

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No. 5545/DEL/2013  
[Assessment Year: 2008-09]**

Smt. Harshi Bhatia  
2E/75, NIT Faridabad  
New Delhi

Vs.

The Income tax Officer  
Ward - 11(4)  
Faridabad

PAN : ADRPB 0117 D

**ITA No. 881/DEL/2014  
[Assessment Year: 2008-09]**

Shri Bhushan Bhatia  
2E/75, NIT Faridabad  
New Delhi

Vs.

The Income tax Officer  
Ward - 11(4)  
Faridabad

PAN : AAQPB 1910 Q

[Appellant]

[Respondent]

**Date of Hearing : 27.03.2019**

**Date of Pronouncement : 29.03.2019**

Assessee by : Dr. Rakesh Gupta, Adv  
Shri Deepak Garg, CA

Revenue by : Shri Amit Katoch, Sr. DR

**ORDER****PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above two appeals by two separate assesseees are preferred against two separate orders of the Commissioner of Income Tax [Appeals], Faridabad dated 19.08.2013 pertaining to assessment year 2008-09.

2. Since the dispute raised by the respective appellants are based on identical set of facts, both these appeals were heard together and are being disposed of by this common order for the sake of convenience and brevity.

3. The dispute relates to computation of capital gains arising out of sale of land when the factory shed of which the appellants were co-owners.

4. The statement showing computation of capital gains in the case of Smt. Harshi Bhatia is as under:

Year of Acquisition (Financial Year)	2000-01
Year of Transfer (Financial Year)	2007-08

Cost of Acquisition	Rs. 95,000/-
Index Cost of Acquisition	Rs. 1,28,929/-
Cost of Improvement	Rs. 10,08,700/-
Index Cost of Improvement	Rs. 12,50,905/-
Full Value of Sales Consideration	Rs. 16,10,000/-
Long Term Capital gain	Rs. 2,30,166/-

The assessee has further given the details of cost of improvement as follow:-

<u>Year of Improvement</u>	<u>Cost of Improvement</u>	<u>Index cost of Improvement</u>
2000-01	1,50,000/-	2,03,571/-
2001-02	3,88,700/-	5,02,755/-
2002-03	1,20,000/-	1,42,808/-
2004-05	<u>3,50,000/-</u>	<u>4,01,771/-</u>
Total	<u>10,08,700/-</u>	<u>12,50,905/-</u>

5. In the case of Shri Bhushan Bhatia the statement showing computation of capital gains is as under:

Year of Acquisition (Financial Year)	2000-01
Year of Transfer (Financial Year)	2007-08
Cost of Acquisition	Rs. 2,11,000/-
Index Cost of Acquisition	Rs. 2,86,357/-
Cost of Improvement	Rs. 16,84,250/-
Index Cost of Improvement	Rs. 20,55,953/-

Full Value of Sales Consideration	Rs. 28,80,000/-
Long Term Capital gain	Rs. 5,37,690/-

The assessee has further given the details of cost of improvement as follow:-

<u>Year of Improvement</u>	<u>Cost of Improvement</u>	<u>Index cost of Improvement</u>
2000-01	3,42,000/-	4,64,143/-
2001-02	2,22,250/-	2,87,464/-
2002-03	2,22,000/-	3,08,166/-
2004-05	<u>3,50,000/-</u>	<u>2,61,814/-</u>
2005-06	3,00,000/-	3,32,596/-
Total	<u>16,84,250/-</u>	<u>20,55,953/-</u>

6. The quarrel is in respect of cost of improvement shown at Rs. 10.08 lakhs in the case of Smt. Harshi Bhatia and Rs. 16.84 lakhs in the case of Shri Bhushan Bhatia, which includes the indexed cost of improvement.

7. During the course of assessment proceedings, the assessee was asked to file all the details with regard to cost of improvement claimed with corroborative documentary evidence since the assessee has claimed improvement on

4250 sq ft area, whereas in the sale deed, same has been shown at 1000 sq ft. Therefore, the assessee was asked to explain the difference.

8. The Assessing Officer further asked the assessee to furnish details in respect of circle rate of registration prevailing at the time of sale, proof of house tax paid and to produce all documents relating to property sold during the year.

9. The assessee submitted the following:

- (a) An agreement to sell dated 17.08.2007 to explain that the shed constructed on the property is approximately 8500 sq ft.;
- (b) Copy of sale deed;
- (c) Rent agreement dated 31.08.2005 with M/s Shivalik Power Control Pvt Ltd;
- (d) Copy of account of M/s Shivalik Power Control Pvt Ltd showing rent received from the let out property and TDS thereon;

- (e) Affidavit of Shri Bhikam Singh, purchaser of property who stated that a factory shed covering 4250 sq ft area existed on the land purchased by his company;
- (f) Certificate from Architect Shri Manoj Darshan showing shed constructed on 4255.70 sq ft area and estimated value of the same; and
- (g) Money received from building contractor Shri Bhanwari Lal, Thekedar confirming construction of factory building during the period 2000-01 to 2005-06.

10. After considering the facts and detailed submissions, the Assessing Officer found that 50% of the shares in the property were held by Smt. Harshi Bhatia and Shri Bhushan Bhatia and remaining 50% of the shares were held by Shri Pradeep Virmani.

11. The Assessing Officer did not find any reliability on the documents submitted by the assessee in so far as the cost of improvement is concerned and denied the cost of improvement and also the indexed cost of improvement and

recomputed the long term capital gains in the case of Smt. Harshi Bhatia as under:

(i) Sale consideration of land (i.e 50% share of the assessee	Rs. 12,10,000/-
(ii) Add : Cost of construction (As discussed above) Total [i + ii]	Rs. 4,00,000/- Rs. 16,10,000/-
(iii) Less : Cost Index of land & building (i.e. Rs. 1,28,949/- + Rs. 4,00,000/-)	Rs. 5,28,929/-
(iv) Long Term Capital Gain (i.e. Rs. 16,10,000/- - Rs. 5,28,929/-)	Rs.10,81,071/-
(v) Already shown by the assessee in her return of income	Rs. 2,30,166/-
(vi) Addition on account of less shown capital gain (ie. Rs. 10,81,071/- - Rs. 2,30,166/-)	Rs. 8,50,805/-

12. In the case of Shri Bhushan Bhatia, the same was computed as under:

(i) Sale consideration of land	Rs. 24,80,000/-
(ii) Add : Sale Consideration of	

construction (As discussed above)	Rs. 4,00,000/-
Total [i + ii]	Rs. 28,80,000/-
(iii) Less : Cost Index of land & building (i.e. Rs. 2,86,357/- + Rs. 4,00,000/-)	Rs. 6,80,000/-
(iv) Long Term Capital Gain (i.e. Rs. 28,80,000/- - Rs. 6,86,357/-)	Rs. 21,93,643/-
(v) Already shown by the assessee in her return of income	Rs. 5,37,690/-
(vi) Addition on account of less shown capital gain (ie. Rs. 21,93,643/- - Rs. 5,37,690/-)	Rs. 16,55,953/-

13. Aggrieved by this, the appellants carried the matter before the CIT(A) but without any success.

14. Before us, the ld. AR once again invited our attention to the documents which were placed before the lower authorities and now brought before us in the form of paper book.

15. The ld. AR vehemently submitted that the appellants have derived rental income and the same has been shown in their respective returns of income, therefore, it can be stated that there was a shed of around 4000 sq ft constructed on the piece of land which has been sold during the year under consideration. The ld. AR further pointed out that as per the agreement, it was agreed that around 3000 sq ft of constructed area shall be demolished with about 1000 sq ft of constructed area.

16. It is the say of the ld. AR that the money received from the building contractor was duly filed before the lower authorities supported by certificate from the Architect and further supported by the affidavit of Shri Bhikam Singh. The ld. AR emphasised that all these evidences clearly show that around 4000 sq ft was constructed area on the piece of land which was sold during the year under consideration. The ld. AR concluded by saying that the entire disbelief by the revenue authorities is based upon the fact that sale deed refers to only 1000 sq ft of constructed area and accordingly, cost of improvement in respect of balance has been denied.

17. The ld. AR placed reliance on the decision of the co-ordinate bench in the case of Shri Boda Dinesh Reddy [HUF] in ITA No. 296/Hyd/2009 order dated 25.01.2012.

18. Per contra, the ld. DR stated that all the documents which have been referred to by the ld. AR are self-serving documents in the sense that none of the documents could be verified from any independent authority except for rent agreement which was also filed before the Sales Tax Department. It is the say of the ld. DR that the assessee did not produce the purchaser nor architect who gave the certificate and also building contractor was not subjected to verification.

19. The ld. DR further stated that rental income shown by the assessee only proves that the assessee was receiving rent from the said property but nowhere it proves the cost of improvement claimed by the assessee. The ld. DR concluded by saying that the decision of the co-ordinate bench is clearly distinguishable on facts of the case in as much as in that case, demolition was done by the promoter and all

expenses on demolition were also borne by the promoters, who were purchasers of the property.

20. We have given a thoughtful consideration to the orders of the authorities below. We have also carefully considered the documentary evidences placed on record in light of Rule 18(6) of the ITAT Rules.

21. In the case of Smt. Harshi Bhatia, we find that the Assessing Officer examined the third co-owner Shri Pradeep Virmani on 23.12.2010. The statement of Shri Pradeep Virmani is placed at pages 59 to 61 of the paper book. Incidentally, the assessment order is also dated 23.12.2010, which means that the assessee was never given any opportunity to cross examine Shri Pradeep Virmani. Similarly, in the case of Smt. Bhushan Bhatia, to prove the genuineness of improvement, the assessee was asked to produce Shri Bhanwari Lal, Contractor, Shri Manoj Darshan, Shri Bhikam Singh, Director, Shiv Tool Engineers and Shri Pradeep Virmani. This was done through order sheet entry and the assessee was asked to comply on 24.12.2010.

Incidentally, assessment order of Bhushan Bhatia is also dated 24.12.2010. We fail to understand as to how the Assessing Officer has drawn adverse inference in the case of Shri. Bhushan Bhatia by stating that the summons issued to Shri Bhanwari Lal and Shri Manoj Darshan were received back unserved for non existence and Shri Bhikam Singh did not respond to the notice. When on 24.12.2010 the assessee showed his inability to produce all the four persons, how the Assessing Officer could issue summons which were returned back on the same date and the assessment order was framed on the very same date i.e. 24.12.2010.

22. In our considered opinion, the Assessing Officer has violated the basic principles of natural justice by not giving any opportunity to the assessee to demonstrate his submission by independent verification. We, accordingly, restore the dispute to the file of the Assessing Officer. The assessee is directed to furnish complete address of (1) Shri Bhanwari Lal, Contractor (2) Shri Manoj Darshan (3) Shri Bhikam Singh and (4) Shri Pradeep Virmani. The Assessing Officer is directed to verify the contentions of the assessee

from these persons by making proper enquiries and after giving sufficient opportunity of being heard to the assessee.

23. In the result, the appeals filed by both the assesseees are treated as allowed for statistical purposes.

**The order is pronounced in the open court on 29.03.2019.**

**Sd/-**

**[K.N. CHARY]  
JUDICIAL MEMBER**

**sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 29<sup>th</sup> March, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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	