

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(IT)A No.257/Bang/2022
Assessment Year: 2017-18

Mohamed Abdul Hameed Maved No.521, 16 th Main, 3 rd Block Koramangala Bengaluru 560 062 PAN NO : BOBPM8457G	Vs.	ACIT Int. Taxn. Circle-1(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri K.S. Kamalakara, A.R.
Respondent by	:	Shri Narayana K.R., D.R.

Date of Hearing	:	15.06.2022
Date of Pronouncement	:	15.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of CIT(A) dated 16.2.2022.

2. The facts of the case are that the assessee had filed the return of income declaring an income of Rs.31,34,190/-. The case was selected for scrutiny. The assessee had income under long-term capital gain by sale of a property during the relevant FY. In the return of income filed, the assessee has computed the long-term capital gains by taking the cost of

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construction at Rs.58,47,629/-. However, during the assessment proceedings the AO has noted that the assessee has not provided any evidence to corroborate this cost of construction. In the absence of any evidence, the AO has re-computed the long-term capital gain taking the cost of construction as NIL and passed the order. Aggrieved by the order of the AO the assessee has filed the present appeal.

3. The assessee went in appeal before Ld. CIT(A). The Ld. CIT(A) observed that the assessee has claimed a cost of construction of Rs.48,80,821/-. The assessee has submitted purchase bills for pre-engineered mild steel to the extent of Rs.23,32,500/-. (Being 50% of the total of Rs.46,65,000 including the purchase cost of construction incurred by assessee and his brother.) Other than this expenditure proof of Rs.23,32,500/-, the assessee has not been able to produce any evidence in support of any expenditure incurred including labor expenses incurred. The photographs of industrial shed submitted during the course of this hearing are also perused by Ld. CIT(A). The photographs reflect a steel structure built over plain land. The steel pillar structures apparently have RCC footings. The inside and outside of the shed have not been cemented or paved. To this extent assessee is said to have incurred a small amount towards RCC footings and labour charges for the erection of steel structure. To be fair to assessee and the revenue, an estimated amount of Rs.3,00,000/- towards RCC footings and Rs.2,33,250/- towards labour charges for the erection of steel structure was considered by Ld. CIT(A). With this an additional cost of Rs.5,33,250/- was allowed to the assessee in addition to Rs.23,32,500/- by him. The total construction cost is taken at Rs.28,65,750/- and indexation of the same is allowed at Rs.34,33,406/-. This amount is allowed in place of Rs.58,47,629/-

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claimed as the indexed cost of construction. The dis-allowance is sustained to the extent of Rs.24,14,223/- and the grounds of appeal were partly allowed by the Ld. CIT(A). Against this assessee is in appeal before us.

5. At the time of hearing, Ld. A.R. submitted that assessee has submitted Registered Valuer Report before the Ld. CIT(A), which was ignored and only he has considered the steel cost. According to him, he should have considered the registered valuation report instead of DVO report. Accordingly, he submitted that addition to be deleted on the basis of Registered Valuer Report.

6. On the other hand, Ld. D.R. submitted that assessee has not submitted Registered Valuation Report before the AO and AO duly referred the matter to the DVO to ascertain the cost of construction of building and on that basis, he completed the assessment. The assessee has not challenged the valuation of the DVO. In such circumstances, the argument of the assessee's counsel cannot be considered.

7. We have heard the rival submissions and perused the materials available on record. Admittedly, assessee filed the Registered Valuer Report before the Ld. CIT(A), which was not made available to AO. The Ld. CIT(A) ought to have called for remand report asking the AO to compare the DVO report with the Registered Valuer Report, which he failed to do so. In view of this, we are inclined to send back the entire issue to the file of AO to compare the Registered Valuer Report with the DVO report and decide issue afresh after giving an opportunity of hearing to the assessee. It is the duty of the assessee to explain the difference between these two reports to the satisfaction of the AO. If the assessee fails to explain the differences,

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with necessary evidence, the AO is at liberty to take adverse inference and has to sustain the addition. With this observation, we remit this matter to the file of AO for fresh consideration.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th Jun, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Jun, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.