

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3263/DEL/2017
[Assessment Year: 2012-13]**

Janardhan Gupta, 30/72, Punjabi Bagh West, Delhi-110026	Vs	Dy. Commissioner of Income Tax, Circle-13(1), New Delhi
PAN-AAIPG3100D		
Assessee		Revenue

Assessee by	None
Revenue by	Ms. Ranu Mukherjee, CIT-DR

Date of Hearing	05.09.2022
Date of Pronouncement	08.09.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A)-5, New Delhi, dated 20.03.2017 pertaining to Assessment Year 2012-13.

2. The grounds of appeal read as under:-

“1. On facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of the claim of cost of construction amounting to Rs.3,63,681/- (being 30% of the total cost of construction) while computing the capital gain.

2. On facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of the claim of cost of improvement amounting to Rs.3,03,762/- (being 30% of the total cost of construction) while computing the capital gain.”

3. Brief facts of the case are that the assessee is an individual.

In the assessment order, the AO made addition on account of capital gain by disallowing cost of purchase and cost of improvement as under:-

“3. From the details filed by the assessee, it has been noticed that the assessee has sold a property situated at 16/43, Punjabi Bagh West, New Delhi in which assessee was having 30% shares alongwith three other persons. Total sale consideration of the property as per sale deed was Rs. 10,21,00,000/- and assessee’s share in sale consideration is Rs. 3,06,30,000/- (30% of Rs. 10,21,00,000/-) as appearing Computation of Income filed by the assessee also. Further, assessee has reduced cc of acquisition amounting to Rs. 74,78,415/- after indexation of Rs/ 52,49,181/- be- 30% of total cost of acquisition of Rs. 1,74,97,270/- as well as cost of improvement of Rs. 8,14,353/- after indexation of Rs. 6,03,762/- being 30% of total cost of improvement of Rs. 20,12,540/-. During the course of hearing, AR of the assessee was asked to produce the documentary evidences of cost of acquisition and cost of improvement as claimed by the assessee in computation of Long Term Capital Gain. In response, AR of the assessee produced purchase deed of the property and submitted that the purchase of the plot was made in F.Y. 2005-06 and then construction of house was done during F.Y. 2006-2008 with total expenses of Rs. 1,74,97,270/- including cost of plot. It was further submitted by the assessee that an amount of Rs. 20,12,540/- was incurred - F.Y. 2008-09 towards pending work (paint, wooden work in the building and installation of Lift). Assessee has only furnished a bill of purchase of lift and as per assessee this - was installed at the time of improvement i.e. in F.Y. 2008-09. In addition to this, no othe documentary evidence has been produced during the assessment proceedings for which assessee has stated that dacoity took place at the residence of assessee and relevant file relating to the above property have been stolen. In absence of any documentary evidences, the claim of cost of construction and cost of improvement cannot be allowed to the assessee. Cost of land is only allowable to the assessee which is Rs. 50,00,000/- + Rs. 3,75,000/- (Stamp Duty and other taxes) as per the documents submitted by the assessee.”

4. Upon assessee’s appeal, the Ld. CIT(A) granted part relief to the assessee and held as under:-

“3.3. As already stated herein before, the appellant was afforded various opportunities to present the facts pertaining to the appeal and it is clear from the record that all the notices of hearing have been duly received. Yet strangely, the appellant has not responded to the notices of hearing. It is understood that the appellant, was only a co-owner and there were three other persons who had joint interest in the property. Since the appellant had only 30% of the ownership in the property, it is clear that the other co-owners must also have invested substantial amount in the construction and improvements of the property, if any. In the circumstances, it was not difficult for the appellant to have collected documentary evidences relating to the construction and improvement on the property from these co-owners, even assuming that the papers available with him were misplaced/stolen. It is also difficult to understand as to how and why the appellant would have incurred almost 50% of the cost of construction (if he had actually been sanctioned a loan of 85 lakhs from SBI) when he is the co-owner only to the extent of 30%. Moreover, if as stated by the appellant, loan was taken from SBI, the appellant could have obtained from SBI, the loan sanction documents and corresponding documents relating to the construction/improvements of the property. It is common practice that the bank subjects the land to mortgage as a collateral for disbursement of funds and sometimes also insists on completion certificate/utilization certificate prior to disbursement of funds. No such documentation has been obtained from the bank and filed before Assessing Officer or the understand. The onus was also on the co-owners of the property, including the appellant to have ensured that the property was valued by a registered valuer at the time of sale. Needless to say, documentary evidences are required when a claim is made for deduction against capital gains and in this case neither before the AO nor before the understand, the appellant has discharged his obligation to show that the claim made is factually correct and duly supported.

3.4. The appellant has stated that the impugned sale deed for the sale of the plot and the house mentions that the cost of the house is Rs.80,03,465/-. The purchaser has paid a stamp duty cost based on this but even this has been ignored by the Assessing Officer. I have examined this contention also but find it difficult to accept as the office of the Sub Registrar normally accepts a sale deed which is drafted as per the mutual convenience of both the parties. It is not as if the value of the house property mentioned in the impugned sale deed is subject to corroboration by a valuation report. The value is relevant to the Sub Registrar only to the extent

*that the stamp duty is valued taking into consideration the cost of the land and any construction thereon. Therefore any value of the land and the property is acceptable for stamp duty valuation purposes and not much reliance can be placed on the same. Moreover, it is also possible that the entire cost of construction was incurred by the other co-owners and not by the appellant and without any substantiating evidence, the view of the AO that no such construction cost was incurred appears to be the correct view. So far as the cost of improvement is concerned, the Assessing Officer has been just and reasonable in considering the cost of Rs.10 lakhs incurred for lift, keeping in view the documentary evidences for which were filed before him. Keeping in view the same I have see no reason to interfere in the cost of construction and the cost of improvement. **Grounds 2 to 4 stand dismissed.***

*3.5. The fifth ground challenges the non-consideration of the stamp duty while giving effect to the deduction u/s 54. The appellant had utilised the sale consideration in the purchase of new property at House No.54, Road No.72, Punjabi Bagh West, New Delhi. His share of the property @16% total cost of each amounted to Rs.1,89,79,270/- and the Assessing Officer has allowed the deduction accordingly on a pro-rata basis. However the AO has failed to consider the stamp duty on the purchases of this property of Rs.63,57,000/-. The stamp duty on purchases of a house is paid by the purchaser and this is indicated in the purchase deed. In the circumstances, the stamp duty paid becomes part and parcel of investment in a new house and the appellant is entitled to the benefit of deduction U/s 54 on this amount also. The AO would consider the appellant's share at 16% of Rs.63,57,000/- i.e. Rs.10,17,120/- and allowed deduction U/s 54 on this amount. **Ground no.5 is held to be allowed."***

5. Against the above order, the assessee is in appeal before us.

6. We have heard the ld. DR and perused the records. We note that several notices have been sent to the assessee but they have returned unserved. None has appeared on behalf of the assessee. Hence, we proceed to adjudicate the issue by hearing the ld. DR and perusing the records. We find that as emanating from the facts narrated above, the revenue authorities have disallowed the assessee's claim of cost of

purchase and cost of improvement *de hors* any corroborative evidences. In our considered opinion, there is no infirmity in the orders of the authorities below as onus is upon the assessee to cogently prove the cost of acquisition and cost of improvement. Since, the assessee has miserably failed in this case to produce necessary evidence; therefore, the authorities below are correct in making the disallowance. Hence, we do not find any infirmity in the order of the Ld. CIT(A), we uphold the same.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 08th September, 2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 08.09.2022.

Shekhar,

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi