

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1309/DEL/2017 (A.Y. 2012-13)

Geeta Narang, 2768, Gali Arya Samaj, Bazar Sita Ram Delhi – 110 006. (PAN : AAGPN 2450 D) (APPELLANT)	Vs	ACIT Circle – 46(1), New Delhi (RESPONDENT)
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Appellant by	Sh. Ved Jain, Adv.
Respondent by	Sh. S. N. Meena, Sr. D.R.

Date of Hearing	26.11.2019
Date of Pronouncement	03.12.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order of the Commissioner of Income Tax [Appeals]-16, New Delhi dated 20.12.2016 for Assessment Year 2012-13.

2. The Grounds of appeal are as under :-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
- 2(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in accepting the cost of construction to the extent of 75% of the value of property estimated by the registered valuer.*
- (ii) *That once accepting in principle that the cost of construction has in fact been incurred, the learned CIT(A) has erred in estimating the same to the extent of 75% of value estimated by the registered valuer.*

- (iii) *That the learned CIT(A) has erred in estimating the 75% of the value estimated by the registered valuer without there being any basis for the same.*
- (iv) *That the learned CIT(A) has erred in taking 75% of the value estimated by the registered valuer, without pointing out any specific discrepancy in the said report.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in disallowing an amount of Rs.5,00,000/- on account of commission on sale of property paid by the assessee, while computing income under the head 'capital gains'.*
4. *Without prejudice to the above and in the alternative, the learned CIT(A) has erred in not giving assessee the benefit of exemption under section 54 of the Act to the extent of Rs.2,13,23,510/- being the investment made in the residential property.*
5. *The appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. The assessee is an individual deriving income under the head "income from business", "income from capital gains" and "income from other sources". The assessee filed return of income for A.Y. 2012-13 on 31.03.2014 declaring an income of Rs.42,31,790/-. Thereafter, the case of the assessee was selected for scrutiny and notice u/s 143(2) of the Income Tax Act was issued to the assessee. During the year under consideration, the assessee sold a property situated at Okhla Industrial Area for a consideration of Rs.2.7 crore and earned capital gains of Rs.1,29,95,449/-. Out of the sale proceeds, the assessee brought a flat in Noida on 16.07.2012 for a total consideration of Rs.50,00,000/- and a flat in Gurgaon on 12.11.2012 for a total consideration of Rs.2,13,23,510/-. The Assessee claimed deduction u/s 54F of the Act for both the properties and tax was paid on the remaining amount of Rs. 35,54,080/-. Further, with the cost of acquisition of the property situated in Okhla Industrial Area, the assessee claimed construction expenses of Rs.63,76,658/-.

During the course of assessment proceeding, the Assessing Officer asked the assessee to produce evidence to support the construction expenses as claimed by the assessee. In response to which, the assessee filed a reply dated 05.02.2015, stating therein that the records prevailing to the A.Ys. 2002 to 2006 were not available with the assessee. The assessee submitted the copies of purchase deed of the said property i.e. Okhla Industrial Area property. The assessee before the Assessing Officer submitted that as per the sale deed of the said property, it is clearly evident that the assessee sold a constructed property to M/S Mir Handicrafts Pvt. Ltd. in Feb. 2012 after completing the construction. Therefore, the assessee got construction done on the said plot after acquiring it. The Assessing Officer held that since there is no documentary evidence for claiming aforesaid construction expenses and made addition to that extent. The Assessing Officer further made addition of Rs.5,00,000/- on account of commission paid on sale of property. The said disallowance was made in respect of purchase and sale transaction of the flat at Gurgaon and Industrial property situated at Okhla Industrial Area which were done through the same property dealer. The Assessing Officer has not given exemption u/s 54 to the extent of Rs.2,13,23,510/- as exemption u/s 54F is not available for the investments in property made through borrowed funds. The said investment was made partly through own funds to the extent of Rs.44,41,369/- and partly through borrowed fund to the extent of Rs.1,68,82,141/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that as regards Ground No.2, the assessee had purchased a plot measuring 200 sq. Mtrs. and sold a built-up property comprising the total plinth area of 525 Sq. Mtrs. The Assessing Officer, if had any doubt in the value of construction as adopted by the assessee then the Assessing Officer could have referred the matter to a valuation officer under

Section 142A of the Act for determining the cost of construction. Alternatively, Ld. AR submitted that the Assessing Officer could have given opportunity to the assessee to arrange a valuation report from a registered valuer so as to justify the construction cost as claimed by the assessee. The Ld. AR submitted that a copy of valuation report as an additional evidence prepared by the accrued valuers clearly states that the total value was computed to Rs. 62,05,000/-. After considering the valuation report, the CIT(A) asked for the comments from the Assessing Officer on the report. However, the Assessing Officer chose not to say anything on the merit of the valuation report. However, the CIT(A) also disregarded the submissions of the assessee and accepted 75% of the value as determined by the registered valuer, i.e., Rs. 46,53,750/- and rejected the cost of construction as claimed by the assessee. There is no dispute in the fact that the assessee got construction done on the plot situated in Okhla Industrial Area. The same is evident from the sale deed. Therefore, the Ld. AR submitted that for completing the above construction certain cost was incurred which rightly claimed by the assessee while calculating capital gain. The Ld. AR further submitted that the registered valuer worked out the construction cost of Rs.62,05,000/- for the approved/permissible area within MCD by-laws i.e. 3,873.6 sq.ft. whereas the actual construction by the assessee is much more than that. The Ld. AR submitted the details of the valuation report. The Ld. AR further submitted that the actual cost incurred by the assessee is much more than specified in the valuation report as the valuer himself has accepted the fact that the actual area of construction by the assessee is much more than the permissible limits of MCD which justifies the cost of construction incurred by the assessee. The Ld. AR further submitted that the assessee was issued a completion certificate by Delhi Nagar Nigam on 10.12.2003 stating therein that the construction work done by the assessee on the industrial plot is completed and declared it to be ready to use. The Ld. AR submitted that once the CIT(A) accepted the value of the construction cost to the extent of 75% of the estimated value calculated by the registered valuer without any basis is bad in law and liable to be deleted.

6. The Ld. DR submitted that the CIT(A) has rightly held that some amount of investment has taken place in the construction of the property and therefore, rightly directed the Assessing Officer to re-compute the capital gain by accepting 75% of the value estimated by the Registered Value.

7. We have heard both the parties and perused all the relevant materials available on record. Since the CIT(A) has already accepted the fact that there was a construction and has not doubted the valuation report of the Registered Valuer. Thus, the Assessee before the Assessing Officer has given the construction cost and the details while incurring the same. Therefore, the same cost cannot be estimated and cannot be disallowed. The evidences show that there is a construction cost incurred by the assessee and through the records the same was properly valued by the Registered valuer. Therefore, the estimation done by the CIT(A) is not justified in absence of any contrary material before the Assessing Officer as well as before the CIT(A). Therefore, we set aside the directions given by the CIT(A). Ground No.2 is allowed.

8. As regards to Ground No. 3 relating to disallowance of Rs.5,00,000/- on account of commission paid on sale of property, the Ld. AR submitted that usually for carrying out any purchase and sale transactions in the case of property, an agent is hired and the same is a common practice. The Ld. AR submitted that the range of commission in such type of business varies from 1% to 2%, therefore, the payment of commission in the case in hand is very reasonable commission amounting only to 0.1590% and therefore claim of the assessee cannot be denied.

9. The Ld. DR relied upon the assessment order as well as the order of the CIT(A).

10. We have heard both the parties and perused all the relevant materials available on record. As regards commission paid, the assessee has not given any documentary evidence as regards to the payment made to the so-called agent. The evidence was not before the Assessing Officer as well as before the CIT(A). Therefore, in absence of any evidence, the CIT(A) has rightly confirmed this addition on account of commission expenses. Ground No.3 is dismissed.

11. As regards Ground No.4, in respect of disallowance of exemption u/s 54 of the Act to the extent of Rs.2,13,23,510/-. The Ld. AR submitted that the assessee sold Industrial property situated at Okhla for Rs.2.7 Crores. However, to claim the benefit of exemption u/s 54F of the Act the assessee purchased a flat at Gurgaon for Rs.2,13,23,510/- within the stipulated time as mentioned in Section 54F of the Act. However, the said investment was made partly through own funds and partly through borrowed funds. Thus, the total eligible deduction u/s 54F is Rs.2,13,23,510/- instead of Rs.44,41,369/- as acquired by the assessee in the return of income. The assessee submitted certain documents for claiming the additional deduction amounting to Rs.1,68,82,141/- which was not at all considered by the Assessing Officer as well as by the CIT(A).

12. The Ld DR submitted that exemption u/s 54F is not available for the investments in property made through borrowed funds. The Ld. DR further submitted that the sold property is having more value earned by the assessee than the purchase property. Therefore, making a submission that the investment in property is made through borrowed fund does not sustain and the CIT(A) rightly rejected this plea.

13. We have heard both the parties and perused all the materials available on records. From the perusal of records, it can be seen that the assessee submitted certain documents before the Assessing Officer and the CIT(A) in respect of claiming benefit of exemption u/s 54F of the Act. The fact remains

that the assessee sold property situated at Okhla and purchased a flat at Gurugaon. Whether the transaction of purchase is from borrowed fund or through own funds has not been properly verified by the Assessing Officer or the CIT(A) before rejecting the assessee's said claim u/s 54F of the Act. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer to decide this issue a fresh after taking into consideration all the documents pertaining to sale and purchase of the properties and determine whether the investment is made either through borrowed fund or own fund. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purpose.

14. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 3rd day of December, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 03/12/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI