

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 6499 /DEL/2019  
Assessment Year: 2016-17**

Manoj Mediratta, A-11, First Floor, Kirti Nagar, New Delhi-110015	<u>Vs</u>	Income-tax Officer, Ward-13(3), New Delhi.
PAN- AAMPM9302R		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>Shri P.K. Chadda, CA</b>	
<b>Department represented by</b>	<b>Shri Om Parkash, Sr. DR</b>	
<b>Date of hearing</b>	<b>26.04.2023</b>	
<b>Date of pronouncement</b>	<b>28.04.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-5, New Delhi, dated 31.05.2019, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

"1. That the Learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 30,13,432.00 on account of Long Term Capital Gain on sale of House Property by rejecting the cost of acquisition as submitted by the appellant and also disallowing commission paid on sale.

2. *That the order of the Learned Commissioner of Income Tax (Appeals) sustaining the addition of Rs. 30,13,432.00 on account of Long Term Capital Gain on sale of House Property is based a mere surmises and assumptions and without proper appreciation of the facts of the case & law and, more particularly, the appellants submission in this regards.*

3. *That it is humbly prayed to delete the addition of Rs. 30,13,432.00 on account of Long Term Capital Gain on sale of House Property as sustained by the learned Commissioner of Income Tax (Appeals).*

4. *That the order of the Learned Commissioner of Income Tax (Appeals) sustaining the addition of Rs. 30,13,432.00 on account of Long Term Capital Gain on sale of House Property is bad in law & facts of the case.*

5. *That the Appellant may please be permitted to add, delete or vary any grounds of appeal.*

2. The only effective ground in this appeal is against sustaining the addition of Rs. 30,13,432/- on account of long term capital gain on sale of house property.

3. The facts giving rise to the present appeal are that in this case the assessee filed his return of income disclosing income of Rs. 19,25,250/-. The case was selected for limited scrutiny for the reason of low closing stock shown in the P&L a/c as compared to the preceding year. During the course of assessment proceedings the Assessing Officer noticed that the assessee during the year under consideration sold an immovable property E-262, 3<sup>rd</sup> Floor, Ramesh Nagar, New Delhi on a sale consideration of Rs. 41,25,000/-. However, the assessee had purchased roof of the first floor up to sky in the said property on 31.5.1999 for a consideration of Rs. 8,00,000/-. Therefore, the Assessing Officer computed long

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term capital gain at Rs. 30,13,432/- and assessed income at Rs. 49,38,684/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions held that assessee had purchased roof of the first floor for Rs. 8,00,000/-, constructed two more floors, therefore, the average value towards cost of acquisition has to be divided into three, whereas the assessee has taken as divided into two. Aggrieved against this the assessee is in appeal before this Tribunal.

4. During the course of hearing learned counsel for the assessee submitted that the authorities below failed to appreciate the fact in right perspective and submitted that the Assessing Officer failed to give set off of cost of acquisition and the learned CIT(Appeals) grossly erred in directing division into three. However, both the authorities have admitted the fact that there was construction of two floors and out of two floors one floor was sold. He also placed on record a technical report dated 25.4.2023 i.e. valuation of the cost of construction of the property in question. He submitted that the authorities be directed to set off the cost of acquisition as claimed by the assessee.

5. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below.

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6. We have heard rival submissions, perused the material on record. We find that the learned CIT(Appeals) has decided the issue by observing as under:

*“6.6 First of all, it is not clear that what qualification is there of these architects. Further, the stamp in the report is put for Gyanendra Singh Bamore with CA/2012/54679 having address at Surana Bhawan, Vikas Marg, Laxmi Nagar, New Delhi - 110092. It is not clear in what capacity he has signed. Further, it is observed from the report that it is an estimate, which appears to be without actual inspection of property because the same is sold almost 3 years ago. Further, in this estimate they have also included for termite proof treatment, electrical works, POP false ceiling, painting of wall roofs, wooden cupboards in kitchen and rooms, which is not in nature of construction but maintenance and renovation. Therefore, appellant failed to provide the source of expenditure or any proof for such expenditure actually incurred. Thus, this report will also have no use to the appellant.*

*6.7 Therefore, looking to the facts and circumstances of this case and in law, as per the discussions held in the foregoing paragraphs, the appellant has not been able to substantiate the cost of construction and hence the addition is sustained and appeal is dismissed on these grounds.”*

7. However, it is admitted that the assessee had sold a floor which was constructed based on construction of the roof rights in property. In our considered view the authorities below ought to have given the benefit of cost of acquisition to the assessee. During the course of hearing the assessee has also filed a technical report by the approved valuer. Therefore, considering the totality of the facts and to sub-serve the substantive justice, we set aside the impugned order and restore the issue to the assessing authority to decide it afresh after considering the submissions

and the report of approved valuer submitted by the assessee. Grounds raised in this appeal are allowed for statistical purposes.

8. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 28<sup>th</sup> April 2023

Sd/

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Sd/

**(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**