

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA.No3383/Del/2017
Assessment Year: 2008-09**

**Shri Raman Kumar Kapur,
Prop. Ramtex Overseas Corp.
9, Raj Niwas Marg, New Delhi**

vs.

**ACIT, Circle 36(1),
New Delhi.**

PAN AAJPK 1989M

(Applicant)

(Respondent)

Appellant by: None

Respondent by: Sh. Surender Pal, Sr. Dr.

Date of hearing: 03/12/2019

Date of order : 13/12/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 31/3/2017 in appeal No. 300/10-11/108/14-15 passed by the learned Commissioner of Income Tax (Appeals)-12, New Delhi ("Ld. CIT(A)") for the assessment year 2008-09, Sh. Raman Kumar Kapoor ("the assessee") filed this appeal.

2. Brief facts of the case are that the assessee is engaged in the business of export of home fabrics and also income from house property. He is also

the proprietor of M/s Ramtex Overseas Corporation. For the assessment year 2008-09, he had filed his return of income on 30/9/2008 declaring an income of Rs. 37,33,520/-. During that year the assessee sold a house at Garden Estate on 10/3/2008 for Rs. 2,26,00,000/-and while calculating the capital gain, he claimed the improvement cost at Rs. 53,98,500/-and transfer expenses at Rs. 2 Lacs. Assessee further claimed the deduction of interest paid on housing loan claimed as cost of acquisition when he sold the house at Pinnacle and 20/9/2007 for Rs.1,56,28,246/-.

3. According to the learned Assessing Officer, when required, assessee failed to furnish any bill or documentary evidence in support of the claim for improvement cost or for transfer expenses. Learned Assessing Officer, therefore, inferred that the expenses and improvement cost were claimed just to reduce taxable income from capital gain. On this premise learned Assessing Officer computed the capital gain on the house at Garden Estate at Rs. 63,67,976/-as against the declared amount of Rs. 7,69,476/-and added an amount of Rs.55,98,500 to the income of the assessee.

4. So also, in respect of the house at Pinnacle , the observations of the learned Assessing Officer are that when confronted on the point of interest paid on housing loan, assessee failed to furnish any details or documents in support of the claim, and therefore, learned Assessing Officer computed the capital gain on house at Garden Estate at Rs.16,14,940/-as against the loss of Rs. 9,15,17/-shown by the assessee and made an addition of Rs. 25,30,650/-as capital gain.

5. Aggrieved by these two additions, assessee preferred appeal before the Ld. CIT(A). It was stated by the assessee before the Ld. CIT(A) that at the

time of making the sale of the house at Garden Estate, it was decided by seller and purchaser that a seller will make improvement to the property before registration of the same. It was not in dispute that the assessee had become owner of the property at the Garden estate by name "Estate Green" by registration on 17/02/2006, which he sold under sale deed dated 10/3/2008. Ld. CIT(A) perused the sale deed and found that there is no mention of any improvement done or to be done or agreed by the seller and purchaser that the seller will make some improvement in the house property. On the other hand, it was found that the vendee, namely, Sh. Amitabh Jhingan agreed to bear all the expenses and outgoings for completion of transfer of the property including stamp duty, registration and the like. Sale deed doesn't support the contention of the assessee inasmuch as it does not contain any recital as to the improvements to be made by the assessee to make the property sellable.

6. Ld. CIT(A) also considered the bill dated 15/2/2008 which was the final bill and observed that there is no independent bill for purchase of various items and the assessee failed to submit any initial bills for the renovation work being carried out whereas the payments were made on various dates starting from 10/7/2007 to 31/3/2008. The payments were not supported by TDS. On an examination of the material before her, Ld. CIT(A) reached a factual finding that the claim made by the assessee was not genuine and was fabricated only to reduce the amount of capital gain, and it seriously lacks credibility.

7. In respect of the sale of property at Pinnacle and consequent capital gains, Ld. CIT(A) noticed that the assessee sold such property on 20/9/2007 for Rs. 1,56,28,246/-and claimed interest paid on housing loan as cost of

acquisition while computing the capital gain. According to the Ld. CIT(A) no detail or document was available to support the claim for transfer of expenses at Rs. 1,93,400/-.

8. The findings of fact by the Ld. CIT(A) go to show that the assessee had entered into an agreement dated 30/7/2004 for purchase of apartment at a Pinnacle with car parking by paying Rs.1,17,75,246/-towards the cost up to 31/5/2006; that he sold the property to Mr Yogesh Suri and Mrs Rupa Suri and 20/9/2007; that the assessee claimed that he sold the property before taking over the possession of the property and, therefore, interest is allowable as cost of acquisition; that the assessee claims to have sold the flat at Pinnacle on 20/9/2007; that he claims to have the flat on 30/7/2004, but never produces the copy of allotment letter from DLF and the money receipt of DLF dated 14/1/2004 shows that the money was received against provisional allotment; that the assessee never produced any allotment letter by DLF or apartment buyers agreement with the DLF; that the assessee entered into an agreement to sell dated 13/5/2005 with Mrs Geetu Singh for sale of his apartment; that the assessee has also not produced the copy of agreement to sell with the Sh. Yogesh Suri and Mrs Rupa Suri for sale of plot; and that, therefore, the assessee has not established that his is a case of Long Term Capital Gain (LTCG). Ld. CIT(A), therefore, confirmed the assessment order and dismissed the appeal.

9. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned with the endorsement of the postal servant that the addressee left. If the assessee is available in such address, such notice should have been served on the

assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are the considered opinion that no time could be granted. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

10. Record reveals that the assessee did not produce any evidence before the authorities below in support of his contentions on the Long-Term Capital Gain (LTCG) in respect of both the properties. The categorical finding of the Ld. CIT(A) is that the claim made by the assessee is not genuine and is fabricated only to reduce the amount of capital gain. She reached such a conclusion basing on the conduct of the assessee in not producing even an iota of evidence in support of his claim. In the absence of any evidence to establish that there is sufficient compliance with the letter of law, is not possible for the authorities to allow the claim for LTCG.

11. Even before us also there is no appearance for the assessee nor any production of any evidence in support of the contentions of the assessee that were taken before the authorities below. For paucity of evidence we find it difficult to take a different view from the view taken by the Ld. CIT(A). We accordingly do not find any merits in this appeal and the same is liable to be dismissed.

12. In the result, appeal of the assessee is dismissed.

Pronounced in open court on this the 13th December, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 13/12/2019
'aks'

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI