

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH,
JODHPUR**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL ACCOUNTANT MEMBER**

**ITA No. 426/JODH/2018
(Assessment Year 2008-09)**

Surendra Kumar Mathur, Kuldip Vihar, Pal Road, Jodhpur.	Vs.	I.T.O., Ward 3(1) Jodhpur.
PAN No. AKBPM 1606 K		

Assessee by	Shri Amit Kothari CA & Shri Abhinav Kothari CA
Revenue by	Shri K.C. Badhok, CIT-DR
Date of Hearing	06.11.2020
Date of Pronouncement	29/01/2021

ORDER

PER BENCH :

This is the appeal filed by the assessee against the order of the Id. CIT(A)-1, Jodhpur dated 16/07/2018 for the A.Y. 2012-13, wherein the assessee has raised following grounds of appeal:

- “1. *The Id. CIT(A) has erred in partly not allowing deduction for cost of improvement incurred in FY 1991-92 at 2,12,500/- out of total claim of Rs. 8,50,000/-.*
2. *The Id. CIT(A) has further erred in partly not allowing deduction for cost of improvement incurred in FY 2001-02 at 1,06,250/- out of total claim of Rs. 4,25,000/-.*
3. *The Id. CIT(A) has erred in sustaining the addition of Rs. 3,35,554/- on account of fair market value U/s 50C of the Act. The declared sale consideration deserved to be taken for computing long term gain.*

4. *The addition sustained in long term capital gain is bad in law and bad on facts.*
5. *The appellant craves liberty to add, amend, alter and modify any of the ground of appeal on or before its hearing before you Honour."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In Ground No. 1 and 2 of the appeal, the assessee had challenged the action of Id. CIT(A) in partly not allowing the cost of construction incurred in F.Y. 1991-92 at Rs. 2,12,500/- and in F.Y. 2001-02 at Rs. 1,06,250/-. The assessee had sold a property for Rs. 61,00,000/- during the year against which he had claimed cost of purchase and further cost of improvement incurred during F.Y. 1991-92 at Rs. 8,50,000/- and in F.Y. 2001-02 at Rs 4,25,000/-. The AO allowed deduction for only the cost of purchase of property but did not allow any deduction for the cost of improvement incurred by the assessee.

4. In the first appeal, the Id. CIT(A) observed that the assessee had received this property after death of his father. When his father had purchased the said property, the construction was only 200 sq. fts. and when the property was sold the total construction area was 1624 sq.fts. which is evident from the original registered purchase and sale deed, therefore the AO was not justified in rejecting the claim of the cost of improvement claimed. The property was purchased in the year 1991 and the perusal of both the

registered deed indicate that the constructed building was very old and one portion had been demolished and renovation work was started. The assessee's father had to get the renovation work done soon on purchase of the property and therefore the cost was required to be incurred. The Id. CIT(A) also appreciated the contention of the assessee that on account of paucity of funds the further renovation work was again started in the year 2001 and some cost of the renovation therefore needs to be considered. However, considering the overall facts and circumstances and in absence of absolute material with the appellant, the CIT(A) hold that a disallowance of 25% out of the cost of construction claimed in both these years be sustained and he deleted the remaining addition and part relief was being allowed.

5. After due consideration of the matter, we find that the Id. CIT(A) on facts had rightly pointed out that there is substantial renovation and construction work being carried out if the two registered sale deed are being compared and therefore the cost of improvement was definitely incurred in relation to the property sold. In these circumstances we see no justification in partly sustaining the addition so made, and we therefore direct to delete the part addition of Rs. 2,12,500/- sustained in F.Y. 1991-92 and Rs. 1,06,250/- sustained in F.Y. 2001-02.

6. In ground no. 3 of appeal, the assessee had challenged the substitution of sale consideration by invoking section 50C and making addition of Rs. 3,35,554/-. The AO had taken the fair market value of the property at Rs. 63,35,554/- on the basis of value as determined for stamp duty purposes as against actual sale consideration received at Rs. 61,00,000/-. The CIT(A) sustained the said addition in view of section 50C which provides that stamp valuation adopted should be taken as fair market value for computation of capital gains.

7. After careful consideration of the matter, we find that there is minor difference of Rs. 2,35,554/- which is 3.86% of the sale consideration. The provisions of section 50C had been amended realizing the practical difficulties in adopting the valuation as per stamp duty valuations in section 50C and it is provided that if the variation is upto 5% the valuation as declared would not be disturbed. In the case of the assessee the same is less than 5% and therefore the declared valuations deserve to be accepted. Such clarificatory amendments needs to be applied retrospectively as held by the Hon'ble Supreme Court in the case of **Allied Motors P. Ltd. reported in 224 ITR 677 (SC) and CIT v. Alom Extrusions Ltd. 319 ITR 306 (SC)**. In view of above legal position and the facts of the case, the sale consideration be

adopted at Rs. 61,00,000/- as against Rs. 63,35,554/- adopted for assessing the long term capital gains.

8. In the result the appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962 by placing the details on the notice board.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Jodhpur

Dated 29/01/2021

*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench