

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.2900/Del/2019
Assessment Year: 2013-14

Ram Gupta, 120-A 2 nd Floor, Old Gupta Colony, New Delhi – 1100 07	Vs.	ITO, Ward-40(5), New Delhi.
PAN :ALCPG4719M		
(Appellant)		(Respondent)

Appellant by	S/Shri Ajay Agarwal & Saurabh Agarwal, CA
Assessee by	Shri Ram Dhan Mehta, SR. DR

Date of hearing	19.05.2022
Date of pronouncement	19.05.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 29.01.2019 of learned Commissioner of Income Tax (Appeals)-14, New Delhi for the assessment year 2013-14. The only effective ground raised by the assessee reads as under:

1. That the Ld. CIT(A) erred on facts and on law by confirming addition of Rs.73,47,462/- on account of claim of cost of improvement inspite the fact that the sufficient document were already submitted before the Assessing Officer to prove the genuineness of the cost of improvement.
2. Briefly, the facts are, the assessee is a resident individual. In the previous year, relevant to the assessment year under dispute, an immovable property, wherein, assessee was one of the co-owners and was holding 1/4th share was sold and assessee received his share of Rs.1,85,00,000. While computing capital gain, assessee claimed indexed cost of improvement of Rs.44,70,068. In course of assessment proceedings, assessing officer called upon the assessee to furnish details of sale of immovable property and justify the claim of indexed cost of improvement. Based on information received from the assessing officer of another co-owner viz. Shri Shyam Gupta, the assessing officer found that in the case of said co-owner, indexed cost of improvement was declared at Rs.4,07,48,384 and 1/4th share of each co-owner works out to Rs.1,01,87,096. Further, he found that as per valuer's report, the permissible FSI of the construction was 200, whereas, the assessee had utilized 312. Thus, the valuer computed the

indexed cost of improvement at Rs.1,13,58,539. 1/4th share of the assessee thereof being Rs.28,39,634, the assessing officer held that the assessee is eligible for deduction of indexed cost of improvement to the extent of Rs.28,39,634 against the alleged claim of Rs.1,01,87,096. Accordingly, he added back the differential amount of Rs.73,47,462. Assessee contested the aforesaid addition before learned First Appellate Authority. Though, learned Commissioner (Appeals) was convinced with the submissions of the assessee that the actual addition on account of indexed cost of improvement which should have been made by the assessing officer is to the tune of Rs.20,20,434, however, he did not allow any relief to the assessee on the reasoning that it is apparently a rectifiable mistake falling under Section 54F of the Act, hence, requires verification of record at the end of the assessing officer. Accordingly, he directed the assessing officer to take necessary action after verification of record.

3. Before us, learned counsel for the assessee reiterated the stand taken before learned First Appellate Authority. Whereas, learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

4. We have considered rival contentions and perused the record.

5. From the material placed before us, it is evident, while computing capital gain arising from sale of immoveable property, assessee had claimed indexed cost of improvement amounting to Rs.44,70,068. Relying upon information obtained from the assessing officer, as it appears on record, the Assessing Officer has presumed that the assessee has claimed indexed cost of improvement of Rs.1,01,87,096. Therefore, while adopting the indexed cost of improvement determined by the valuer at Rs.28,39,634, assessing officer has added back an amount of Rs.73,47,462 to the income of the assessee, being the difference between the indexed cost of improvement allegedly claimed by the assessee at Rs.1,01,87,096 and indexed cost of improvement determined by the valuer at Rs.28,39,634. It is the contention of the assessee before us that the assessee had never claimed indexed cost of improvement at Rs.1,01,87,096 but has claimed it at Rs.44,70,068. Therefore, addition if any, has to be made by reducing the amount of Rs.28,39,634 from the indexed cost of improvement claimed by the assessee at Rs.44,70,068. At this stage, it would be necessary to look at the

following observations of learned Commissioner (Appeals) on the issue:

“8. As regards, the claim of transfer expenses of Rs.3,70,000/- there is no mention of the same in the grounds of appeal. As regards, the cost improvement, the indexed cost of improvement was claimed of Rs.44,70,068/- in the return of income. At the assessment stage the claim was modified and deduction of indexed cost of improvement was increased to Rs.1,01,87,096/-. It was claimed that the house was re-constructed in F.Y. 1999-2000 but no evidence of the cost of said re-construction was furnished. A valuation certificate was filed which had certain discrepancies as discussed on second last page of the assessment order. The A.O accepted total indexed cost of improvement of Rs.1,13,58,539/- for all the 4 co-owners with assessee's share being Rs.28,39,634. The claim of Rs.28,39,634/- was allowed against the claim by assessee in the return of Rs.44,70,068/- being indexed cost of improvement and Rs.3,70,000 being claimed transfer expenses. Therefore, the actual addition in computation should have been of Rs.20,00,434/- ($44,70,068 + 3,70,000 - 28,39,634$). The said addition is confirmed for want of any submission with evidence on the part of the appellant. The AO has however made an addition in computation of Rs.73,47,462, which appears to be incorrect as the assessment order itself mentions that the excess claim of indexed cost of improvement was made during the assessment proceedings. So while the actual disallowance by the AO, which is being contested by the assessee, is of Rs.73,47,462/-. In the computation of income addition of only Rs.20,20,434/- should have been made. However, this issue falls under the domain of section 154 of the I.T. Act. In the grounds of appeal, the assessee has contested the disallowance of Rs.73,47,462/- which includes the additional made of assessment stage and disallowed. Considering the same, as far as ground no. 2 is concerned, the said ground is dismissed and disallowance of Rs.73,47,462/- is confirmed. The issue as to whether, the correct amount to be

added should be Rs.20,20,434/- or Rs.73,47,462/- falls under the domain u/s 154 of the I.T. Act and requires verification of records for which the Assessing Officer should take necessary action after verification of correct facts as per records.

6. From the aforesaid observations of learned Commissioner (Appeals), it is very much clear that he has accepted that the assessing officer has committed an error while making the addition at Rs.73,47,462 which should have been made at Rs.20,20,434. However, he has declined to grant any relief to the assessee on the reasoning that such mistake committed by the assessing officer falls in the domain of section 154 of the Act.

7. In course of hearing, learned counsel for the assessee has brought to our notice that the assessee, in fact, has filed a rectification application under Section 154 of the Act before the assessing officer as early as on 14.03.2019. However, it still remains pending. He further submitted that apart from the issue relating to indexed cost of improvement, there is one more issue of utilization of actual FSI which also needs to be rectified. Thus, keeping in view the overall facts and circumstances of the case, prima facie, we are convinced that

the addition made by the assessing officer on account of the alleged excess claim of indexed cost of improvement has been made under factual misconception, hence, requires to be rectified at the end of the assessing officer. In fact, there is a direction of learned Commissioner (Appeals) to do so. Unfortunately, even after long lapse of time of more than three years, the assessing officer has neither complied with the directions of learned First Appellate Authority nor has disposed of the rectification application filed by the assessee under Section 154 of the Act filed on 14.03.2019.

8. In view of the aforesaid, we direct the assessing officer to dispose of the rectification application filed by the assessee by rectifying the mistake in relation to the addition made on account of indexed cost of improvement which is apparent on the face of record. Assessing Office is also directed to deal with the other issues raised in the rectification application including the issue of actual utilization of FSI. The aforesaid exercise should be completed by the assessing officer within a period of three months from the date of receipt of this order. Needless to mention, before deciding the issue, the assessee

must be afforded reasonable opportunity of being heard. Ground is allowed for statistical purposes.

9. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 19th May, 2022.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 19th May, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	20.05.2022
2.	Date on which the draft of order is placed before the Dictating Member:	23.05.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	19.05.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	19.05.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	25.05.2022
7.	Date on which the final order is uploaded on the website of ITAT:	30.05.2022
8.	Date on which the file goes to the Bench Clerk	30.05.2022
9.	Date on which files goes to the Head Clerk:	
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11.	Date of dispatch of order:	