

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

**BEFORE SHRI SAKTIJIT DEY-VICE PRESIDENT
&
SHRI PRADIP KUMAR KEDIA-ACCOUNTANT MEMBER**

I.T.A. No.768/DEL/2023
Assessment Year 2019-20

Yogesh Gandhi C-2/14, Safdarjung Development Area New Delhi.	Vs.	ACIT Central Circle -1(3)(1) International Taxation New Delhi
TAN/PAN: AAIPG4922F		
(Appellant)		(Respondent)

Appellant by:	Shri Rishabh Ostwal, Advocate Shri Deepak Ostwal, Chartered Accountant		
Respondent by:	Shri Vizay B. Vasanta, CIT-DR		
Date of hearing:	28	02	2024
Date of pronouncement:	07	03	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed at the instance of the assessee against the final assessment order dated 22.06.2022 passed under Section 143(3) r.w. Section 144C(13) passed in pursuance of directions issued by Dispute Resolution Panel (DRP) dated 10.05.2022 relevant to Assessment Year 2019-20.

2. At the time of hearing, the Id. counsel for the assessee pointed out that the solitary issue for determination of the Tribunal is allowability of Rs.15,40,000/- towards cost of acquisition/ improvement of the property received by way of family settlement which property has been sold during the year under consideration.

3. The Id. counsel for the assessee submitted that the assessee is a Non Resident Indian (NRI) citizen, resident of USA. The assessee has been a permanent resident of USA for more than 50 years. His father - Late Shri Sitaram Gandhi acquired property in question, i.e., C-2/14 SDA New Delhi-21 on 19.11.1965. Father – Late Shri Sitaram Gandhi had

three sons (i) Shri Avinash Prakash Gandhi (ii) Shri Prem Prakash Gandhi (iii) Shri Yogesh Gandhi, i.e., assessee. Father – Late Shri Sitaram Gandhi gifted / transferred this property on 21.01.1966 in the name of his eldest son Shri Avinash Prakash Gandhi who happened to be only son residing in India. Father - Late Shri Sitaram Gandhi passed away on 29.10.1996. The house in question, was the property of Late Shri Sitaram Gandhi but the title was in the name of brother Shri Avinash Prakash Gandhi, although two younger brothers including assessee had equal share in this property without any legal title.

3.1 The potential dispute towards share in the property was settled in a family mediation / settlement and it was agreed that Shri Avinash Prakash Gandhi would transfer $\frac{2}{3}$ share in the property by way of gift in the name of his two brothers, including assessee, residing in USA. A permission was obtained from Delhi Development Authority in October, 2012 for recognition of rightful entitlement of other two brothers, one of which is assessee. To avoid any doubt or dispute and to secure clear legal title over the said property, the assessee decided to pay stamp duty charges for registration of his share in the said property as per stamp duty valuation. The said cost towards stamp duty was borne by the assessee and a Conveyance Deed was executed. On payment of stamp duty of Rs.11.40 lakh each by two brothers, $\frac{2}{3}$ share of the property was transferred in the name of Shri Prem Prakash Gandhi and Shri Yogesh Gandhi, i.e. assessee. The property was sold in the assessment year in question and capital gain thereon was calculated after deducting cost of acquisition. The assessee also included cost of stamp duty charges of Rs.11,40,000/- which was indexed at Rs.15,40,000/- as part of the cost of acquisition.

3.2 The AO has denied the deduction towards stamp duty cost of Rs.11,40,000/- while granting the cost of acquisition worked out as per Fair Market Value as on 01.04.2001 towards the $\frac{1}{3}$ share in the property. The AO denied the claim in the light of the DRP directions that stamp duty paid on gift deed does not constitute cost of improvement of

property.

4. On perusal of records and in the light of factual matrix placed before us on behalf of the assessee, we see no perceptible justification in the action of the Revenue. The AO has duly accepted the factum of transfer of 1/3 share in the property from his brother to the assessee. Fair Market Value as on 01.04.2001 towards cost of acquisition has been accepted. The only dispute revolves around the stamp duty expenses incurred in 2012 for obtaining clear legal title in the property. We are unable to understand the rationale for denial of stamp duty being integral part of the cost of acquisition / improvement. The factual matrix placed before us speaks for itself. The stamp duty expenses incurred by the assessee for obtaining clear title in the property thus cannot be seen differently but is part and parcel of the cost of acquisition itself. The action of the AO in this regard thus deserves to be set aside and cancelled. The AO is directed to include the stamp duty cost as part of acquisition cost and re-determine the taxable capital gain in accordance with law.

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

Order pronounced in the open Court on 07/03/2024

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

DATED: /03/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**