

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 604/JP/2023
निर्धारण वर्ष / Assessment Years : 2016-17

Sushila Bhardwaj H. No.-1460, Khunteto Ka Rasta, 3 rd Crossing Kishanpole Bazar, Rajasthan	बनाम Vs.	ITO, Ward 1(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AQVPB 9738 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mukesh Khandelwal (CA)
राजस्व की ओर से / Revenue by : Sh. Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 07/02/2024
उद्घोषणा की तारीख / Date of Pronouncement: 01/03/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 21/09/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2016-17 which in turn arise from the order dated 22.11.2018 passed under section 143(3) of the Income Tax Act, by ITO, Ward-1(4), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. That the Id. CIT(A) has erred on facts in sustaining the action of the Id. AO in estimating the indexed cost of construction of house property, sold by the appellant at Rs. 24,06,000/- as against claim of the appellant at Rs. 61,65,795, for calculating taxable LTCG.

2. That the appellant craves leave to add, amend, alter, withdraw any of the grounds of appeal before hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee had sold a residential property with constructed area 2005 Sq. ft. on 19.11.2015 and declared LTCG of Rs. 1,14,13,094/- there on against which deduction under section 54 of the IT Act, 1961 was claimed for the said capital gain amount. The assessee had claimed a sum of Rs. 6,44,300/- spent during FY 82-83 and 83-84, against cost of construction of house sold which was doubted by the Id AO by saying that such cost of construction was very high and Id. AO reduced the same by Rs. 2,42,600 and enhanced the amount of LTCG from Rs. 1,14,13,094/- as declared by the assessee to Rs. 1,51,72,889.

3.1 Regarding claim under section 54 he opined that the assessee had purchased two adjacent houses which were having separate entry, separate electricity connections and he restricted the claim for only one house and reduced the claim from Rs. 1,14,13,094 to Rs. 70,00,000/- only.

Hence there was addition of Rs. 8,17,28,89 in the returned income of the assessee.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5.1.3 I have considered the submission of the appellant and the documents filed during the appeal proceedings. The submissions made in appeal were made before the AO also. As discussed in para 2 of the assessment order, the construction of the property was 32 years old. Further, it is an undisputed fact that the property in question was a constructed property, hence cost of improvement needs to be allowed to the assessee. Since the property is very old, the appellant is not expected to have kept the bills/vouchers pertaining to construction of the property. However, the appellant should have made due diligence to calculate the cost of improvement through a registered valuer. The appellant failed to provide any basis for taking the cost of improvement at Rs. 321/- per sq Ft. as in 1982 and 1983. The AO on the other hand has applied reverse indexation method for calculating the cost of improvement which is based on logic. In the absence of actual valuation of cost of improvement, I find the reverse indexation method to be the most practical method for computing the cost of improvement. Accordingly, the disallowance made by the AO of Rs. 37,59,795/- is confirmed. The ground of appeal raised is hence dismissed.

5.2.3 I have gone through the assessment order, submissions of the appellant, the remand report and the facts of the case. It is an undisputed fact that prior to the purchase of the property by the appellant there were two dwelling units and two families were residing in the said building. However, this is also a fact that initially the entire campus was one building occupied by one family. The Income-tax Inspector's (ITI) report attached with the remand report of the AO states that the building has only one main gate and on entering the said gate there is a gallery followed by an open space with no partition and the entire campus is one premise only. He has further noted that on enquiring from neighbours it was confirmed that it is one house. The ITI has enclosed photo of the said premise also. The AO in the remand report has not contradicted the report of the ITI but

has noted that since total 11 registered deeds were executed, the property has multiple dwelling units. Since on physical verification of the property the property is found to be one unit, in my opinion the appellant complies with the requirement for claim of deduction 54 with respect to the entire unit. Accordingly, the deduction claimed under section 54 by the appellant with respect to the both the units numbered 1460A and 1460B is allowed. The ground of appeal raised is allowed.”

5. As the assessee did not find any favor from the finding of the Id. CIT(A) regarding the cost of construction claimed by the assessee the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submissions and the same is reproduced herein below:

“The appellant individual had filed her ITR on 24.01.2017 vide e filing acknowledgement no. 600896960240117 declaring a taxable income of Rs. 1,86,730. The appellant earns income from rent and interest. During the year under consideration she had sold her residential house situated at plot no. A-14, Acharya Vinoba Bhave Nagar, Vaishali Nagar, Jaipur and out of sale consideration she had purchased a residential house and in the ITR she had declared this transaction as under :-

Sale Consideration of House Property		1,76,45,500
(actual sale consideration – Rs. 1,45,45,500)		
(value adopted by registering authority – Rs. 1,76,45,500)		
Less : Indexed cost :-		
FY 1981-82 Plot	6,162/100* 1081	66,611
FY 1982-83 Construction	2,70,000/109* 1081	26,77,706
FY 1983-84 Construction	3,74,300/116* 1081	34,88,089

		62,32,406

Capital Gain		1,14,13,094

During assessment proceedings the Id. AO doubted on two claims in the above said working of Long Term Capital Gain i.e. on the cost of construction as claimed and deduction u/s 54 and he had made disallowances on both the issues. The issue of deduction u/s 54 stands settled with order of the Ld. CIT (A) and for present proceedings the only issue is regarding cost of construction claimed. The appellant had sold her residential land with constructed residential house thereon admeasuring 2005 sq. feet (RCC) and 167.50 Sq. Ft (Pattiposh). Copy of Registered sale deed is at APB 2-8. It was claimed by the appellant that she had constructed house in FY 1982-83 and 1983-84 and had spent Rs. 2,70,000 and Rs. 3,74,300 respectively totaling to Rs. 6,44,300 yielding per sq. ft construction rate of around Rs. 300 per sq. ft. The said amount was claimed by the assessee as per details maintained in her personal diary which had been destroyed after filing ITR for the relevant year. The Id. AO doubted this working and he made his own estimations and stated that at present (i.e. during PY 2015-16) per sq. ft construction cost is Rs. 1,200 per sq. ft and hence he worked out indexed cost of construction at Rs. 24,06,000 (i.e. 2005 X1200) and allowed the same whereas the indexed cost of construction as claimed by the appellant is Rs. 61,65,795 and on account of this reason an addition of Rs. 37,59,795 has been made by the Id. AO. The computation as done by the Id. AO for LTCG was as under :-

Sale Consideration of House Property (actual sale consideration – Rs. 1,45,45,500) (value adopted by registering authority – Rs. 1,76,45,500)	1,76,45,500
Less : Indexed cost :-	
FY 1981-82 Plot	6,162/100* 1081
Indexed cost of construction	66,611
	24,06,000

	24,72,611

Capital Gain	1,51,72,889

Hence the LTCG as worked out by Id. AO is Rs. 1,51,72,889 in place of Rs.,1,14,13,094 claimed by the appellant.

Proceedings before Ld. CIT (A) :

The Id. CIT (A) concurred with the view of the Id. AO by stating that reverse indexation is also an acceptable method.

Submissions :

1. The Id. AO made his estimation about present construction cost which is not a permissible method as per law. As per provisions of section 48 indexed cost of capital asset transferred has to be deducted for calculating taxable capital gain which has further been defined in clause (iii) of Explanation. As per this definition indexed cost of acquisition is an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later. Meaning thereby that cost actually incurred in the first year of acquisition of capital asset has to be determined first for working out indexed cost of acquisition and it is not permissible that you straightway jump to estimate cost in today's terms.

2. The estimation about cost of construction is also on wrong footings as in the same way the Id. AO was supposed to estimate the FMV of the land as existing during PY 2015-16. For your kind information the fair market value of land during PY 2015-16 was around Rs. 1,50,00,000 (i.e. @ Rs. 30000 per sq. yards) which further stands proved with the DLC rate applied by the registering authority. What he has done is that he accepted some thing which was favorable to him and has disturbed the value which was not found suitable to him. This approach is wrong and un justified. Therefore such approach of the Id. AO in estimating present cost of construction only is wrong in law and on facts,.

3. The appellant claimed about construction of house during two previous years i.e. 1982-83 and 1983-84 whereas the Id. AO was confused about the matter as at one place he mentions that as per photographs of property submitted, the construction looked to be new one as against claim of the appellant about the construction to be 32 years old whereas in next paras he states that reverse indexation is valid method of estimation and even worked out initial cost of construction at Rs. 2,42,600 during FY 1982-83 by following reverse indexation. He has nowhere mentioned as to which year he considers that the construction had been undertaken. The AO was not an expert person in the field of construction and hence his estimation about cost of construction is a work of his guess only.

4. The Id. AO has worked out construction cost only for 2005 sq. ft. RCC construction only and has not accounted for 167.50 sq. ft of pattiposh construction. Estimation for pattiposh construction was also required to be done by him.

5. The Id. AO states in his order that by reverse indexing the present estimated cost of Rs. 24,06,000 the figure as at 1982-83 comes to be Rs. 2,42,600 which he states to

be rational one. Hence he has estimated that the appellant had spent Rs. 2,42,600 for construction during 1982-83 which results into per sq. ft. cost of construction at around Rs. 121/- per sq. ft (for 2005 sq. ft RCC construction) as against claim of the appellant at around Rs. 300/- per sq. ft. for complete construction. The cost estimated by the Id. AO is very much on lower side and hence is liable to be rejected. The Id. AO as well as Id. CIT (A) forgot to take into consideration that during 1982-83 Vaishali Nagar where the appellant had her land and construction work was carried was used to be remotely located having very meager population and at such place both the material and labour cost were much higher than cost in city area.

6. The Id. AO states in his order that It is very strange and unusual that cost of construction is almost 105 times of the cost of land. Generally, in case of residential houses, construction being made immediately subsequent to purchase of land, the construction cost is always lower than the cost of land. Again he has used his estimations only as his contention may be correct in todays time but herein the matter pertains to 1981-82 at which time land was very cheap in almost all places of the country and it was only after the year 2000 that prices of land started shooting up geometrically every where. Hence his contention is also not correct. Had he been correct then why he did not estimate cost of construction lower than Rs. 66,611 being indexed cost of land ?

7. The Id. CIT (A) has confirmed the action of the Id. AO by holding that in absence of valuation report the reverse indexing method is based on logic. The appellant contents that reverse indexation method is against the spirit of provisions of section 48 which says about indexed cost of acquisition/ development. Therefore such approach of the Id. AO and CIT (A) is required to be quashed. Further the Id. AO stated that at present per sq. ft. cost of construction is Rs. 1,200/-. He has put this figure without having any expertise in the subject. It is not known on what parameters he has estimated cost @ Rs 1200 per sq. ft. Therefore such estimation deserves to be quashed. He did not have any information about quality of construction and even he did not try to justify his adopted rate with the photos produced before him. Therefore such approach wherein assessment has been framed merely on estimations only, deserves to be quashed and the value adopted by the appellant deserves to be confirmed.

It is important to bring to your notice that after sale of the property the buyer had demolished the construction and had constructed a multistory complex on the land so purchased by him. Due to this reason the verification of the property is impossible and the matter has to be decided to the best of the estimations of Hon`ble Bench. It will again be not practicable to send the matter for valuation to the Valuation Wing of the department as the constructed building has ceased to exist. Under these circumstances

the assessee had took the matter to one approved valuer of the department to whom she had submitted the copy of the sale deed and an Affidavit confirming various construction work which she had carried in her house and based thereon the valuer has given the report which is now being submitted to your honour for your kind perusal and deciding the matter. The valuer has estimated the cost of construction at Rs. 3.86 Lacs which is although on very lower side as compared to actual amount spent by the assessee but in absence of property as constructed by the assessee this was the only possible way of valuing the cost of construction. Your honour is sincerely requested to consider the same and decide the matter.

In view of all above it is sincerely requested that the estimation done by Id. AO may kindly be quashed and the cost estimated by the appellant towards construction or as worked out by registered valuer may kindly be allowed and oblige.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

SN	Description	Page No.
1.	Computation of Total Income for the year under consideration	1
2.	Copy of sale deed	2-3 4-12

7. During the course of hearing the Id. AR of the assessee also filed a petition requesting to admit the additional evidence in terms of sub rule 4 to rule 18 of the ITAT Rules, 1963 praying that the main and only dispute in the present appeal subsist of the allowance of cost of construction the Id. AO has computed the cost of construction on estimate basis. Whereas the claim of the assessee was considered as higher and since the property has already sold based on the evidence the assessee has in her possession

she has in support of her claim prayed to considered the report of the registered valuer in support of the claim and to counter the estimate made by the Id. AO. Since, these evidence is required as assistance to the assessee on hand the same is admitted and the considered for our finding in this appeal.

8. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A) and at the same time strongly objected to the additional evidence filed by the assessee. The Id. DR objected to the claim of the assessee without any support and the Id. AO has already granted the relief based on the logical working and reasonable estimate of cost. The Id. DR also argued that the assessee could not prove exact period of construction and therefore, he has requested for setting aside the matter to Id. AO for determination of this fact first, but since, there is no building existed finally he did not insist on said demand and requested the bench to take a decision on the matter. He also argued that the assessee has got the valuation report from the registered valuer by providing details of construction as per her own to reach on a particular figure of construction cost and same should not be considered.

9. We have heard the rival contentions and perused the material placed on record. The apple of discord in this appeal is that the assessee had claimed a sum of Rs. 6,44,300/- spent during FY 82-83 and 83-84, against cost of construction of house sold which was doubted by the Id AO by saying that such cost of construction was very high and Id. AO reduced the same by Rs. 2,42,600 and enhanced the amount of LTCG from Rs. 1,14,13,094/- as declared by the assessee to Rs. 1,51,72,889. The assessee has challenged the action of the Id. AO before the Id. CIT(A). The brief fact of the case is that in the assessment proceeding the Id. AO doubted on two claims in the working of Long Term Capital Gain i.e. on the cost of construction as claimed and deduction u/s 54 and he had made disallowances on both the issues. The issue of deduction u/s 54 stands settled with order of the Ld. CIT (A) and before us in the present appeal the only issue is regarding cost of construction claimed. The assessee sold her residential land with constructed residential house thereon admeasuring 2005 sq. feet (RCC) and 167.50 Sq. Ft (Pattiposh). Copy of Registered sale deed is at APB 2-8. It was claimed by the assessee that she had constructed the house in FY 1982-83 and 1983-84 and had spent Rs. 2,70,000 and Rs. 3,74,300 respectively totaling Rs. 6,44,300 yielding per sq. ft construction rate of around Rs. 300 per sq. ft. The said amount was

claimed by the assessee as per details maintained in her personal diary which claimed to have been destroyed after filing ITR for the relevant year. The Id. AO doubted the cost of construction claimed by the assessee and he made his own estimations and stated that at present (i.e. during PY 2015-16) per sq. ft construction cost is Rs. 1,200 per sq. ft and hence he worked out indexed cost of construction at Rs. 24,06,000 (i.e. 2005 X1200) and allowed the same whereas the indexed cost of construction as claimed by the appellant is Rs. 61,65,795 and on account of this reason an addition of Rs. 37,59,795 has been made by the Id. AO which is under dispute. In the first appeal the Id. CIT (A) concurred with the view of the Id. AO by stating that reverse indexation is also an acceptable method. Before us the Id. AR of the assessee fairly admitted that there is big difference between the cost of construction claimed by the assessee at Rs. 300 per sq. feet against the estimate of the Id. AO at Rs. 121 sq. ft. based on the reverse calculation. The Id. AO has estimated per sq. feet cost of around Rs. 121/- per sq. feet considering the fact that in the PY 2015-16 during which the assessee had sold her residential property per sq, ft. and the rate of construction cost was around Rs. 1,200/- per sq. feet. Accordingly he worked out that for construction of 2005 sq. feet of construction the cost of the assessee in today`s time is Rs. 24,06,000 which has been treated by

him as indexed cost of construction. The Id. AO by applying reverse indexation process worked out cost of construction during 1982-83 at Rs. 2,42,600 which he opined to be rational based on the said working. The Id. CIT (A) while dealing with the appeal of the assessee on this ground sustained the order of the Id. AO (in para 5.1.3 at page 5 of his order) by holding as under :-

*"I have considered the submission of the appellant and the documents filed during the appeal proceedings. The submissions made in appeal were made before the AO also. As discussed in para 2 of the assessment order, the construction of the property was 32 years old. Further, it is an undisputed fact that the property in question was a constructed property, hence cost of improvement needs to be allowed to the assessee. Since the property is very old, the appellant is not expected to have kept the bills/vouchers pertaining to construction of the property. However, the appellant should have made due diligence to calculate the cost of improvement through a registered valuer. The appellant failed to provide any basis for taking the cost of improvement at Rs. 321/- per sq Ft. as in 1982 and 1983. The AO on the other hand has applied reverse indexation method for calculating the cost of improvement which is based on logic. In the absence of actual valuation of cost of improvement, I find the reverse indexation method to be the most practical method for computing the cost of improvement. Accordingly, the disallowance made by the AO of Rs.37,59,795/- is confirmed. **The ground of appeal raised is hence dismissed.**"*

9.1 The action of the Id. AO determining estimated cost of construction at present and considering the same as indexed cost of construction on reverse indexation is not in accordance with law when the assessee has objected and has placed his cost of construction stating that the same is done in two year whereas the Id. AO has estimated the cost in one year only and that too on reverse working considering the cost at the time of

sale is not permissible. The bench has also noted that the assessee' claim for land was accepted but only the dispute made related to the cost of construction. Since, it is also not disputed fact that if the matter is remanded back to estimate the cost of construction the present building is not there as stated by the Id. AR of the assessee. Thus, to give the justice and to consider the principles of natural justice we considered the cost of construction estimated by the approved valuer as guiding factor to render justice to the assessee. The assessee claimed that construction of the house had been done during PY 1982-83 and 1983-84 whereas the Id. AO has nowhere denied this fact but for working out estimated cost during 1982-83 by adopting reverse indexation method he has shown his satisfaction about the estimated cost as had been incurred during PY 1982-83. He has also stated that the Id. AO could not appreciate that then constructed house of the assessee was having 2005 Sq. feet RCC construction and 167.50 Patti Posh construction whereas the Id. AO worked out estimated cost of construction for 2005 sq. ft RCC construction only. Since there is no scientific basis for arriving the cost of construction by the Id. AO and as he is also not an expert person in the civil construction field and hence his working is merely a work of his estimation without any proof not only that the way he has estimated the cost of

construction is also not correct he has first estimated the cost and then apply the indexation of the subsequent indexation and not the reverse. Since, the buyer of the property of the assessee had demolished the residential house of the assessee and the construction is no more in existence and hence at none of the stages i.e. before AO or CIT (A) she could substantiate his cost and also not made any request to refer the matter to Departmental valuation cell. Due to these circumstances the assessee appointed a registered valuer (approved by CCIT, Jaipur) to whom she had submitted parameters of the construction and based thereon the valuer has estimated cost of construction of the house during the years 1982-83 and 1983-84 by applying local PWD rates as prevailing during these years. Such report has been submitted by the assessee with a request for admission of this document as an additional document so as to seek the justice and to be used as guiding tool the same is used for the first time before us as a reasonable and scientific way of estimation of cost of construction. In terms of the sub rule 4 to rule 18 of the ITAT Rules, 1963 we consider this evidence as a guiding support so as to give the justice to the assessee. As per this valuation report the estimation made by the registered valuer is Rs. 3.86 Lacs and in the report the valuer stated that in absence of any requisite details it can safely be presumed that such

estimated cost of construction may be divided equally between two years viz. FY 1982-83 and 1983-84. The bench noted that the estimation done by the Id. AO at Rs. 24,06,000 during PY 2015-16 is not in accordance with the provisions of section 48. As per the provisions of section 48 read with its explanation estimation of actual cost as had been incurred during the relevant year has first to be estimated and thereafter only indexation has to be applied whereas the Id. AO straightway jumped to estimating current cost of construction and justified the same by reverse indexation is not correct. The AO is silent on the issue as to why not he disturbed the rate of land. It is not correct to accept only a part of the matter as correct and not to accept other part of the matter without any justification. We also note that the assessee had claimed cost of construction as had been incurred during two previous years viz. 1982-83 and 1983-84 which fact seems to had been completely ignored by the Id. AO. At one place in the order he doubts about the construction period whereas in subsequent para he agrees to the period 1982-83 by comparing the presently estimated cost by reverse indexation. We also note that the Id. AO has used his estimations only about the cost of construction. If he had any doubts he could have referred the matter to Valuation Cell of the department, which he did not do and proceeded as per his own estimations. Under these circumstances we

accept the document said valuation in the interest of justice and equity and direct the Id. AO to consider the cost of construction at Rs. 3,86,000 to be distributed equally in the year 1982-83 & 1983-84 as against the claim of the assessee at Rs. 6,44,300/- which will serve end to justice to both the revenue as well as to the assessee. Based on this observation the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 01/03/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/03/2024

*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sushila Bhardwaj, Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward-1(4), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 604/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar