

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

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

**ITA No.-3671/Del/2018
(A. Y. : 2013-14)**

Sh. Vivek Sudarshan, Ghaziabad Villa No. 4, GH-7 Crossing Republic, Ghaziabad Uttar Pradesh, PAN : AQAPS1686G	vs	ITO, Ward-2(5), Ghaziabad
Assessee by		Shri Aditya Purwar, CA
Revenue by		Shri S.L.Anuragi, Sr. DR

Date of Hearing	27.12.2018
Date of Pronouncement	28.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-Ghaziabad, dated 28.02.2018 for assessment year 2013-14. The assessee has raised following grounds of appeal :-

"1. On the facts and in the circumstances of the case, the assessing officer has erred in making addition of Rs. 24,90,800/- in house no -117 and Rs. 12,00,000/- in house no -A1 126 as income from long term capital gain. Total addition of Rs. 36,90,800 deserves to be fully deleted.

2. The appellant has been denied proper opportunity of presenting facts of his case before CIT(A). The counsel to whom notices were sent through email did not share the same with the appellant which resulted in non-compliance of the same. The proper opportunity to defend his case has been denied.

3. The facts of his case have been ignored by assessing

officer and hence the order deserves to be modified / Cancelled as per law.

4. The assessee had spent Rs 14,00,000 on construction of house no-117 the same is liable to be allowed as capital expenditure under section 55 of Income Tax and should be considered in calculation of capital gain.

5. On the facts and in the circumstances of the case, the assessing officer has erred in rejecting the valuation report as on 28/03/2016 obtained by the appellant from government approved registered valuer. The value of Rs 1445000 as determined is liable to be accepted. Summary of valuation report as blow:

S.N	Particular	Area Sft	Roof htft	Year	Construction Rs/ sft	Replacement Rs	Dep	Net Value
1	Ground Floor	900	10'-0"	2004	1100	990000	27%	722700
2	First Floor	900	10'-0"	2004	1000	900000	27%	657000
3	Mumti	100	10'-0"	2004	900	90000	27%	65700
							Total	1445000

6. The assessing officer could not interfere with the valuation of the registered valuer and the assessing officer is not competent authority to summarily reject the registered valuer report filed by assessee.

7. The assessing officer not having used his power for giving direction u/s 55A and hence was duty bound as per law to accept the valuation filed by the assessee.

8. On the facts and in the circumstances of the case, the assessing officer has erred in making addition of Rs 12,00,000/- in house no. A1-126 without allowing indexation to the cost.

S.N.	Particular	Amount	Index Cost
1.	Purchase Cost	541056	888208
2.	Stamp Duty	122700	201427
3.	Registry Fee	5020	8241
4.	Construction Cost	959548	1307049
	Total	1638324	2404925

9. *The addition of Rs. 36,90,800/- as long-term capital gain is against facts of the case and is bad in law and deserves to be fully deleted because the assessee has invested the entire Sale Consideration in purchase of new residential house as per the provisions of section 54 of the Income Tax Act, 1961. Assessee purchased New house on 09/07/2012 in his wife Mrs. Malvee Sudersan for taking benefit of lower stamp duty. The exemption claimed u/s 54 of the Act is liable to be fully allowed.*

10. *The order is illegal and against facts of the case and is bad in law and deserves to be quashed."*

2. At the outset, Ld. Authorised Representative of the assessee Shri Aditya Purwar, CA submitted that he has filed an application under Rule 29 of the ITAT rule for acceptance of additional evidences which were not filed before the Assessing officer on the ground that the assessee was in state of depression. He further submitted that on appeal the Commissioner of Income Tax (Appeals) dismissed the appeal of the assessee as the assessee failed to put in appearance on the dates of hearing fixed by him on 24.10.2017, 14.11.2017, 12.12.2017 and 27.02.2018. He, therefore, prayed that the matter should be remanded to the file of the Assessing Officer to adjudicate the issues involved in the appeal of the assessee afresh after taking into consideration the additional evidences now filed before the Tribunal.

3. The Departmental Representative Shri S.L.Anuragi, Sr. DR had no objection to the above submission of the Authorised Representative of the assessee.

4. In the above facts and circumstances, I set aside the orders of the lower authorities and remand the matter back to the file of the Assessing Officer for adjudication of the issues afresh after

considering the additional evidences filed before the Tribunal namely 1. Purchase deed of House No. A1-126 (2) Sale deed of House No. A1-126 (3) Purchase deed of Villa No. 4 (4) LIC Housing Loan Paper (5) Bank Statement of Account No. 00762010077960 (Individual Account) (6) Bank Statement of Account No. 095010200018647 (firm Account) (7) Capital Gain Computation.

5. In the result appeal of the assessee allowed for statistical purposes.

Order pronounced in the Open Court on 28th December, 2018 at New Delhi.

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 28.12.2018

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.12.2018
Date on which the typed draft is placed before the dictating Member	27.12.2018
Date on which the typed draft is placed before the Other Member	.12.2018

Date on which the approved draft comes to the Sr. PS/PS	28.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	28 .12.2018
Date on which the fair order comes back to the Sr. PS/PS	28.12.2018
Date on which the final order is uploaded on the website of ITAT	28.12.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	