

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.2768/DEL/2018
Assessment Year: 2014-15

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| Daulat Ram Goel, C/o Akhilesh Kumar, Advocate, Chamber No.206-07, Ansal 'Satyam' RDC Raj Nasgar, Ghaziabad. | v. | DCIT, Circle-1, Ghaziabad. |
| TAN/ PAN: ADAPG 4442P | | |
| (Appellant) | | (Respondent) |

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| Appellant by: | Shri Akhilesh Kumar and Pushkar Pandey, Adv. | | |
| Respondent by: | Shri S.L. Anuragi, Sr.D.R. | | |
| Date of hearing: | 14 | 11 | 2018 |
| Date of pronouncement: | 17 | 01 | 2019 |

ORDER

The aforesaid appeal has been filed by the Assessee against the impugned order dated 16.01.2018 passed by the Commissioner of Income Tax (Appeals), Ghaziabad for the quantum of assessment passed u/s.143(3) of the IT Act, for the Assessment Year 2014-15. The assessee is mainly aggrieved by disallowance of indexed cost of construction of Rs.22,95,740/-.

2. The facts in brief are that the ld. Assessing Officer noted that in the computation of Long Term Capital Gain shown by the assessee it has claimed indexed cost of construction of Rs.31,69,852/- comprising of Rs.17,66,573/- for Financial Year 1985-86 and Rs.5,29,167/- for Financial Year 1990-91. The ld. Assessing Officer noted that the assessee has failed to

furnish proof of construction pertaining to these years. Even though, he admitted that it cannot be denied that construction was made but the said construction was done in the years as mentioned by the assessee has not been supported by any adequate proof. As per allotment letter by Ghaziabad Improvement Trust, construction of the ground floor was to be done within three years and remaining floors should be completed within five years from the date of sanction which was 22.03.1977 and 22.03.1983, respectively or within the extended time allowed by the Trust. The assessee has failed to provide any evidence for extension of time. Accordingly, he disallowed sum of Rs.22,95,740/-. The said finding of the Assessing Officer has also been confirmed by the Id. CIT(A) on the ground that no completion certificate or bills of construction activities or bills and vouchers have been submitted in support of such claim.

3. After hearing both the parties and on perusal of the relevant facts as culled out from the material placed on record, it is seen that assessee had sold a property, Building No. 29, Additional Sihani Gate, Ghaziabad for sum of Rs.2,65,00,000/- and $\frac{1}{4}$ share of the assessee was Rs.66,25,000/-, vide sale deed dated 21.01.2014. The assessee has computed the Long Term Capital Gain in the following manner:

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| | <i>Sales</i> | <i>Rs.66,25,000/-</i> |
| <i>Less:</i> | <i>Indexed cost for purchase</i> | <i>Rs. 84,148/-</i> |
| | <i>Indexed cost for construction as on 01.04.1981</i> | <i>Rs.31,69,852/-</i> |
| | <i>F.Y. 1985-86</i> | <i>Rs.17,66,573/-</i> |

| | | |
|--|-------------------------------|----------------------|
| | <i>F.Y. 1990-91</i> | <i>Rs.5,29,167/-</i> |
| | <i>Transfer expenses</i> | <i>Rs.4,63,750/-</i> |
| | <i>Long Term Capital Gain</i> | <i>Rs.6,11,510/-</i> |

4. Before us, learned counsel pointed out that in the sale deed itself, there is a specific mention that flat consisted of basement, ground floor, first floor, second floor and third floor. The Assessing Officer had disallowed mainly construction of second and third floor as he himself has stated that construction of ground floor which includes basement should have been made till three years from the lease dated 22.03.1977 and further construction should have been made till 22.03.1983. The construction of 2nd and 3rd floor as per the assessee was done in the Financial Year 1985-86 and 1990-91, respectively. Though, assessee should have taken the extension from the Ghaziabad Improvement Trust for the construction of further floors but same should not be the ground for disbelieving the assessee's contention that construction of 2nd & 3rd Floor was carried out, because same is quite evident from the sale deed. Since, matter was 25 years old; therefore, it was not possible for the assessee to provide any evidence. Accordingly, Ld. Counsel for the assessee submitted that assessee's claim should not be disallowed.

5. On the other hand, ld. DR has strongly relied upon the order of the authorities below submitted that onus was upon the assessee to show that he has incurred cost on construction/improvement of the property.

6. From the perusal of the sale deed, it cannot be doubted that assessee had constructed all the four floors, viz., ground floor including basement, first floor, second floor and third floor. Even though assessee could not furnish the evidence for construction conducted in the years 1985-86 and 1990-91, but the factum of construction cannot be disputed. In such a situation, there is no option but to resort to some reasonable estimate of cost of construction for 2nd and 3rd floor. The area of 2nd floor is 88 sq. mtr and the area of 3rd floor is 38 sq. mtr which is mentioned in the sale deed. Out of 22,95,740/-, as claimed by the assessee, I think it appropriate that cost of construction for 126 sq. mtr, i.e., 1356 sq. ft. should be taken at Rs.1200 sq. ft. which comes at Rs.16,27,200/-. Accordingly, I estimate cost of construction should be taken at Rs.16,50,000/- and balance amount should be disallowed.

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

Order pronounced in the open Court on 17th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 17th January, 2019

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