp Rules 1976 as on 01.04.1981 = 15000-16000 per hectare cost of acquisition of 1/2 share of land sold 0.7705*15000 indexed cost of acquisition = 11557* 582 /100 = 67262.*

As per this working the indexed cost of acquisition comes to Rs. 67,2627- that is allowable to the assessee as against Rs. 35,44,380/- as claimed by the assessee. The AO is directed to allow this cost of acquisition at Rs.67,262/- while computing the capital gain from the sale of land.”

7. Thus, the above working of cost of acquisition of the land in the case of Both Singh, brother of the assessee, was applied in the assessee’s case without confronting the assessee with the same, particularly in face of Valuation Report of the registered valuer, which was furnished by the assessee. The assessee has, therefore, been deprived of due opportunity of rebuttal and, as such, the matter requires to be remitted for the purpose.

8. Ground No.4 before us reads as follows:

“4. Because the learned CIT(A)-2, Agra has erred both on facts and in law in not appreciating that the Fair Market Value on 01.04.1981 of the land sold was Rs. 75 per Sq. Mtr. duly substantiated by the report of the approved valuer filed during the course of the proceedings along with application under Rule 46A for consideration of the same.”

9. This issue is directly connected with Ground No.5 and the report of the approved valuer is necessary to be taken into consideration for a just and fair decision in the matter.

10. In view of the above, the matter is remitted to the file of the AO, to decide it afresh, on affording due and adequate opportunity of hearing to the assessee. All pleas available under the law shall remain so available to the assessee. The assessee, no doubt, shall co-operate with the AO in the fresh proceedings.

11. In the result, for statistical purposes, the appeal is allowed. The Stay Application is disposed of as infructuous.

Order pronounced in the open court on 14/08/2018.

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT AGRA