

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 1211/DEL/2018
[Assessment Year: 2010-11]

UMESH CHAND BHARGAVA, Vs. ITO, WARD-2(4),
507/3, MANGAL PANDEY NAGAR, MEERUT
MEERUT,
UTTAR PRADESH
(PAN: AAYPB1366Q)
[Appellant] [RESPONDENT]

Assessee by: Shri Rohit Aggarwal, CA
Revenue by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax [Appeals], Meerut dated 14.12.2017 pertaining to assessment year 2010-11 on the following grounds:-

1. That the authorities below, the AO and the CIT(A), have proceeded on incorrect facts and have erred in holding that the assessee's share in the impugned property is 1/3rd and not 1/4th as claimed by the assessee.
2. That the exemption / deduction u/s. 54EC has been short allowed and the authorities below have erred in computing / confirming the deduction in respect of investment in bonds amounting to Rs. 24,00,000/- u/s. 54EC with reference to Stamp Duty valuation while it ought to have been allowed with reference to net consideration received.

3. That the authorities below have erred in assessing / confirming the amount of taxable capital gain at Rs. 21,16,450/- as against capital loss of Rs. 5,22,975/- as returned by the assessee.
4. That alternatively but without prejudice the Taxable Capital Gain as computed / confirmed by the lower authorities below at Rs. 21,16,450/- as against capital loss of Rs. 5,22,975/- is highly excessive.
5. That the authorities below have erred in computing / confirming the capital gain on the basis of stamp duty valuation u/s. 50C instead of actual consideration which was settled in court proceedings between the three vendors and their other brother Vinod Prakash Bhargava in course of civil suit proceedings in respect of the impugned properties which was an ancestral property and was a subject matter of litigation. Section 50C in substance even did not apply to the facts of the case.
6. That the authorities below have not appreciated the fact correctly and the several observations as made and inferences as drawn are grossly misconceived and even factually incorrect.

2. At the time of hearing, Ld. Counsel for the assessee stated that the Revenue Authorities have not given sufficient opportunity to the assessee for substantiating the claim. He requested that assessee is having all the documentary evidences which he has filed

in the shape of 02 paper books before this Tribunal one is containing pages 1-78 and another is containing pages 1-75. Hence, he requested that the issues in dispute may be aside to the AO to decide the same afresh, as paw law, after giving adequate opportunity of being heard to the assessee.

3. On the contrary, Ld. DR relied upon the orders passed by the revenue authorities.

4. I have heard both the parties and perused the orders of the revenue authorities alongwith the 02 paper books one is containing pages 1-78 in which assessee has attached the photocopy of submission dated 06.12.2017 as filed before the Ld. CIT(A) during appeal proceedings; photocopy of submissions dated 12.8.2017 as filed before the AO during the assessment proceedings; photocopy of the sale deed dated 27.8.2009 as filed before the AO as well as Ld. CIT(A) and photocopy of Certificate of Capital Gain Bond of NHAI alongwith its receipts as filed before the AO as well as Ld. CIT(A) and the second paper book which is containing pages 1-75 having the copies of various judgments/ decision of the Tribunal and Hon'ble High Courts. I find considerable cogency in the contention of the Ld. Counsel for the assessee that revenue authorities have not given sufficient opportunity to the assessee for substantiating the claim. However, the assessee is in possession of all the documentary evidences filed before the Tribunal in the shape of paper books as discussed above. Therefore, in the interest of justice, the issues in dispute are set aside to the file of the Assessing Officer to decide the same afresh, after giving adequate opportunity of being heard to the assessee, after considering all the documents and case laws to be filed by the assessee. Assessee is directed to fully cooperate with the Assessing Officer during the

hearing and produce all the documentary evidences in his possession to substantiate his case.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 03.02.2020.

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

Dated:03-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi