

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

**BEFORE SHRI G.S. PANNU, PRESIDENT AND SHRI
SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.2286/Del/2022
Assessment Year: 2018-19

Gayatri Kapur Chadda, B-17, Maharani Bagh, New Delhi	Vs.	ACIT, Circle 1(2)(1), (International Taxation), New Delhi
PAN :AAIPK1051B		
(Appellant)		(Respondent)

Appellant by	Shri Anil Bhalla, CA
Department by	Shri Vizay Vasanta, CIT DR

Date of hearing	03.04.2023
Date of pronouncement	13 .04.2023

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against final assessment order dated 27.07.2022 passed under Section 143(3) read with 144C(13) of the Income-Tax Act,1961 pertaining to assessment year 2018-19, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. Though, the assessee has raised multiple grounds, inter alia, challenging the validity of the impugned assessment order being wholly without jurisdiction, however, at the outset, we proceed to decide the issues raised on merits. As could be seen from the grounds raised on merits, the grievance of the assessee is against disallowance of cost of acquisition and cost of improvement while computing long term capital gain.

3. Briefly the facts are, the assessee is a non-resident individual. For the assessment year under dispute, the assessee filed her return of income electronically on 23.02.2018 declaring income of Rs.1,30,99,390.

4. In course of assessment proceedings, the Assessing Officer noticed that the income declared was on account of long term capital gain arising out of sale of an immovable property. He observed, while computing capital gain, the assessee had claimed the following deductions:

- i) Cost of acquisition with indexation: Rs.3,78,85,682
- ii) Cost of improvement with indexation: Rs. 94,65,393

5. Alleging that the assessee failed to respond to the statutory notices issued under Section 142(1) and 143(2) of the Act and further did not furnish any reply/details to the queries raised, the Assessing Officer proceeded to complete the assessment by disallowing the deduction claimed towards cost of acquisition and cost of improvement. Accordingly, the income was determined at Rs.6,04,50,465. Against the draft assessment order so passed, the assessee raised objections before learned DRP. Though, detailed submissions were made contesting the disallowance made by the Assessing Officer, however, learned DRP did not find merit in the submissions of the assessee and upheld the decision of the Assessing Officer. In terms with the directions of learned DRP, the Assessing Officer passed the final assessment order.

6. Before us, learned counsel appearing for the assessee submitted that the assessee is a non-resident Indian staying in United Arab Emirates (UAE). He submitted, the assessee along with her husband were co-owners of an immovable property, each having 50% share. He submitted, during the year under consideration, the residential property was sold and both the assessee and her husband offered to tax

capital gain arising out of their respective shares in the sale consideration, after claiming deduction on account of cost of acquisition and cost of improvement. He submitted, assessment proceedings in case of assessee and her husband were carried out at the same time by the same Assessing Officer. He submitted, while in case of husband the assessment order was passed under Section 143(3) of the Act accepting long term capital gain declared after claiming deduction on account of cost of acquisition and cost of improvement, in case of wife, the present assessee, the deductions were disallowed, though, facts are identical. He submitted, no long term capital gain can be computed if cost of acquisition is not ascertainable. Thus, he submitted, the disallowance made should be deleted.

7. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

8. We have considered rival submissions and perused the material available on record.

9. Undisputedly, in the year under consideration, the assessee and her husband have sold a residential property, wherein, both were co-

owners having equal shares. It is observed, both the assessee and her husband filed their income tax returns for the impugned assessment year offering Long Term Capital Gain arising out of sale of the residential property after claiming deduction on account of cost of acquisition and cost of improvement. Since, the assessee and her husband were having equal share in the property, thereby, having equal share in the sale consideration, the computation of Long Term Capital Gain by both assessee and her husband was in identical manner. Interestingly, while completing scrutiny assessment under Section 143(3) of the Act in case of the husband of the assessee vide order dated 20.09.2021, Assessing Officer has accepted the capital gain offered after claiming deduction on account of cost of acquisition and cost of improvement. However, while framing the draft assessment order in case of the wife i.e. the present assessee, though, the capital gain arose out of the same transaction, however, the same Assessing Officer disallowed the cost of acquisition and cost of improvement by stating that no response/reply was furnished by the assessee.

10. We are surprised with the aforesaid observation of the Assessing Officer considering the fact that the assessment was completed under Section 143(3) of the Act and not under Section 144 of the Act. Be that as it may, before learned DRP, the assessee had made a specific submission that capital gain arising at the hands of the husband qua sale of same property was computed after claiming cost of improvement and cost of acquisition, which has been allowed by the Assessing Officer in scrutiny assessment. However, on perusal of the directions of learned DRP, it is observed that learned DRP has remained totally aloof to such submission of the assessee, though, all relevant material in connection with the computation of capital gain in case of husband was filed before learned DRP. This, in our view, is unacceptable. When the case of the assessee and her husband, factually, stand on equal footing, we fail to understand how differential treatment can be given to the assessee, qua, the claim of deduction in respect of cost of acquisition and cost of improvement. When the capital gain relates to the same property, the cost of acquisition and cost of improvement in case of husband would also be

the cost of acquisition and cost of improvement in case of wife, as, both were having equal shares in the property.

11. We further find substantial merit in the submissions of learned counsel for the assessee that in absence of cost of acquisition, the computation mechanism fails.

12. In view of the aforesaid, we direct the Assessing Officer to allow assessee's claim of deduction on account of cost of acquisition and cost of improvement.

13. In view of our decision on merits, all other grounds having become infructuous, do not require adjudication.

14. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 13th April, 2023.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 13th April, 2023.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi