

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 5384/Del/2018
Assessment Year 2013-14

Tilak Raj Jain, Delhi	Vs.	ACIT, Circle – 39(1), Delhi
(Appellant)		(Respondent)

Assessee by:	Shri R.R. Singla, CA
Department by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	28/01/2019
Date of pronouncement	/03/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 25.6.2018 passed by Ld. CIT(A) 17 New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2014-15. In grounds of appeal the assessee has challenged the addition of Rs. 98,84,636/- on account of long term capital gain. The relevant grounds raised reads as under :

- “1. The Id. CIT. (A) has grossly erred in law and facts by not deleting the additions made by the Id. Assessing Officer amounting Rs. 9,89,636/- on account of long term capital gain.*
- 2. The Id. CIT(A) has erred in law and facts while rejecting the admission of additional evidences submitted by the assessee.*

3. The Id. CIT(A) has erred in laws and facts while rejecting the facts of having attached/adjoining property on the basis of wrong interpreting the common Urdu words "Araji Digar" used in Sale Deed as name of some person instead of its meaning "land of others"

4. The ld. CIT(A) has erred in laws and facts while upholding the assessment made by the assessing Officer based on his own whims and surmises and without verification of the facts explained by the assessee."

2. Facts in brief are that during the year under consideration the assessee has sold two properties acquired by him in the financial year 1998-99 the details of which are as under :-

S.NO.	PARTICULARS	PROPERTY NO. 1	PROPERTY NO. 2
1	Type of Property	Shop at Jind	Shop at Jind
2	Date of Sale	12-08-2013	26-08-2013
3	Sale Price	10,60,000	12,54,000
4	Value as per circle rate	10,60,000	12,54,000
5	Date of Purchase	06-08-1998	06-08-1998
6	Cost of Purchase of plot	1,16,500	2,89,750
7	Year of Construction	1998-99	1998-99
8	Cost of Construction	88,800	3,70,740
9	Total cost of acquisition	2,05,300	6,60,490
10	Index of the base year	351	351
11	Current year index	939	939
12	Indexed Cost	5,49,221	17,66,952
13	Long Term Capital Gain (Loss)	5,10,779	-5,12,952

3. Before the AO the assessee sought to produce evidence to prove that assessee has incurred certain expenses of Rs. 88,800/- and Rs. 3,70,740/- in the year 1998-99 though no bill for material was obtained by the assessee however a confirmation from the contractor

was filed who has constructed the building at that time was produced before the AO. The Ld. AO did not accept the same and calculated the long term capital gain disallowing the cost of construction in the case of property No. 2 of Rs. 3,70,740/- the reason given by the AO the said deed dated 26.8.2013 of property No. 2 does not identify the said property as a built up property rather it was mentioned at vacant land and now supporting evidence was filed by the assessee. Accordingly the addition on account of long term capital gain worked out Rs. 9,89,636/-. Ld. CIT(A) noted that assessee has sold a property for Rs. 12,54,000/- as per the sale deed property consist of plot of 167 sq. yard. The assessee's contention that the said property consisting of a shop and vacant land on which a shade was constructed however due to wear and tear the same was in bad condition and therefore in the sale deed it was shown as vacant plot. Assessee has claimed that he had constructed a shade for Rs. 3,70,740/- in the year 1998-99. During the course of the appellate proceedings assessee filed copy of additional evidences in the form of water bill and property tax notice cum bill dated 20.5.2016 which shows area of the plot as 200 sq. yard in which there was a construction . Ld. CIT(A) refused to admit the additional evidences on the ground that there were two separate properties and the sale deed there was no such construction and one of the property on the date of sale and if had there be any construction the value of the stamp duty purpose could have been included the value of such construction total value would have been increased. Accordingly he dismissed the assessee's appeal. Before us Ld. Counsel submitted that assessee has sought claim and has incurred cost of construction for construction of a shade which was a shop majoring 40 sq. yard in the sale deed it has been categorically mentioned that in the sale deed for property No. 2 which was sold at Rs. 12,54,000/- though there is no mention of shop but matter of fact

that there was a shop for which assessee has adduced ample evidence to prove before the authorities below that assessee has constructed a shop in the year 1998-99. Therefore matter can be restored back to the file of the AO to examine these additional evidences and decide in accordance with law. On the other hand Ld. DR strongly relied upon the order of the Ld. CIT(A) stating that Ld. CIT(A) has given detailed reasoning as to why said additional evidence cannot be admitted.

4. After considering the aforesaid submissions and on perusal of the relevant material placed on record I find that the only dispute is with regard to cost of construction on a sale of plot admeasuring 167 sq. yards of Rs.3,70,740/-.Before the AO assessee has submitted confirmation from the contractor who has constructed the building. Here in this case assessee has sold two properties one on sale price of on which AO has accepted and there was a shop and he has allowed sought cost of construction of Rs. 88,800/-. However he disallowed the cost of construction in the second property sold wherein assessee has claimed cost of construction of Rs. 3,70,740/-.

Before the Ld. CIT(A) assessee has filed following additional evidences :

- i. Photocopy of Water / Sewerage bill no. 37 (book no.443) (date not clear) in the name of Tilak Raj C/o Ajay Trading Co. (it is not mentioned in the bill as to where the said water was consumed),*
- ii. Photocopy of Notice-cum-bill of property tax dated 20.05.2016 (printed date 20.04.2016 which has been corrected by pen as 20 05 2016. in the respect of property no. 2007/31 in name of Sh. Teelraj, and*

- iii. *Photocopy of assessment register of Municipal Ward-24, Colony: ward-24 (02) for the year 2001-2002 to 2011-2012 on which it is mentioned that application for copy of this document was submitted on 02.05.2013 and copy was provided on the same date by the signature of tax Superintendent, Municipal Council, Jind.”*

5. From these additional evidences assessee has tried to demonstrate that there was some constructed property which was a kind of shop for which assessee was paying valid property tax and in the assessment register of proposal record it was shown that there was a property. Ld. CIT(A) has rejected this entire additional evidence giving weightage to the said deed wherein there is no mention of any building. Even though in the sale deed contractor has not been mentioned but if assessee is able to demonstrate that there was some construction which has become dilapidated and therefore it was not mentioned in the sale deed that does not mean that no structure stood there and assessee has not constructed any structure. The additional evidence filed by the assessee at least will prima facie go to show that assessee has structure which was constructed by him in the year 1998-99. Accordingly In the interest of justice I feel that this issue should be remanded back to the file of the AO who was excess additional evidences and reach to conclusion that whether any structure was constructed by the assessee or not. If assessee is being able to establish that he has constructed some structure then appropriate reliance can be given in the computation of capital gain in this direction.

6. In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28th March, 2019.

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 28/03/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi