

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 816/Del/2020  
निर्धारण वर्ष/Assessment Year: 2016-17

Shri Santosh Kumar Suri, C/o. Adv. Nagesh Kumar Behl, B-33, Lawrence Road Industrial Area, Delhi - 110 035.	<u>बनाम</u> Vs.	ACIT, Circle : 40 (1) New Delhi.
PAN No. AVJPS5666C		

AND

आ.अ.सं .I.T.A No. 721/Del/2020  
निर्धारण वर्ष/Assessment Year: 2016-17

ACIT, Circle : 40 (1) New Delhi.	<u>बनाम</u> Vs.	Shri Santosh Kumar Suri, C/o. Adv. Nagesh Kumar Behl, B-33, Lawrence Road Industrial Area, Delhi - 110 035.
		PAN No. AVJPS5666C
अपीलार्थी/ Appellants		प्रत्यर्थी/ Respondents

निर्धारित की ओरसे / Assessee by :	Shri Nagesh Behl, C. A.;
राजस्व की ओरसे / Department by :	Shri Abhishek Kumar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	25.10.2022
उद्घोषणाकीतारीख/Pronouncement on :	20.01.2023

**आदेश / O R D E R**

**PER C. N. PRASAD, J.M.**

1. These two appeals are filed by the Revenue and Assessee against the order of the ld. Commissioner of Income Tax (Appeals)-14 [hereinafter referred to CIT (Appeals)] New Delhi, dated 05.12.2019 for assessment year 2016-17.

2. The Revenue in its appeal has raised the following grounds of appeal:-

“1. Whether the CIT (Appeals) is right in deciding on fresh evidence without giving opportunity of being heard to the AO.

2. Whether the CIT (Appeals) is correct in allowing the claim of the assessee of cost of improvement without any documentary evidence but only based on the letter submitted by third party.”

3. In so far as ground No. 1 is concerned, the ld. DR submits that the assessee has furnished additional evidence before the ld. CIT (Appeals) and the same were admitted without giving an opportunity to the Assessing Officer to go through the additional evidence furnished by the assessee in respect of cost of improvement made by the assessee. The additional evidence contains copies of cost of improvement year-wise.

4. On the other hand, the ld. Counsel submits that assessee has not filed additional evidence before the ld. CIT (Appeals) and the ld. CIT (Appeals) suo moto enquired directly by issue of notice under section 133(6) of the Income Tax Act, 1961 (the Act) and the architect/interior designer responded to the notice issued by the ld. CIT (Appeals) stating that they have issued certificate to the assessee in respect of the expenses claimed on cost of improvement of property. In any case the ld. Counsel submits that the matter may be sent back to the Assessing Officer for limited purpose of verification of cost of improvement.

5. On hearing both the parties and perusing the orders of the lower authorities especially para 5 of the assessment order wherein the finding of the Assessing Officer was that assessee was asked to produce documentary evidence with regard to cost of improvement claimed but the assessee failed to give any documentary evidence with regard to the said claim. Therefore, we are of the considered opinion that this matter should go back to the Assessing Officer for proper verification of the evidence in respect of cost of improvement claimed by the assessee. Thus, we restore ground Nos. 1 and 2 of grounds of appeal of the Revenue to the file of the Assessing Officer with a direction for de novo adjudication of cost of improvement claimed by the assessee.

6. Coming to appeal of the assessee, even though various grounds have been raised by the assessee, the ld. Counsel argued only ground No. 5 of grounds of appeal relating to indexation of cost of improvement and cost of acquisition and submits that the indexed cost of acquisition shall be with reference to the year in which previous owner acquired the assets and not the year in which the assessee acquired an asset. The ld. Counsel submits that in the case of the assessee the property was

acquired by assessee's mother in the year 1969 and after her demise in 2013 her share of property was inherited by the assessee. The Id. Counsel placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Manjula J. Shah [(2013) 355 ITR 474] and the decision of Hon'ble Delhi High Court in the case of Arun Shungloo Trust Vs. CIT in ITA. No. 116/2011 [2012 (2) (TMI) 259 in support of his argument.

7. The Id. DR placed reliance on the orders of the authorities below.

8. We observe that the Id. CIT (Appeals) held that in the case of inherited property cost of acquisition as well as the cost of improvement by the previous owner of a capital asset the indexation shall be allowed during the year of acquisition or improvement by the previous owner or the year of inheritance by the person, who sold the property. The Hon'ble Bombay High Court in the case of CIT Vs. Manjula J. Shah (supra) affirmed the view of the Tribunal in holding that while computing the capital gains arising on transfer of a capital asset acquired by the assessee under a gift or inheritance the index cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset. Similar view has been taken by the Hon'ble Delhi High Court in the case of Arun Shungloo Trust Vs. CIT (supra). Respectfully following the above decisions, we direct the Assessing Officer to allow the cost of indexation to the assessee keeping in view the principles laid down by the above judgements. Ground No. 5 of grounds of appeal of the assessee is allowed.

9. As the Ld. Counsel for assessee did not argue any other ground other than ground No. 5, all other grounds are dismissed as not argued.

10. In the result, the appeal of the Revenue is allowed for statistical purposes and the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on : 20/01/2023

Sd/-  
( SHAMIM YAHYA )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 20/01/2023

\*MEHTA\*

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	17.01.2023
Date on which the typed draft is placed before the dictating member	18.01.2023
Date on which the typed draft is placed before the other member	20.01.2023
Date on which the approved draft comes to the Sr. PS/ PS	20.01.2023
Date on which the fair order is placed before the dictating member for pronouncement	20.01.2023
Date on which the fair order comes back to the Sr. PS/ PS	20.01.2023

	Date on which the final order is uploaded on the website of ITA	20.01.2023
	Date on which the file goes to the Bench Clerk	20.01.2023
	Date on which the file goes to the Head Clerk	
	The date on which the file goes to the Assistant Registrar for signature on the order	
	Date of dispatch of the order	