

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

*(through web-based video conferencing platform)*

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No. 283/Ind/2019**

**निर्धारण वर्ष/ Assessment Year : 2015-16**

Shri Nirbhay Singh Rathore, 65C, Sector-B, Slice No.6, Scheme No.78, Indore (MP)-452010 PAN : ADXPR 5639 Q	Vs	Deputy Commissioner of Income-tax-3(1), Indore, MP
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Pankaj Shah, AR
Revenue by :		Shri Amit Kumar Soni, Sr DR

सुनवाई की तारीख/Date of Hearing : 08/11/2021  
घोषणा की तारीख /Date of Pronouncement: 15/11/2021

**आदेश/O R D E R**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income-Tax (Appeals)-I, Indore dated 22<sup>nd</sup> January 2019 passed for Assessment Year 2015-16.

2. The solitary grievance of the assessee is that the learned CIT(A) has erred in not considering Rs.15,00,000/- as part of sale consideration for the purpose of computing capital gain.

3. The brief facts of the case are that the assessee has filed his return of income on 26.08.2015 declaring total income at Rs.16,55,150/-. On scrutiny of the account, it revealed to the Assessing Officer that the assessee has sold

an immovable property and admitted capital gains of Rs.97,35,000/- . He claimed indexed cost of acquisition at Rs.12,80,000/- and indexed cost of improvement at Rs.25,20,236/-. These aspects are not in dispute; therefore, we do not deem it necessary to make reference of the same. The dispute is the total capital gains admitted by the assessee contains Rs.82,35,000/- representing sale consideration for the plot and Rs.15,00,000/- representing the sale of scrap, i.e. sale of old furniture, iron, sanitary-ware etc... The case of the assessee is that he had constructed a three story house on the plot in dispute after taking due approval from the competent authorities. However, the vendee put a condition that he should be handed over the vacant plot after demolition of the house/building. Accordingly assessee demolished the building and sold the scrap arising from demolition of structure for Rs.15,00,000/-. Thus, the assessee has included this Rs.15,00,000/- in the gross receipt for the purpose of computing capital gains. The stand of the Assessing Officer is that this Rs.15,00,000/- is to be assessed as income from other sources and could not be included in the component of the sale consideration of the house.

4. With the assistance of learned representatives, we have gone through the record carefully. Learned Counsel for the assessee read over the sale deed and apprised us that the three story house was standing on the plot in dispute. It was demolished and thereafter sold for consideration of Rs.82,35,000/-. The scrap of the demolished structure of building has also been sold for a consideration of Rs.15,00,000/- . We have also been apprised that this construction was raised after obtaining due permission from the competent authorities as mentioned in the description of the property contained in the sale deed. The scrap of building material is to be treated as

integral part of the capital asset, i.e. building; and the sale consideration of such scrap would partake the character of the total sale consideration received by the assessee on sale of a building. When assessee has raised this plea, the Assessing Officer has recorded the following finding while rejecting the contention of the assessee:-

*“The explanation of the assessee is found to be not acceptable and the income from sale of scrap is treated as income from other sources and taxed accordingly. I am satisfied that, the assessee has furnished inaccurate particulars of its income and concealed income thereof, hence, penalty proceedings u/s 217(1)(c) of the Income Tax Act, 1961 are initiated in the matter.*

*Addition : Rs.15,00,000/-”*

This finding has been confirmed by the learned First Appellate Authority. A perusal of the above would reveal that there is no specific reasoning contained in this finding as to why the claim of the assessee should be rejected. The learned Assessing Officer simply wrote that the explanation of the assessee is found to be not acceptable, but it is nowhere discernible in the assessment order as to why the explanation of the assessee is not acceptable. Therefore, considering the facts and circumstances of the case, we are of the view that the sum of Rs.15,00,000/- received by the assessee on sale of scrap of the building is treated to be the sale consideration of the capital asset and to be included in the total consideration for computing the Long Term Capital Gains. The finding of the Assessing Officer which has been confirmed by the leaned CIT(A) is set aside. We accordingly allow the appeal of the assessee and direct the Assessing Officer to include Rs.15,00,000/- in the total sale consideration received by the assessee for sale of capital asset, i.e. building, and thereafter calculate the capital gains, if any, assessable in the hands of the assessee.

5. In the result, the appeal of the assessee is allowed.

Pronounced on 15.11.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

Dated 15 /11/2021

*Dr*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

Sd/-

**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Indore