

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 998/DEL/2019

A.Y.: 2013-14

VANDANA AWASTHI,
A-32, YARROWS APARTMENT,
PLOT NO. C-58/5, SECTOR-62,
NOIDA

UTTAR PRADESH – 201 309

(PAN: AISPA3588M)

(Appellant)

vs. ITO, WARD 53(5),
Room no. 1530, 15th floor,
Civic Centre, E-2 Block,
New Delhi – 110 002

(Respondent)

Assessee by : Sh. Arvind Kumar Awasthi (Husband of Assessee)

Department by : Ms. Ekta Vishnoi, Sr. DR.

ORDER

This appeal filed by the Assessee is directed against the Order dated 12.12.2018 of the Ld. CIT(A)-18, New Delhi pertaining to assessment year 2013-14 on the following grounds:-

1. That the learned CIT (A) has made a mistake in affirming the tax demand of Rs. 2,97,930.00 raised by the learned Assessing Officer under section 156 of the Income Tax Act.
2. That the order of the learned CIT(A) has not considered' the full facts and circumstances of the case in deciding upon the built-up area of the property and the fact of improvements in the built-up area.

3. That based on the facts and circumstances of the case, the learned CIT(A) is not justified in his observations in para 4.3 of the impugned order regarding curtailing the built-up area of the property from 411.10 square meters to 126.60 square meters. He has based his observations on the absence of a 'completion certificate' even though it is widely known that completion certificates are seldom obtained and preserved by normal owners of house property (intended for personal use) unless the owners are engaged in the business of sale and purchase of such capital assets. The fact that the construction was duly compounded by the competent Development Authority on 10.02.1993 should have been accepted as collateral evidence for the existence of the completed built-up area of the property. Compounding is a post facto event for which the evidence was duly produced before the learned Officer.

4. That the learned CIT(A) has made a mistake in para 4.3.1 of the impugned order by completely disregarding the valuation report prepared by a duly recognised Valuer. The contention that the built-up area had been partially demolished at the time of the sale deed does not negate the fact that the negotiated sale consideration of the property

was arrived at while the complete built-up area was still in place. Merely because the possession of the property was handed over to the buyer before signing of the sale deed does not negate the existence of the built-up area. Even otherwise the costs incurred by the Assessee and other co-owners of the property should be allowed either as the cost of acquisition or as the cost of improvement. Costs incurred in demolition of the partial built-up area have not been claimed by the Assessee. Indexed cost of acquisition has been allowed at Rs 6,98,148/- by the respective Assessing Officers in the case of other siblings namely Mrs Archana Mishra and Mr Gopal Dikshit.

5. That the learned CIT(A) has made a mistake in his observations in para 4.4 of the impugned order whereby the 1/5th share of the appellant of the indexed cost of improvement amounting to Rs 7,67,018/-, has been disallowed even though the relevant evidences for the same were produced before the learned CIT(A). After the demise of Mr and Mrs. A.P. Dikshit in years 2004 and 2007 respectively, some of these costs were incurred jointly by all the co-owners of the property. The Indexed cost of improvements of Rs 7,67,018 have been allowed by the respective assessing officers

of the other co-owners namely Mrs Archana Mishra and Mr Gopal Dikshit.

6. That the learned CIT(A) has ruled that that the bills of improvements furnished by the Assessee did not appear to be genuine as the same did not carry any sales tax registration number and the seat of the vendor even though it is widely known that minor works contracts are usually performed by unregistered vendors with limited turnover who do not satisfy the minimum turnover considerations for registration. The improvements claimed were consistent with the status of the deceased IAS officer and his family and are in no way disproportionate to the accepted living standards of persons in the relevant income bracket of pension/salary.

7. That the learned CIT(A) has wrongly stated in para 4.4.1 of his impugned order that one of the co-owners of the property namely Mrs Archana Mishra had not claimed her share of the cost of improvement of Rs 767018/- in her tax filing. This inference has probably arisen as the value of improvements has not been specifically mentioned in the order of the Assessing Officer under section 143(3). The said statement is not correct as the cost of improvements can be inferred by reducing

(i) indexed cost of acquisition of Rs 6,98,146/., (ii) deduction of Rs 66,76,000/- under section 54 and (iii) declared capital gain of Rs 58,836 from the sale value of Rs 82,00,000/-, as clearly recorded in the orders of the Assessing I. T. Officer dated 29/03/2016.

8. that on the facts and in the circumstances of the case, it is clarified that the subject property fell upon five siblings including the appellant and therefore this case should be assessed in the same manner as that of the other co-owners. Therefore, cost of acquisition and the cost of improvement incurred on the aforesaid property ought to have been allowed and should be dealt with in the same manner as the assessment Of other co-owners.

9. That the appellant's husband was a member of the Indian Audit and Accounts Service and retired as Deputy CAG on 30th April 2013. He has dutifully paid all his income tax dues on his Salary and later on his Pension after retirement. As a family, the appellant could be considered as fully compliant in the matter of income tax' dues. It is therefore extremely embarrassing for the appellant to repeatedly appeal against an unfair order on a senior citizen.

10. Any other ground or grounds as may be urged at the time of hearing.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. Assessee, Smt. Vandna Awasthi alongwith her husband, Shri Arvind Kumar Awasthi appeared in person. She stated that she is inherited 1/5th share in the house property in Dehradun, after the death of her mother in April, 2007. The property was sold to a builder M/s KRS Infrastructure in 8/2012 for Rs. 410 lakhs against a fair market value circle rate of Rs. 231.79 lakhs. She further stated that no dispute with the AO regarding land area, shares of siblings, valuation report of CBDT Valuer, building plan and maps approved by City Committee and Sale Deed. She further submitted that the dispute with the AO is only regarding extent of covered area of the inherited building and the improvements thereon, as claimed by the assessee in her income tax return. It was further submitted that similar averments on the same issue before Income Tax Department by her siblings have been accepted by the Income Tax Department. It was further submitted that AO has limited the construction area to 126.20 sqm documented in sale deed, by which time a substantial part of original built up area of 411.10 sqm had been demolished by builder. AO has disregarded the figures on constructed area certified by the CBDT approved Valuer and 1965 map of originally approved construction and two later compounding maps of 1966 and 1993 approved by the Town Building Committee. She further stated that AO has also refused to consider the indexed cost of six improvements to constructed area even though the same have been accepted in the case of her siblings. The assessee came into inheritance only after her mother's death in 2007 and the relevant share of costs of improvements in 2008-09 and 2011-12 was a minor figure of Rs. 1,49,674/- which was paid in cash in instalment which is adequately explained by her household savings and istridhan. She finally stated that

the AO as well as Ld. CIT(A) has not verified from the relevant contractors who were income tax assesses with PAN Nos. as well as from record of her siblings case regarding cost of improvement and decided the case of the assessee against her. In spite of the sufficient evidence filed by her before the authorities below. She has also filed the written submissions dated 03.9.2019 alongwith documents of the case i.e. Permission Letter of Building Construction; Sale Deed; Report of Valuation of Immovable Property (Other than Agricultural Lands, Plantations, Forests, Mines and Quarters); Corrigendum dated 4.11.2016; Assessment order dated 08.03.2016 of Sh. Gopal Dixit relevant to AY 2013-14; Assessment order dated 29.3.2016 of Mrs. Archana Mishra; Bill dated 12.3.86; Final Bill dated 23.3.1993; Bill dated 11.12.1998; bill dated 15.12.2004; bill dated 15.10.2011. Lastly she alongwith her husband submitted that all the documents/evidences were filed before the authorities below which have not been properly considered and wrongly made the addition in dispute, which was upheld by the Ld. CIT(A), hence, they requested that the appeal of the assessee may be accepted.

4. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that AO and Ld. CIT(A) has passed a well reasoned order on the basis of documentary evidences filed by the assessee, therefore, no need to interference is called for in the impugned order.

5. I have heard both the parties and perused the records, especially the impugned orders passed by the revenue authorities alongwith documentary evidences filed by the assessee in the shape of Paper Book in which the assessee has attached the copy of written submissions dated 03.9.2019 alongwith documents of the case i.e. Permission Letter of Building Construction; Sale Deed; Report of Valuation of Immovable Property (Other than Agricultural Lands, Plantations, Forests, Mines and Quarters); Corrigendum dated 4.11.2016; Siblings record i.e.

Assessment order dated 08.03.2016 of Sh. Gopal Dixit relevant to AY 2013-14; Assessment order dated 29.3.2016 of Mrs. Archana Mishra; Bill dated 12.3.86; Final Bill dated 23.3.1993; Bill dated 11.12.1998; bill dated 15.12.2004; bill dated 15.10.2011, which were submitted with the revenue authorities, but were not properly appreciated and examined by them while deciding the case of the assessee. In view of above, I set aside the issues in dispute to the file of the AO with the directions to decide the same afresh, after considering each and every document/evidence filed by the Assessee and give an adequate opportunity of being heard to the assessee. Assessee is also directed to fully cooperate with the AO in the proceedings and file any document/evidence before him to substantiate her case and did not take any unnecessary adjournment.

6. In the result, the Appeal of the assessee is allowed for statistical purposes.

Order pronounced on 31-10-2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date:31/10/2019

SRB

Copy forwarded to: -

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches