

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No. 1366/Del/2019
Assessment Year: 2015-16**

Kamla Rani Flat No. 67/D-15, Sector-7, Rohini, Delhi. PAN No. AAJPR1165Q	vs	ITO Ward 37(1) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri P.D. Mittal, CA
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	01.08.2019
Date of Pronouncement	06.08.2019

ORDER

This appeal filed by the assessee is directed against the order dated 12.12.2018 of the Ld. CIT(Appeals)-13, New Delhi relating to AY 2015-16.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 21.12.2015 declaring total income of Rs. 2,02,892/-. During the course of assessment proceedings, the AO asked the assessee to substantiate the indexed cost of acquisition in relation to the property sold on which LTCG has been shown. Since, the assessee could not substantiate the evidence regarding the cost of redevelopment

expenses for calculating the indexed cost of acquisition the AO made an addition of Rs. 20,15,685/- out of the amount of Rs. 24,52,085/- claimed by the assessee. Similarly, the AO also made an addition of Rs. 9,11,677/- u/s 45 of the Income Tax Act. Thus, the AO determined the total income of the assessee at Rs. 31,30,254/-.

3. In appeal, the Ld. CIT(A) deleted the addition of Rs. 20,15,685/- made by the AO on account of cost of redevelopment expenses for which the Revenue is not in appeal. So far as the addition of Rs. 9,11,677/- made by the AO while working of the capital gains shown by the assessee is concerned, the Ld. CIT(A) gave part relief to the assessee by observing as under:

“The other addition of Rs. 9,11,677/- was on account of the working of the capital gains shown by the Assessing Officer. The additions resulting in this figure of Rs. 9,11,677/- included:

- 1. Brokerages of Rs. 2 lakhs which was in fact payment for construction of boundary wall.*
- 2. Cost inflation index taken by the Assessing Officer at Rs. 43,03,138/- instead of Rs. 47,13,174/- adopted by the appellant.*
- 3. The Assessing Officer disallowed the cost of construction of Rs. 3,99,973/- for non-submission of bills relating to construction.*

As regards the payment of Rs. 3,99,973/- it includes the following payments :

- | | |
|--|----------------------------|
| <i>i. Payment to Mr. Rakesh Nanda on account of brokerage for purchase of property</i> | <i>Rs. 1,15,000</i> |
| <i>ii. Registry charges</i> | <i>Rs. <u>1,15,000</u></i> |
| <i>Total</i> | <i>Rs. <u>2,30,000</u></i> |

The balance amount of Rs. 1,69,973/- was not supported by documentary evidence or proof during appellate

proceedings also. Hence, disallowance to the extent of Rs. 1,69,973/- is upheld.

4. Other expenses of Rs. 10,126 + Rs. 2,713 = Rs. 12,876 which were disallowed as bills were not provided according to the AO. It was found that payment of transfer duty, stamp duty, copying fee etc. were covered in the amount of Rs. 12,876/- which are supported by documentary proof. Hence, no addition is called for.

*In the light of the above discussion addition of Rs. 1,69,973/- is upheld. The balance amount stands **deleted.**"*

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

- 1. "That the Ld. AO as well as Ld. CIT(Appeal) gravely erred in disallowing construction expenses incurred during FY 2007-08 on the ground that the vouchers for the same is not available. The assessee has not maintained such vouchers.*
- 2. That the Ld. AO as well as Ld. CIT(Appeal) has failed to appreciate the evidence consisting (i) valuation report of M/s OBEROI & ASSOCIATES dated 18.03.2008, (ii) MCD house tax assessment order dated 05.09.2008, (iii) Conveyance Deed executed by DDA (iv) Registered Sale Deed dated 13.11.2013, in support of the construction expenses being Rs. 2,15,220/- incurred on the sold property during FY 2007-08.*
- 3. That the entire assessment order as well as appeal order is wrong, arbitrary, illegal, unjust against the fact as well as against the law."*

5. The Ld. Counsel for the assessee submitted that proper opportunity has not been given to the assessee to substantiate the expenses. He submitted that given an opportunity the assessee is in a position to substantiate the same with evidence to the

satisfaction of the AO or CIT(A) as the Bench deems it proper. He, accordingly, submitted that the issue may be set aside to the file of the AO/CIT(A) as the case may be.

6. The Ld. DR on the other hand, heavily relied upon the order of the CIT(A).

7. I have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A). I have also gone through the paper book filed on behalf of the assessee. I find the AO in the instant case made addition of Rs. 9,11,677/- u/s 45 of the I.T. Act by re-computing the capital gain out of which the Ld. CIT(A) has given part relief to the assessee, the reasons for which have already been reproduced in the preceding paragraphs. It is the submission of Ld. Counsel for the assessee that given an opportunity the assessee is in a position to substantiate the same with evidence to the satisfaction of the AO. Considering the totality and the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one more opportunity to the assessee to substantiate her case and decide the issue as per fact and law. Grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/08/2019

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 06/08/2019

*Kavita Arora

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	05.08.2019
Date on which the typed draft is placed before the dictating Member	05.08.2019
Date on which the typed draft is placed before the Other Member	06.08.2019
Date on which the approved draft comes to the Sr. PS/PS	06.08.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	06.08.2019
Date on which the fair order comes back to the Sr. PS/PS	06.08.2019
Date on which the final order is uploaded on the website of ITAT	06.08.2019
Date on which the file goes to the Bench Clerk	06.08.2019
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	

