

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JABALPUR  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 18/JAB/2023

(A.Y: 2015-16)

Shri Jasbir Singh Marwah, 1040 Prem Nagar, Madan Mahal, Jabalpur-482003 MadhyaPradesh.	Vs.	ITO, Ward 2(3), Aayakar Bhawan, Annexe Bldg, Nagrath Chowk, Jabalpur -482001. MadhyaPradesh.
PAN/GIR No. : AHIPM6658H		
Appellant	..	Respondent

Appellant by :	Shri Rahul Bardia, FCA
Respondent by :	Shri Saad Kidwai, CIT DR

Date of Hearing	22.09.2023
Date of Pronouncement	07.11.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed this appeal against the orders of the National Faceless Appeal Centre (NFAC)/CIT(A) passed the order u/sec 143(3) r.w.s 263 and U/sec 250 of the Act. The assessee has raised the following grounds of appeal.

- 1) The order passed by the Ld CIT (A) supporting the order of Ld AO is bad in law and facts, void a initio and with jurisdiction.*

(2) The Ld CIT (A) erred in supporting the order of Ld AO for charging capital gain of Rs 80,77,061/-.

(3) The Ld CIT (A) erred in supporting the order of Ld AO in valuing the property as on 01.04.1981 for Rs 29,746 instead of Rs 1,29,220/-.

(4) The Ld CIT(A) erred in supporting the order of Ld AO in considering the constructed area of property as 1,200 sq.fts instead of 2,400 sq. Fts on the date of sale. Existence of first floor is evidenced by the photograph of building attached to sale deed.

(5) The Ld CIT(A) erred in supporting the order of Ld AO in rejecting the cost of construction of the property at Rs 300/- per sq.fts and adopting the rate of Rs 237/- per sq.fts.

(6) The Ld CIT(A) erred in supporting the order of Ld AO in valuing the cost of construction at Rs 2,84,400/- for bare structure only and ignoring the cost of other structure and finishing.

(7) That Ld CIT(A) erred in supporting the order of Ld AO in rejecting the deduction of Rs 24,78,825/- as cost of land and Rs 35,00,000 against cost of construction of residential house.

(8) The appellant reserves the right to add, amend or alter any grounds of appeal..

2. The brief facts of the case are that, the assessee worked as a forest contractor. The assessee has filed the return of income for the A.Y 2015-16 on 16.03.2016 disclosing a total income of Rs. 2,57,190/-. Subsequently

the case was selected for limited scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act along with questionnaire are issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time and filed the written submissions and the case was discussed. The AO found that the assessee has disclosed income under mercantile accounting system by adopting the presumptive tax u/s 44AD of the Act on a receipts @ 8.61% of the turnover of Rs. 23,54,760/- and the assessee is having income from other sources, income from capital gains and assessee has invested in another residential property and claimed exemption u/sec 54 of the Act. The AO on perusal of the information found that the assessee has sold immovable property along with other co owners for Rs. 4,35,00,000/- on 20.02.2015 as reported by the Registrar of Property Assurance, Jabalpur. The assessee has explained that the property was sold along with five co-owners and the assessee's share is Rs.87 lakhs and in support of the claim, the assessee has filed the registered sale deed and also the other documents to substantiate the assessee share. Further the purchaser has deducted the TDS @ 1% of Rs. 87 lakhs in respect of the assessee's share and the assessee has availed the benefit of TDS claim.

Subsequently the assessee has purchased a plot of Rs. 24,78,825/-for construction of the residential property. The assessee in support of the claim has made submission on various dates 01/07/2014, 05/08/2014 and 07/08/2014 and the copy of the agreement and the possession agreement was filed. Apart from that, the assessee has deposited Rs. 35 lakhs with the SBI under capital gain scheme and along with the copy of sanctioned map from the competent authority for new residential house and copy of valuation certificate from Govt approved valuer in support of the index cost of acquisition. The AO considering all these facts and submissions and assessed the total income of Rs.2,57,190/- and passed the order u/sec 143(3) of the Act dated 20.04.2019.

3. Subsequently, the Pr.CIT on perusal of the records and information found that the order passed by the AO under section 143(3) of the Act is erroneous and prejudicial to the interest of the revenue as the revenue has failed to conduct the enquiries and issued directions and passed the order u/s 263 of the Act dated 6.09.2019.

4. The Assessing Officer (AO) as per the directions of the Pr. CIT u/s 263 of the Act has issued notice u/sec 142(1) of

the Act on the assessee to substantiate the claim. The AO has dealt on the facts with respect to purchase of the property and the sale of the property. The AO has requested the assessee to file the documentary evidences in respect of the purchase of property valuation as on 01.04.1981. In compliance, the assessee has submitted substantial details explaining the holding of the building since 1960 along with others legal heirs. Whereas the AO has observed that the assessee is not entitled for claiming higher cost of acquisition and has dealt at page 3 to 4 of the order as under:

*“1. The previous valuation report submitted by the assessee before the JAO was estimate of the property as on 04.06.1984. The same has also various shortcomings and thus technically not acceptable. Therefore, the assessee requested to submit revised report valuing the property as on 01.04.1981. Accordingly, the assessee submitted the revised report of valuation of property as on 01.04.1981 prepared on 10.03.2021 by Er. Praveen Kr. Beohar valued the cost of 1/5th portion of land (i.e. the assessee's share) measuring at 2584.40 sq. ft. at Rs. 29,746/-. In this connection, it is pertinent to mention here that the assessee, erroneously submitted the two valuation report of the same property valued by the same engineer on the same date, i.e. as on 10.03.2021. However, in one of the report, the engineer valued the 1/5th cost of land (i.e. 2584.40 sq. ft.) of property Kh. No. 28/6 Div. Kh. No. 28/1, P.C. No. 06(old 28/32, S.No. 622, Village Masheshpur, MadanMahal Ward, Tehsil & distt. Jabalpur @ 11.51 per sq. ft. at Rs. 29,746/-. However, in the other report, the valuation of*

*the same property/ land was valued @ 50/ sq. ft. at Rs. 1,29,220/-. Further, inadvertently, the engineer, with the first mentioned valuation report enclosed the circle rate orders of then district wh administration, which confirms that the property under consideration have original value as on 01.04.1981 for Rs. 29,746/- The second valuation report found erroneous and thus rejected*

*1. Regarding the cost of improvement on the said land, it has been submitted by the assessee that he initially constructed the ground floor between 1985 to 1989 and first floor during the years 1993-1995. The date of addition/improvement provided by the assessee has been accepted. Further, the reply of the assessee has been considered. Here, first thing which needs attention is the area of the construction of sold property. The assessee submitted in his reply that total area of 2400 sq. ft. was constructed on the sold property having identical area of 1200 sq. ft. on ground and first floor. However, on examination of the sale deed, the same has been found to be mentioned at 1200 sq. ft. in total. The picture attached with the sale deed clarifies that there were a building having two floors, i.e. ground and first. However, area mentioned in the sale deed at 1200 sq. ft. in total. Now the assessee is claiming the area at 2400 sq. ft. which has no correlation with the sale deed. Here, this is to mention that the buildup area of the property enhances the circle rate valuation of the property as on date of sale. Hence, the assesses has not disclosing the correct information either to the revenue authorities of state government or to the Income Tax Department. Regarding the property sold, the registered Sale deed is the most authentic documents on which the department may rely, therefore, the construction area mentioned in the sale deed at 1200 sq. ft. seems justifiable and hence, allowed. Further, the age of the construction shown in the deed is about 30 years old, hence*

the same is supposed to be construed in year 1989-90, as claimed by the assessee.

2. The cost of construction (improvement) on the said land has been taken at 300 per sq. ft. by the engineer in his second valuation report. However, the report is erroneous hence the same is also not acceptable. Accordingly, alternative method which is adopted is the present average cost of construction prevailing in the market. Now days, average cost of construction for a normal house comes around 1600 sq. ft. for a good quality construction. If we compute the same retrospectively with reference to the Cost Inflation Index (CII) issued by the Government of India for every financial year, we can easily find a suitable rate for the cost of construction in the given year, i.e. in year 1989-90 by making retrospective calculation. The present CII is based on base year 2001. Hence, the calculation will be as under

Present average cost of construction : 1600 sq. Ft.

CII in 2019-20 : 289

CII in 2001-02 : 100 (as base year)

Average cost of construction in 2001-02 :  $1600 \times 100 / 289$  Rs.  
554 (approx.)

CII in 1989-90 : 182

CII in 2001-02 : 426

Average cost of construction in 1989-90 =  $554 \times 182 / 426$  Rs.  
237 (approx.)

Accordingly, we may take the above value for obtaining the cost of construction for 1200 sq. ft. as under:

*1200 sq. Ft. x 237/sq. ft. = 2,84,400/- (in year 1989-90)”*

5. Further on the second issue, with respect to investment in the property, the AO found that the assessee has purchased the plot and has made investment in construction of House property. Whereas the assessee has not complied with the timing of deposits as per the provisions of Sec. 54 of the Act and observed at page 5 to 7 of the order as under:

*“1. Regarding the investment in capital gain account, it has been submitted by the assessee that the assessee made investment made in capital gain account scheme for Rs. 35,00,000/-. The date of investment as per audit memo supplied by the JAO was mentioned at 15.02.2016. However, the assessee supplied this office a copy of FDR for depositing in CG scheme showing date as on 15.07.2015. A copy of passbook were also supplied by the assessee showing a single entry of Rs. 35,00,000/- debit from his account for CG scheme deposit on 15.07.2015. The same has deeply been examined and found that the assessee counterfeited the documents. A copy of CGFDR submitted by the assessee before the JAO during the course of original assessment proceedings clearly shows the date of deposit as on 15.02.2016 which is beyond the period of six months from the date of sale of property, and hence not allowable as deduction. The scan of CGFDR supplied before the JAO is passed as below for reference:*

*1. The last issue which has to be examined was the exemption allowed against purchase of land u/s 54 of the Income Tax Act. The assessee in his reply submitted that for claiming the deduction under section 54, he purchased a plot of 11017 square feet situated at Village Andhua near by-pass Jabalpur*

for Rs. 24,78,825/- for the construction of residential house. To substantiate his claim, the assessee also supplied copy of purchase deed depicting date of July and August, 2014. The property was purchased for 24,78,825/-. However, the provisions of the Act stating that for claiming exemption u/s 54 the assessee must construct or purchase a residential house and therefore, being the property was a vacant land alone, the same is not eligible for exemption u/s 54. Hence the same is also being disallowed.

2. On more issue which needs to be clear that while computing capital gain, the assessee charges the total cost of improvement on the property sold on 26.02.2015 for his computation taking plea that he himself constructed the house on the land sold. However, same is not admissible. The issue is not ascertainable from any documentary source that the construction was made only by the assessee and further, sibling of the assessee are not taking the deduction for the cost of construction in their computation. Accordingly, 1/5th of the total cost of construction is allowable to the assessee.

Subject to the above remarks, the capital gain in the matter of the assessee is computed as under:

Cost of the property sold	4,35,00,000 (as per sale deed)
Share of the assessee in sale proceeds	1/5 <sup>th</sup> of Rs. 4,35,00,000/- i.e Rs. 87 lakhs
Cost of the property sold to the assessee (i.e value of the property as on 01.04.2081)	Rs. 29,746/- (assessee's share) (as discussed supra)
Cost of improvement	1/5 <sup>th</sup> Rs. 2,84,400/- i.e Rs. 56,880/- (as discussed supra)
Indexed cost of assessee share in sale proceeds	Share of assessee in sale proceeds x CII for 2014-15 / CII for 1980-81 = 29,746x1024/100=3,04,599
Indexed cost of improvement (as discussed above)	Share of assessee in cost of improvement x CII for 2014-15

	<i>/ CII for 1989-90</i> <i>=</i> <i>56,580x1024/182=3,18,340/-</i>
<i>Capital Gain</i>	<i>Share of assessee in sale proceeds [indexed cost of acquisition + indexed cost of improvement]</i> <i>= 87,00,000-[3,04,599 + 3,18,340] = 80,77,061/-</i>

Finally the A.O has assessed the total income of Rs.83,34,250/- and passed the order u/sec 143(3) r.w.s 263 of the Act dated 20.09.2021:

6. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has sustained the additions made by the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

7. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the fact that the assessee has valued the property as on 01.04.1981 as per the valuation report and all these facts were brought on record before the AO. Further the Ld. AR also emphasized

that the assessee has been adopting certain rates for the purpose of construction and supervision. The Ld. AR's contentions are that the assessee has adopted the cost of acquisition applicable to the co-owners. Further the assessee has purchased the plot for Rs.24,78,785/-. Whereas the assessee has deposited Rs.35 lakhs in the capital gains account scheme on 15.02.2016 before due date u/s 139(4) of the Act. Subsequently withdrawn and utilized for construction of the residential property. The Ld. AR contentions are that the assessee is entitled for the exemption u/sec 54 of the Act in respect of deposit in the capital gains account scheme before the time limit u/sec 139(4) of the Act. Further there is prescribed time limit of deposit in the capital gains account scheme before due date U/se 139 of the Act which also include time limit U/sec139(4) of the Act. The Ld. AR substantiated the submissions with the factual paper book, written submission judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR relied on the order of the CIT(A).

8. We heard the rival submissions and perused the material on record. The first disputed issue envisaged by the Ld. AR that the CIT(A) has erred in sustaining the

valuation of the property at Rs.29,746/- as against Rs.1,29,220/- irrespective of the fact that the assessee has adopted the same value determined to the co owners. The Ld. AR emphasized on the various facts in respect of the joint property sold, whereas the property was purchased by Sri. TahalSingh Marwah in 1960 and after the death of Sri Tahalsingh marwah on 4-06-1984, the said property was inherited by 5 legal heirs and constructed ground floor in the year 1989-90 and the first floor was constructed in the year 1995-96. Whereas in the F.Y 2014-15, the property was sold for Rs.4,35,00,000/- along with five co-owners and the assessee's share is Rs.87 lakhs and in support of the claim, the assessee has filed the registered sale deed and also the other documents to substantiate the assessee share. Further the purchaser has deducted the TDS @ 1% of Rs. 87 lakhs in respect of the assessee's share and assessee has availed the benefit of TDS claim. Subsequently the assessee has purchased the plot of Rs. 24,78,825/- for construction of the residential property and the assessee been filed the return of income on 16.03.2018. The assessee has made deposits in the capital gains account scheme of Rs. 35 lakhs on 15-02-2016. Further the assessee has withdrawn the amount from the capital

gain account scheme and utilized the funds for construction of residential property. The Ld. AR contentions are that the assessee has sold the property on 26.02.2015 and whereas due date for filing the return of income non audit case u/s 139(1) is on 31.08.2015. Whereas the assessee has deposited in the capital gain account scheme on 15.02.2016 and the original return u/sec 139(4) of the Act was filed on 16.03.2016 and the funds were withdrawn on 14.03.2017 for construction purpose. The Ld.AR contentions are that the exemption u/sec 54(2) of the Act is allowed for investment in capital gains account scheme and relied on the judicial decisions. We consider it appropriate to refer to the written submissions filed by the assessee as under:

*May it please your honour,  
Your honour kind attention is invited to decision para as per the Ld CIT Appeal order and reason for error in the judgement.*

*Para 5.2*

*It is submitted that the assessee is 1/5th owner of the property. In the case of assessee, the department has raised queries regarding FMV as on 01.4.1981, estimate for cost of construction/ improvement, area of construction etc. However, department has already accepted the return of income of other four co-owners. Therefore, the same basis as adopted by the other co-*

*owners and accepted by the department must also be adopted in the case of assessee. The also submitted judgement of the Jurisdictional ITAT, Jabalpur in the case of:-*

*Vinod Kumar Guru VS ITO Ward 2(1), Jabalpur ITA No.38/JAB/2019 dated 17.11.2020.  
Kindly refer para 4 of the ITAT order.*

*In view of the above referred judgment of the jurisdictional ITAT, it is prayed that the basis of capital gain computation for all five owners of the property must be same.*

*Para 7.1*

*The assessee submitted following report of valuation before the assessing authority:-*

*(a) Valuation report dated 15.11.2014 filed during original assessment. (Details of property mentioned is Double story residential building). In this report the Er has valued land at Rs 1,29,220/- and construction Rs 6,60,000/-. Total Value Rs 7,89,220/-. Date of sale of property is 28.02.2015.*

*(b)*

*(b) Second Valuation report dated 10.03.2021 filed during set aside assessment (Details of property mentioned is Double Story residential building). In this report the Er*

has valued land at Rs 1,29,220/- and construction (GF and FF) Rs 7,20,000/-. Total value Rs 8,49,220/-.

(c) Third Valuation report dated 10.03.2021 filed during set aside assessment (Details of property mentioned is land and Ground floor constructed thereon). In this report the Er. Has valued land Rs 1,29,220/- and cost of construction at Rs 3,60,000/-.

(d)

The reason for submitting two report is just for comparing the cost of land and construction of first floor in 1985 to 1989. And then another report for land, ground floor in 1985 to 1989 and FF in 1993 to 1995. It is important that all three reports are issued by same engineer i.e. Shri Praveen Beohar and on same date.

The ld AO, has drawn the wrong conclusion that multiple are submitted with wrong intention. It is also important to note that the Income Tax Act does not specify to take circle rate of property as the FMV as on 01.04.1981. Instead, the market value of the property is the best guide.

The assessee also made a request before the Ld CIT A to refer the property to DVO for determination of FMV as on 01.4.1981 instead of relying on the Ld AO estimates or method. The assessee's request was not accepted.

Para 8.1

The construction of 1200 sq.fts at Ground Floor and 1200 sq.fts on first floor is evidenced by:-

(a) Valuation report dated 15.11.2014.

(b) Valuation report dated 10.03.2021.

(c) Photograph attached to the registered deed of sale [ refer page

(d) Map attached to the registered deed of sale [ refer page No.

.....] clear mentioned of GF and FF with drawing.

The ld AO aswell as Ld CIT A has ignored these vital evidence and just adopted the figure of 1200 sq.fts. It was accpeted by the assessee that it is a typing mistake and can be rectified by the buyer of the property.

Para 9.1

The Ld AO has rejected the cost of construction estimated by the Er for Rs 300/- stating it to be arbitrary.

Against this the Ld AO has made reverse calculation based on cost estimate of Rs 1,600/- per sq.ft. and then applying cost inflation index backwards.

It is not clear as to what is the basis for Rs 1,600? Further there is no method prescribed for reverse working under the Income Tax. The best method is to take a valuation report from registered valuer.

If department does not agree than valuation can be referred to DVO.

The ld AO is not a technical expert in this line.

*Para 11.1*

*The assessee purchased land for construction of house for Rs 24,78,825. All payments for purchase of property was made out of sale proceeds of the residential house purchased.*

*The Ld AO has rejected the deduction on the plea that no construction was made thereupon. The payment for purchase of land was made as per time allowed u/s 54.*

*The assessee invested Rs 35,00,000 in FDR under capital gain scheme on 15.02.2016. This is after due date of return of income u/s 139(1) for AY 2015-16. The Ld AO therefore rejected deduction for land purchased as well as house property constructed.*

*The assessee withdrew money from Capital gain a/c scheme on 14.03.2017. The money drawn has been utilized for construction of property. Ultimately the deduction must be allowed for amount actually invested till the time allowed u/s 54. In view of the above, the deduction of Rs 24,78,825 must be given.*

*Year of Taxability is not AY 2015-16. It will be year in which money withdrawn i.e. AY 2017-18, that too -after verification of the construction status out of money withdrawn.*

9. Considering the facts, circumstances and judicial decisions, we found that the assessee's claim cannot be overlooked and further the assessee has made investment in the residential property which is not disputed by the revenue. Further the judicial decisions on the investment in the residential property for the provisions of Sec.54 of the Act are interpreted as the beneficiary provisions. Further the fact remains that, there is no dispute with respect to purchase of the property and the construction of residential house. Whereas on the first issue with cost of acquisition, the A.O is directed to verify and examine the Cost of acquisition adopted in the case of other Co-owners and the same is applied in the assessee case. On the second issue with respect of denial of exemption u/sec54 of the Act in respect of amount deposited in the capital gains account scheme, the revenue has not disputed the purchase of the plot, construction of residential house and withdrawal of funds from the capital gains account scheme for utilization for construction purpose. We rely on the ratio of the decision of the Coordinate bench of Mumbai Tribunal in the case of ITO Vs Nilima Abhijit Tannu (2019) Tax Pub (DT) 4802 and CIT Vs Rajesh Kumar Jalan, Honble High Court of Gauhati 286 ITR 274 (Gau) and direct the

Assesseing officer to allow the claim of exemption U/sec54 of the Act in respect of deposit in the capital gains Account scheme and allow the grounds of appeal in favour of the assessee.

10. In the result the appeal filed by the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 07.11,2023.

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

( Asst. Registrar)  
ITAT, Jabalpur