

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.474/Del/2023
निर्धारणवर्ष/Assessment Year:2020-21**

Ashwin Kapur D-4/4101, Vasant Kunj, South West, New Delhi.	<u>बनाम</u> Vs.	ACIT Circle (Int. Tax) 2(1)(2) Civic Centre, Minto Road, New Delhi.
PAN No. AQAPK9804E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri M.S. Dagar, CA
Revenue by	Shri Vizay B. Vasanta, CIT-DR

सुनवाईकीतारीख/ Date of hearing:	13.09.2023
उद्घोषणाकीतारीख/Pronouncement on	08.12.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the final assessment order dated 19.01.2023 passed by the Assessing Officer (for short "AO") u/s 143(3) r.w.s. 144C(13) pursuant to the directions of the DRP dated 09.12.2022 passed u/s 144C(5) of the Act. The assessee in the grounds of appeal challenged the order of the AO/DRP in not allowing indexed cost of improvement to the

property while computing the capital gains for the assessment year under consideration i.e. AY 2020-21.

2. Brief facts are that during the assessment year under consideration the assessee has sold property for sale consideration of Rs.4 crores and claimed deduction u/s 48 of the Act at Rs.3,40,43,088/- and declared capital gains of Rs.59,56,912/-. The assessee claimed renovation expenses of Rs.9,50,000/- and upon indexation at Rs.20,04,015/- with respect to the said property. The assessee was required to provide documentary evidences in support of his claim of renovation of cost of Rs.9,50,000/-. The assessee furnished reply which was rejected by the AO on the ground that assessee has failed to provide details of name, address and PAN of party to whom payment was made, did not furnish invoices, bank statements, reflecting the entries for the payment of Rs.9,50,000/-. Accordingly, he proposed an addition of Rs.20,04,015/- being indexed cost of renovation cost for which the assessee filed its objections before DRP.

3. In the course of proceedings before DRP the assessee submitted that all the payments for purchase of flat were made through assessee's bank account maintained in SBI, NewYork. It was also contended that more than 14 years lapsed from the time

the flat was renovated and assessee being an individual does not maintained any regular books of accounts. The assessee submitted that since more than 13-14 years had lapsed assessee requested for old bank account statements from bank where the payments were made. Assessee submitted that as he was living in USA all costs for renovation were incurred through his mother Smt. Sunita Kapur. It was also contended that the work of renovation was done through Alok Lal through his sole proprietary firm M/s Fourth Dimension 242, Sector-17, Urban Estate, Gurgaon having PAN No.AAXPL6937C that all the payments were made from withdrawals from his bank account the cheques were issued to Alok Lal for withdrawing cash for purchase of material on behalf of the assessee and provided the cheque details.

4. The DRP called for a remand report and the AO observed that as per bill, bank account statement and copy to cheque counter files the assessee had made total payment of Rs.10,96,800/- to Fourth Dimension or Alok Lal without entering any counter agreement for renovation work. The AO observed in the remand report that no additional documentary evidence was furnished establishing the relationship between Fourth Dimension and Alok Lal. In the remand report the AO also observed that no substantial

proof was available to show that the cash withdrawal amounts were precisely used for the renovation work. Based on the remand report the DRP held that order passed by the AO does not suffer from any infirmity.

5. The Ld. Counsel for the assessee before us made elaborate submissions as under:

“It was submitted that since the Appellant was living in USA, all costs for renovation were incurred through his mother Smt Sunita Kapur. After obtaining old bank statements etc. locating the old documents it was submitted that the work of renovation was done through, Sh. Alok Lal through his sole propriety firm M/S Fourth Dimension 242, Sector-17, Urban Estate, Gurgaon 122001 having PAN No.AAXPL6937C.

In respect of his services he raised following invoices for his labour charges:-

Bill No 010029 dated 20.5.2010 Rs.59,000/- (copy Enclosed)

Bill No 10.5.2020 dated 10.05.2010 Rs.2,47,800/- (copy Enclosed)

Payment in respect of his bills were made vide 694186 on 21.5.2010 for Rs 2,00,000 through ICIC bank Account in favour of Alok Lal and vide 694173 on 08.4.2010 for Rs 90,000 through ICIC bank Account in favour of Fourth Dimension.

Besides above, cheques for withdrawing cash were issued to Sh. Alok Lal for purchase of material on behalf of the assessee as per details given below:-

<i>Date</i>	<i>Cheque No.</i>	<i>Bank</i>	<i>Amount (Rs)</i>
<i>05-04-2010</i>	<i>694177</i>	<i>ICICI Bank</i>	<i>15,000.00</i>

05-04-2010	694176	ICICI Bank	15,000.00
05-04-2010	694175	ICICI Bank	15,000.00
05-04-2010	694174	ICICI Bank	15,000.00
26-04-2010	694180	ICICI Bank	2,00,000.00
26-06-2010	775595	ICICI Bank	3,00,000.00
01-09-2010	775559	ICICI Bank	50,000.00
07-09-2010	775558	ICICI Bank	50,000.00
20-09-2010	775556	ICICI Bank	50,000.00
29-09-2010	775557	ICICI Bank	50,000.00
16-07-2010	000023	Kotak Mahindra Bank	2,00,000.00
23-10-2010	000024	Kotak Mahindra Bank	1,00,000.00

It was also argued that the above factual position is verifiable from cheque counterfoils and bank statements etc. Further, it was submitted that it may also be appreciated that at the time a flat is handed over to the buyer, it requires significant renovation before it is inhabitable for living etc. Also for a flat size of approx 5250 sq ft amount Rs.9.50 Lacs claimed on renovation is quite reasonable and justifiable.

The Appellant requested before DRP-1 Delhi for admission of Additional Evidence in relation to Cost of Improvement in terms of Rule-9, Income-tax (Dispute Resolution Panel) Rules, 2009 in support of objections to proposed addition as per Draft Assessment order u/s 144C and plead for allowance of renovation expenses incurred.

During the course of proceedings before DRP, as per Letter No MSDA/2022-23/Ashwin/IT/SCR202021-DRP/08 dated 8th September, 2022, the appellant through his AR replied to Remand Report dated 6.9.2022 filed by AO in relation to Additional evidence furnished before DRP-Delhi-1 as under: -

- i. Learned AO has pointed out that in respect of Invoice No 010028 dated 10.05.2010 for an amount of Rs 2,47,800/- and Invoice No 010029 dated*

20.05.2010 for an amount of Rs 59,000/- aggregating to Rs 3,06,800.00, the assessee has not provided the details of corresponding payments as per bank statement.

It is submitted that payment in respect of his bills were made vide 694186 on 21.5.2010 for Rs.2,00,000/- through ICIC bank Account in favour of Alok Lal and vide 694173 on 08.4.2010 for Rs.90,000/- through ICIC bank Account in favour of Fourth Dimension. The payments are duly reflected in ICICI Bank. Statement furnished at Page No 4 of The Additional Evidence submitted and marked as A & B. Further, copy of PAN Card was also submitted at paper book page no 1. As regards copy of ledger copy in the books of M/S Fourth Dimensions etc, it may be pointed out that more than 12 years have lapsed from the date of transaction and period of limitation for keeping books had lapsed, the assessee was not in a position to obtain copy of account as desired.

It is respectfully submitted that copy of PAN and bill along with bank statement clearly showing payment through account payee cheque has been submitted, therefore, doubting genuineness of transaction is beyond apprehension.

ii. Ld. AO has pointed out that the assessee has not entered into any contract or agreement with M/S Fourth Dimensions/Sh. Alok Nath for renovation work got done at Flat No GH-3/PHC, GARDEN HEIGHTS-III .GURUGRAM, Since more than 12 years have lapsed from the time the flat was renovated and being individual, does not maintain any regular books of accounts etc., Further, all material for Addition/renovation of new Flat was out of cash withdrawals from bank through bearer cheque in the name of Sh. Alok Lal etc. and he purchased material on behalf of the Assessee to execute the work for furnishing flat measuring 5250 sq. ft. The assessee could not locate bills/invoices for purchase of material, however, detailed work done was

submitted during the course of assessment proceedings and also proof of source of renovation/addition made in the flat by way to payment through account pay cheque to the contractor and cash withdrawals from bank for purchase of raw material is already submitted in support thereon.

iii. Ld. AO has pointed out that No documentary evidence has been furnished to establish relationship between Fourth Dimensions and its Proprietor Sh. Alok Lal. It is submitted that M/S Fourth Dimensions is a sole proprietorship firm of Mr. Alok Lal. In respect of his services, he has issued Invoice No 010028 dated 10.05.2010 for an amount of Rs.2,47,800/- and Invoice No.010029 dated 20.05.2010 for an amount of Rs.59,000/- aggregating to Rs.3,06,800.00. Payment in respect of his bills were made vide 694186 on 21.5.2010 for Rs.2,00,000/- through ICIC bank Account in favour of Alok Lal and vide 694173 on 08.4.2010 for Rs 90,000/- through ICIC bank Account in favour of Fourth Dimension, Further, signature as per is copy of PAN Card submitted and signature on bills issued are identical/matching. It may also be pointed that for cheque of Rs.200000/- was issued in his individual capacity, he has provided bill from his sole proprietorship firm. As your honor is aware that sole proprietor firm does not have any separate registration documents as it is assessed under pan of the Proprietor.

iv. As pointed out in our submissions, the assessee Sh. Ashwin Kapur is a Non- Resident and living in USA. The work of renovation was got done by his mother i.e Smt. Sunita Kapur. All payments have been made through her banking accounts being maintained with ICICI bank and Kotak Mahindra Bank . Since, payments were made by way of account payee cheque for Rs.2,90,000/- to Sh. Alok Lal/Fourth Dimensions etc. and the remaining payments were made out of withdrawals from bank etc. Since more than 12 years have lapsed from the

time the flat was renovated and being individual, does not maintain any regular books of accounts etc., Further, all material for Addition/renovation of new Flat was out of cash withdrawals from bank through bearer cheque in the name of Sh. Alok Lal etc. and he purchased material on behalf of the Assessee to execute the work for furnishing flat measuring 5,250 sq. ft. The assessee could not locate bills/invoices for purchase of material, however, detailed work done was submitted during the course of assessment proceedings and also proof of source of renovation/addition made in the flat by way to payment through account pay cheque to the contractor and cash withdrawals from bank for purchase of raw material is already submitted in support thereon.

v. Ld. AO has pointed that cash withdrawal amount were used for renovation work in the flat and that mere narration is not sufficient that all withdrawals were for renovation purpose. It is submitted that 5,250sq. ft. flat provided by the builder was bare flat and in order to make it inhabitable, certain Addition were made for Interior and Woodwork in flat, Modular Kitchen/Chimney etc. in the Flat etc. Due to additional work and renovation done in the flat, the flat could be let out at monthly rental of Rs.1,00,000/- to M/S SISTEMA SMART TECHNOLOGIES LIMITED. Cash withdrawal from bank conclusively prove that the renovation amount was actually spend and claim is not bogus etc.

vi. As regards the observation of LD. AO regarding cash withdrawals through 4 cheques of Rs 15000 each as to why cash could not have been withdrawn thought one cheque only. Kindly note Ch no. 694174 was issued on 4.4.2010, Ch no.694175 was issued on 31.03.2010 and Ch no. 694176 and 77 was issued on 5.04.2010. Possibly, separate cheques were issued for separate purchases etc. Further as per bank statement submitted Rs.15000 each was withdrawn on 6-4-2010.

Attention is invited to ITAT [C] Bench : Chennai order in the case of ACIT vs. Shri Sambandhan Dorairaj in ITA No 301/Chy/2020 wherein it has been held as under:

“We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. We find that the case of the assessee is that he is residing at Mumbai and he has purchased an old house at Chennai and subsequently, repairs are carried in the house. The counsel for the assessee has submitted before us that the repairs carried by the assessee long back, five years ago and therefore, he is not able to produce evidence before the A.O. He further submitted that the entire repair works/improvements carried out by his relatives and he is not able to collect the bills and vouchers since he is residing at Mumbai. We have gone through the assessment order and the report of the Inspector. We find that the Inspector has enquired with the neighbors and the neighbours have stated before him that they are not aware of the improvements carried out by the assessee. Mainly, based on the enquires made with the neighbours, he came to the conclusion that the assessee has not carried out any improvement work and disallowed the entire expenditure claimed by the assessee. On appeal, the Ld. CIT(A) is of the opinion that if the A.O wanted to know exactly about the improvement works carried out by the assessee, he should have been enquired through a builder who constructed the building in spite of neighbours. Further, the Ld. CIT(A) keeping in view the above and also by considering all other factors and also take into consideration that the assessee is not residing at Chennai he is only residing at Mumbai, he disallowed an amount of Rs.5,00,000/- for lack of evidence and directed the A.O to allow the

benefit u/s 54 of the Act to the extent of Rs.18,00,000/-. We have gone through the entire order of the Ld. CIT(A), we find that the disallowance made by the Ld. CIT(A) to the extent of Rs.5,00,000/- is fair and reasonable and we find that no interference is called for.

In view of the above, the appeal filed by the Revenue is dismissed (Copy of order enclosed)

Appellant's objection to Draft Assessment order u/s 144C and various submissions and documents submitted before DRP-1 Delhi were dismissed vide order (DIN) No ITBA/DRP/M/144C(5)/2022-23/1047968058(1) dated 9.12.2022.

Appellant respectfully prays for deletion of Addition/disallowance of Rs.20,04,015/- made in the assessment order passed u/s143(3) r.w.s 144C(13) of the Income Tax Act, 1961."

6. On hearing both the sides and perusing the orders of the authorities below, we see considerable force in the submissions of the assessee. The submissions of the assessee that being an NRI he has issued cheques to Alok Lal for withdrawal of cash from his bank account for the purpose of utilizing the same for renovation of kitchen, cupboards, etc. cannot be ruled out. The explanation of the assessee is a plausible explanation. The observation of the AO that there is no written agreement to establish the relation between the assessee and the Fourth Dimension and its proprietor Alok Lal cannot be a ground for disbelieving the payments for

utilizing the renovation work. In any case, there is no dispute about carrying out of the renovation work and the amount spent was only of Rs.9,50,000/- for kitchen cup boards, etc.. Therefore, taking the totality of facts and circumstances into consideration, we accept the submissions of the assessee and the explanation as genuine and, therefore, direct the AO to allow the assessee the cost of improvement with indexation and re-compute the capital gains.

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

Order pronounced in the open court on 08/12/2023

Sd/-
(G.S. PANNU)
VICE PRESIDENT

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

Dated: 08/12/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi