

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5248/Del/2014
Assessment Year: 2009-10

Smt. Geeta Rani Yadav, Sec-62, Shastri Nagar, Ghaziabad	Vs.	Income Tax Officer, Ghaziabad
PAN :AAXPY3625N		
(Appellant)		(Respondent)

Appellant by	Sh. Rajiv Saxena & Sh. Ajit Kr. Jha, Advocates.
Respondent by	Sh. B.S. Rajpurohit, Sr.DR

Date of hearing	05.12.2018
Date of pronouncement	14.12.2018

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 29/08/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-Ghaziabad [in short 'the Ld. CIT(A)'] for assessment year 2009-10, raising following grounds:

- In confirming the addition of Rs.5637567/- made by the Ld. AO in the total income of the assessee on the ground of erroneous claim of Cost of Improvement under "Income From Capital Gain", without giving the proper opportunity of being heard.*

2. That the appellant may be allowed to add, alter, deleted, or amend any ground of appeal if considered necessary at the time of hearing of appeal.

2. This appeal came for hearing before the Tribunal on 08/06/2017 and in view of no compliance on behalf of the assessee, it was dismissed in default. However, on Miscellaneous Application filed by the assessee, the appeal was recalled vide order dated 29/06/2018. The assessee is in appeal before the Tribunal in second-round of proceedings.

3. Briefly stated facts of the case are that the assessee filed return of income on 20/03/2010 disclosing income of Rs.1,75,680/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (for short 'the Act') was issued and complied with. In the scrutiny proceedings, the Assessing Officer observed that the assessee sold a plot of land for Rs. 50 Lacs, however, valuation of the same as per the stamp value authority was at Rs.79,85,000/-. The assessee filed computation of capital loss of Rs.12,128/- which is reproduced in the assessment order. For ready reference, same is reproduced as under:

<i>Cost of sale consideration:</i>			Rs.79,85,000/-
<i>Indexed Cost of acquisition:</i>			
<i>(Purchase cost of 681884X582/259=1532264</i>			<i>(-)Rs.1532,264</i>
Cost of improvement 31.3.98	1475000	2593505	
	31.03.99	1688750	2800150
	31.03.2000	715980	1071209
		38,79,730	<i>(-)Rs.64,64,364/-</i>
			<i>(-)Rs.12,128/-</i>

4. The Assessing Officer found that cost of improvement claimed in the return of income was not in consistence with the

copy of the sale deed filed. According to the sale deed cost of construction (improvement) was worked out to Rs.4,63,610/-. The Assessing Officer accordingly called upon the assessee to file necessary documentary evidence in support of cost of improvement of Rs.38,79,730/- claimed by the assessee. But no reply in this respect was filed by the assessee before the Assessing Officer and thus the assessment was completed after allowing the cost of improvement of Rs.4,63,610/- alongwith indexation and capital gain of Rs.56,37,567/- was worked out and added to the income is under:

<i>Cost of sale consideration</i>	<i>Rs.79,85,000/-</i>
<i>Indexed Cost of acquisition</i>	
<i>(681884X582/259=1532264)</i>	<i>(-)Rs.15,32,264/-</i>
<i>Indexed cost of improvement</i>	
<i>(463610 X 582/331 = 815169)</i>	<i>(-)Rs.8,15,169/-</i>
	<i>Rs.56,37,567/-</i>

5. Against the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A) however no compliance was made by the assessee before the Ld. CIT(A) though several opportunities were given to the assessee. The Ld. CIT(A) in impugned order has reproduced a table of the dates on which assessee did not attend the appellate proceedings before the Ld. CIT(A) in first round of the proceedings. For ready reference said para of the order of the Ld. CIT(A) in first round of the proceedings is reproduced as under:

“This appeal was fixed for hearing on number of times. Details of which are given below, but no compliance was made to any of the notices issued. All these notices were sent to the appellant through Speed Post on the address given in the appeal petition i.e. form No. 35

Sl. No.	Date of notice	Date fixed for hearing	Remark
1.	01.05.2012	09.05.2012	None attended nor any application for adjournment was filed
2.	29.05.2012	13.06.2012	On request case adjourned for 28.06.2012
3.	----	28.06.2012	On request case adjourned for 11.07.2012 (final opportunity)
4.	---	11.07.2012	The counsel's junior came and requested for adjournment but it has refused as earlier also. 'final adjournments has been given.

6. On further appeal, the Tribunal vide order dated 06/11/2012 in ITA No. 4735/Del/2012, restore the matter to the file of the Ld. CIT(A) for deciding afresh observing as under:

“.....We find that on 11.07.2012 the junior counsel of the assessee attended and requested for adjournment but it was refused. From the order of CIT(A), we also find that the CIT(A) has not dealt with the issue that on what ground the adjournment was sought while rejecting the assessee's adjournment application. After looking to the facts of the case, we find it appropriate and in the interest of justice to restore the issue to the file of CIT(A) for deciding afresh after providing the opportunity of being heard to the assessee. The assessee is also directed to cooperate in the appellate proceedings and submit the necessary details before the CIT(A).....”

7. In the second round of proceedings before the Ld. CIT(A), the assessee claimed that the expenditure of Rs.38,79,730/-was incurred as under:

financial year	Amount (Rs.)	Explanation of expenditure
1997-98	14,75,000	For filing and levelling of plot and raising of boundary wall
1998-99	16,88,750	Improvement on the plot
1990-00	7,15,980	Removing the garbage, cleaning of plot, digging and again refilling the plot and repairing certain cracks of the boundary wall

8. However, the assessee failed to produce any supporting voucher of expenditure. The Ld. CIT(A) in Para -6 of the impugned order has specifically mentioned this fact is under:

“6. The counsel for the appellant categorically stated as per note sheet entry dated 29.08.2014 that he cannot produce any supporting details or vouchers in support of his claim.”

9. In view of the failure on the part of the assessee in furnishing any documentary evidence in support of the cost of improvement claimed in even second-round of the proceedings before the Ld. CIT(A), he confirmed the addition observing as under:

“7. Having carefully considered facts and circumstances of the case, I decide the appeal as under:-

It is seen that the appellant has not been able to substantiate the claim of expenditure of Rs. 34,16,120/- out of total cost of improvement claimed at Rs. 38,79,30/-. The matter having travelled to Hon’ble ATAT and despite reasonable opportunity having been provided to the appellant to adduce evidence in support of his claim, the appellant has not come out with any evidence what so ever. It is apparent that the claim of the appellant regarding cost of improvement to the extent of Rs. 34,16,120/- is not genuine but a self serving statement for the purpose of reducing his tax liability of capital gain. Even otherwise also the cost of improvement on the plot purchased for Rs.6,81,884/- such heavy expenditure is not justified from the principle of preponderance of probability. The appellant has claimed that the said expenditure was incurred for filling and leveling of plot and raising of boundary wall and removing the garbage. Such general claims are baseless and not supported by any details and evidences of such expenditures as to when expenditure was made, from which agency work was got done, when and how payment was made etc. The claim of appellant is rejected as baseless and not supported by any evidence. The liability of capital gain of Rs. 56,37,567/- worked out by the Assessing Officer is confirmed.”

10. Aggrieved with the addition sustained by the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

11. Before us, the Ld. Counsel of the assessee submitted an application under Rule 29 of ITAT Rules for admission of additional evidences along with a paper book. In the application filed, the assessee has given a new twist to the nature of cost of improvement claimed. In the application, the assessee has submitted that amount of Rs. 38, 79, 730/- claimed in the return of income as cost of improvement, was actually cost incurred in relation to acquisition of the plot of the land. The assessee in the application has submitted that

- (i) She was allotted a plot of 250 m² by the Ghaziabad development authority (GDA), which she agreed to sale to the buyers for consideration of Rs.8,50,000/- and against which she received advance of Rs.3,00,000/-.
- (ii) She was however allotted plot of 341.54 m² as against the earlier plot of 250 m² and made payment of Rs.6,81,884/- to the GDA. As the buyers were not willing to pay additional amount due to enhanced area of the plot from 250 m² to 341.5 m², a dispute arose between the assessee and the buyers.
- (iii) Complaints were filed before police authorities and a settlement was filed before the Police authorities to close the dispute and according to which the assessee paid Rs.14,75,000 by 31/03/1998 and Rs.16,88,750 by 31/03/1999 to the buyers.

- (iv) In respect of the amount of Rs.7,15,980/- the assessee has claimed that same was incurred for development of boundary wall and rooms etc.

12. To support this explanation of cost of improvement the assessee has filed following documents as additional evidences:

- (i) A Copy of agreement between the assessee and (a) Shri Satish Kumar village- Shahjahapur & (UP) (b) Sh. shahabuddin son of Sh Sikander Khan , Etawa (UP). (Placed on page 12 to 13 of the paper book).
- (ii) A Settlement deed between the assessee and the above parties (placed on page 14 to 15 of the paper book.)
- (iii) A Copy of the settlement application filed before the police station in charge, Link Road, Sahihabab (Gaziabad)(placed on page 16 of the paper book)
- (iv) A Copy of receipt and confirmation from the buyers (placed on page 17 of the paper book).

13. The assessee also produced original copy of the above documents for perusal of the bench.

14. In view of the applications filed under Rule 29 of the ITAT Rules by the assessee, the Ld. Counsel submitted that the assessee being a lady was not well versed with the Income-tax proceedings and the earlier Counsel in the case did not make effort to inquire from the assessee and filed submission before the

Assessing Officer without supporting evidences. The relevant part of the application of the assessee is reproduced as under:

“It is humbly submitted that I being housewife could not devote time with the AR and y husband could also not devote time to provide the evidence already existing to the AR.

It is humbly submitted that facts and figures depicted in the balance sheet on the basis of payment made to reacquire the plot from the buyers and assessee delayed the possession even after making full payment because of the disputes and after making payment to the buyers and also signing settlement agreement. This additional evidence is very much essential to be considered in the interest of substantial justice. The assessing officer has completed the assessment without providing the opportunity to the assessee as around 12.12.2011 the assessing officer raised quarry and assessment was completed on 20.12.2011. The CIT(A) decided the appeal ex- parte and after second opportunity provided to the assessee by the Hon’ble ITAT the CIT(A) in the second order passed the order on the first date of hearing i.e. 29.08.2014 even assessee filed the balance sheets showing the same figures as shown in the agreement/settlement deed/payment made by the assessee shown in the receipt. Thus the assessee did not get proper and reasonable opportunity before the assessing officer who completed the assessment hurriedly and also before CIT(A) who first time passed ex-parte order and second time decided the appeal on the very first date. The AR also did not ask the assessee about the documents and being lady I was also not aware about the assistance required to be given to the AR in the Income Tax matters. The documents dated 1994 to 1998 were also traceable after such a long period and after hectic efforts these documents were traced and filed now. Copy of original documents are hereby produced for your kind consideration which would justify the claim made by the assessee in the return and in the balance sheet.”

15. In support of the contention that the Tribunal can admit the additional evidences not only on sumo motu action , but also on application filed by one of the parties of the appeal, the Ld. Counsel relied on the decision of the Hon’ble Delhi High Court in the case of Commissioner of Income Tax vs. Text Hundred India Private Limited reported in (2013) 351 ITR 57 (delhi.).

16. On the contrary, the Ld. DR submitted that assessee had been provided ample opportunity by the Assessing Officer as well

as by the Ld. CIT(A), however no supporting evidences were filed before the lower authorities. The Ld. DR submitted that before the Ld. CIT(A) the assessee claimed that improvement expenses were incurred on filing and leveling of plot etc., whereas now the assessee has taken summersault and claiming altogether a new story of making agreement for sale of plot and cancellation. He submitted that in most of the cases to explain cash deposits, tax payer resort to this kind of unsubstantiated explanation. According to him, the documents produced as additional evidence do not seem genuine and need forensic investigation. The Ld. DR objected for admission of the additional evidences relying on following decisions:

1. *Jawahar Lal Jain (HUF) Vs. CIT, P&H High Court, 2014 [2015] 59 taxmann.com 374 (Punjab & Haryana)*
2. *Shivangi Steel (P.) Ltd. Vs. ACIT, ITAT Agra, 2013 [2014] 42 taxmann.com 393 (Agra -Trib.) 147 ITD 166 (Agra-Trib.)/[2014] 164 TTJ 134 (Agra-Trib.)*

17. We have heard the submission of the both parties on the issue of admission of the additional evidence under rule 29 of the ITAT rules. We note that Hon'ble Delhi High Court in the case of Text Hundred India Private Limited (supra) on the issue of admission of the additional evidences has observed as under:

"13. The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motu action of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well-settled that the procedure

is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect.

14. The next question which arises for consideration is as to whether the exercise of discretion in the instant case permitting the additional evidence by the Tribunal, is apposite? It is undisputed that rule 29 of the Rules is akin to Order 41 Rule 27(1) of the Code of Civil Procedure. The true test in this behalf as laid down by the Courts, is whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. The legitimate occasion, therefore, for exercise of discretion under this rule is not before the Appellate Court hears and examines the case before it, but arises when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent to the Appellate Court coming in its way to pronounce judgment, the expression to enable it to pronounce judgment ' can be invoked. Reference is not to pronounce any judgment or judgment in a particular way, but is to pronounce its judgment satisfactory to the mind of Court delivering it. The provision does not apply where with existing evidence on record the Appellate Court can pronounce a satisfactory judgment. It is also apparent that the requirement of the Court to enable it to pronounce judgment cannot refer to pronouncement of judgment in one way or the other but is only to the extent whether satisfactory pronouncement of judgment on the basis of material on record is possible..... ”

18. The Hon'ble court has laid down that the Tribunal may admit additional evidences if the same are necessary to do substantial justice in the matter. In the instant case before us the assessee has produced original copies of the agreement to show the willingness to prosecute the appeal. We are of the opinion that if there is some truth in the story of the assessee of the agreement for sale of plots and subsequent settlement for payment to the proposed buyers, the assessee must get chance to prove its

innocence and the issue must be decided after due verification and genuineness of the evidences furnished by the assessee as additional evidences. Accordingly, we admit the above additional evidences filed by the assessee.

19. In view of the additional evidences filed vis-à-vis earlier explanation of cost of improvement, we feel it appropriate to restore the issue in dispute involved in the appeal to the file of the Ld. Assessing Officer for deciding afresh with following directions:

- (i) The assessee shall produce a copy of the additional evidences alongwith the original copy before the Assessing Officer and also produce the buyer parties for verification of their claim in agreement/settlement deed within one month from receipt of this order.
- (ii) The Ld. Assessing Officer shall send the original copy of agreement and settlement deed for forensic investigation to the relevant expert authorities . The investigation may include verification of purchase of stamp paper(s) from authorised stamp vendor, verification from the register of the Notary Public who has notarized and attested the agreements, verification of complaints and settlement deed filed in the police station etc.
- (iii) Carry out verification of source of payment of settlement amount paid to the buyers by the assessee.
- (iv) Carry out verification of the income shown by the buyers of the amount received in their income tax returns
- (v) Any other verification which deemed necessary in the facts of the case.

20. The assessee shall not be allowed to take a plea that by efflux of the time, the relevant verification are not possible because the assessee has filed these document for the first time before the Tribunal and there was no occasion for lower authorities to examine or verify these documents. The Ld. Assessing Officer is directed to provide result of all the enquiries, which will be carried out by him to the assessee and provide sufficient opportunity for filing rebuttal / necessary explanation by the assessee and if required provide cross examination of the witnesses etc.

21. After verifying issue of genuineness of the additional evidences filed and considering the submission of the assessee, the Ld. Assessing Officer may decide the issue in dispute in accordance with law.

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

The decision is pronounced in the open court on 14th December, 2018.

sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 14th December, 2018.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	07.12.2018
2.	Date on which the draft of order is placed before the Dictating Member:	10.12.2018
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	