

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.4480 & 5532/Del/2017
Assessment Year: 2012-13

Rabinder Taranjeet Singh Keer, Vs ACIT,
3, Shree Ganesh Heights, Circle-52(1),
Behind Prakash Petrol Pump, New Delhi.
Chowk No.5, Govind Nagar,
Nashik – 422009.

PAN: AASPK7452N

(Applicant)

(Respondent)

Assessee by : None
Revenue by : Shri Vivek Vardhan, Sr. DR
Date of Hearing : 20.03.2024
Date of Pronouncement : 28.03.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the orders dated 14.12.2016 and 28.06.2017 of the Commissioner of Income Tax (Appeals)-18, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.159/15-16 and No.Del/CIT(A)-18/159/15-16 respectively arising out of an appeal before it against the order dated 31.03.2015 passed u/s

143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 52(1), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record. As the case was called for hearing, none has appeared. The RPAD issued was received back with the endorsement 'left address.' The record shows that the assessee had earlier filed a transfer application which was dismissed by the Hon'ble President by order dated 05.01.2024. Thereafter, notices were issued for today and as observed earlier, the same have been received back with the report 'left the address'. No other address is available on which service can be effected. The ld. DR was heard who supported the findings of the ld. tax authorities below.

3. On appreciating the material before us, it comes up that the assessee had bought a plot with an old bungalow along with his nephew on 08.02.1999 for Rs.8,50,000/-. The nephew sold his rights on 11.06.2007 for Rs.5,50,000/- following which the assessee constructed a building on the plot in the name 'Soma Heights'. The appellant sold the first floor and second floor terrace area while retaining ground floor and a capital gain computation was submitted. The ld. AO was not satisfied with the huge construction cost/improvement cost and, accordingly, re-calculated the long-term capital gain. As the order was challenged before the ld.CIT(A), the assessee had claimed that :

(1) While the Valuation Officer computed the cost of construction of ground floor at the rate of Rs. 6032/sq.ft and Rs.3657/sq.ft for the first and second floor, the appellant stated that the higher value of ground floor is adopted by the valuer because of expenditure like ground development, plinth expenses, land expenses have been allocated by the valuer to the ground floor only.

The appellant stated that the entire expenses should be allocated to the total construction area and not only for the GF.

(2) It was also a claim that the payments of substantial amount have been made prior to the period of construction and subsequent to the period of construction (See para 4.6 of the AO).

4. However, the Id.CIT(A) has sustained the addition in part for which the assessee is in appeal before us raising the following grounds:-

“1. On the basis of facts and the circumstances of the 'case and as per law, the delay in filing of appeal please be condoned as husband of the appellant was under treatment as he was suffering from hypertension, obstructive sleep apnoea, NIDDM and advanced lumbar splosis, as such he was advised strict bed rest.

2. On the basis of facts and the circumstances of the case and as per law, the order passed by the Asst. Commissioner of Income Tax, Circle 52(1), New Delhi and the appeal order passed against the same please be quashed being without jurisdiction

3. On the basis of facts and the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeal) -18, New Delhi, is not justified in disallowing payment of Rs. 4,59,114/- made for purchase of 50% share in Plot No. 3, S. No. 574/2,. Nashik.

4. *On the basis of facts and the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeal) -18, New Delhi, is not justified in calculating the yearly construction expenses incurred from year 2008 to 2012 on basis of percentage of payments made by the appellant from bank account during the said period ignoring the period during which the actual expenses on construction were incurred.*
5. *On the basis of facts and the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeal) -18, New Delhi, is not justified in enhancing income of the appellant by Rs. 3,66,20,143/- U/s. 69 of the Act by treating the difference between construction expenses incurred and payments made from bank account as unexplained investment.*
6. *The Appellant craves for addition to, deletion, alteration, modification, change any of the above grounds of appeal.”*
5. Appreciating the order of Id.CIT(A), it comes up that the CIT(A) has taken into consideration the valuation report and had further show-caused the assessee for enhancement of income which was not responded. It appears that the assessee was unable to submit any documents other than the valuation report and the copies of bank statements establishing the period and cost of construction of the building and the source of the same. The CIT(A) having considered the bank statement was not satisfied with the assertion of the assessee regarding the source of investment of the purchase cost and construction. The findings of CIT(A) in para 4.13 to 4.15 remain unrebutted in the absence of any rebuttal at this stage by the assessee. Further, the enhancement has been made on the basis of expenses established to be made beyond the banking transactions which appears to be justified. In the light of the aforesaid, we find no substance in the grounds as

raised. The appeal is dismissed. Consequentially, penalty proceedings are also dismissed.

Order pronounced in the open court on 28 .03.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 28th March, 2024.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi