

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

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

ITA No.473/Del/2023  
Assessment Year: 2020-21

Mahinder Chawla,  
H-80, South Extension,  
New Delhi – 110 049.

Vs ACIT,  
Circle Int. Taxation 1(2)(1),  
New Delhi.

PAN: ACDPC9480B

(Appellant)

(Respondent)

Assessee by	:	Dr. Rakesh Gupta, Advocate
Revenue by	:	Shri Sanjay Kumar, Sr. DR
Date of Hearing	:	25.01.2024
Date of Pronouncement	:	.04.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 31.01.2023 of the Commissioner of Income Tax (Appeals), Delhi-42, (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Delhi-42/10596/2019-20 arising out of the appeal before it against the order passed u/s 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Circle Int. Taxation 1(2)(1), New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the records.

3. On hearing the Ld. Representatives of both the sides and perusal of the records it comes up that the only effective issue in the present appeal is against the action of Ld. Tax authorities below in not accepting the indexed cost of acquisition calculated for the purpose of capital gain allegedly on the ground that assessee has not submitted the proof of ownership of the property sold.

3.1 On considering the impugned orders it comes up that the sale of property is not in dispute by the authorities below as the capital gain from the sale of property in the present case has been brought to tax by the authorities below. Further, the fact that sale deed mentions about the fact of ownership of the assessee through inheritance including previous owners right from 1959 is actually not disputed. Then the case of assessee is that the registered valuer has determined the Fair Market Value as on 01.04.2001, so deemed cost of acquisition as per Section 55 of the Act should be accepted.

4. Here before us the Ld. AR has relied the following submissions and evidences to show the ownership of the property and computation of capital gain as claimed by the assessee:-

1. At PB page 2-4 is the copy of the computation of income for the impugned year showing the income from capital gain.

2. At PB page 5-7 is the copy of reply submitted by the assessee submitted on 21.12.2021 in response to notice u/s 143(2) dated 29.06.2021 and notice u/s 142(1) dated 01.12.2021 inter alia submitting the sale deeds.
3. At PB page 13-41 is the sale deed dated 29.11.2019 for property sold out bearing No. H 80, South Extension, Part-I, New Delhi for Rs.2,05,00,000/- for Ground Floor and 1st Floor.
4. At PB page 42-66 is copy of sale deed dated 29.11.2019 for property sold out bearing no.H-80, South Extension, Part-1, New Delhi for Rs. 46,00,000/- for basement.
5. At PB page 67-91 is the copy of sale deed dated 29.11.2019 for property sold bearing no. H-80, South Extension, Part-I, New Delhi for Rs. 98,00,000/- for 2nd Floor.
6. At PB page 92-112 is the copy of sale deed dated 29.11.2019 for property sold bearing no H-80, South Extension, Part-1, New Delhi for Rs. 95,00,000/- for terrace.
7. At PB page 9-10, 11-12 are assessee's reply dated 22.04.2022 submitting bank statements, computation of income, valuation reports and sale deeds.
8. At PB page 113-119 is the copy of the valuation report prepared by Er. B.P. Singh (Gov. approved valuer) dated 23.10.2019 valuing the property as on 01.04.2001 for a total amount of Rs. 1,42,13,000/- out of which assessee's share is 50% i.e. Rs. 71,06,500/- which is considered by the

assessee as cost on 01.04.2001. PB 119 shows the assessee's share of cost of acquisition which worked out to Rs.2,05,37,785/-.

9. At PB page 120-126 is the copy of the written submissions filed by the assessee before the ld. CIT(A).

5. As we appreciate the aforesaid material before us it comes up that the assessing officer had made the addition primarily for the reason that he concluded lack of evidence being filed to establish the indexed cost of acquisition. Before the CIT(A) the appellant was able to establish that certain evidences were filed before the assessing officer however AO had not taken cognizance of same. It comes up that assessee was show caused on 2<sup>nd</sup> March 2022 and assessee claims to have replied on 22<sup>nd</sup> April 2022 but the draft assessment order was already passed on 23<sup>rd</sup> March 2022. Therefore the evidence as filed by reply dated 22<sup>nd</sup> April 2022 could not have been taken note of. The CIT(A) had called for the remand report from the assessing officer wherein assessing officer had submitted that the additional evidence as filed by assessee before the CIT(A) may not be taken into consideration. Then CIT(A) sought response of assessee on the remand report and it appears that as the assessee had failed to respond to the remand report the CIT (A) refused to take cognizance of the material before him which included not only the valuation report but also copy of sale deed.

6. We are satisfied that once remand report was called on the plea of assessee which are supported with evidences then only because of failure of the assessee to respond to the remand report, the CIT (A) was not justified to not consider the evidences before him and to accept the findings of assessing officer for the same reasons that they lack of evidence. The co-terminous powers of CIT (A) are provided to remedy such situations only however being first appellate authority, the CIT (A), failed to be circumspect and exercise the power. Thus we are inclined to accept the grounds raised for the statistical purposes.

7. The appeal is accepted and allowed for statistical purposes. The issue is restored to the files of CIT(A) to decide the issues on merits after admitting and taking into consideration the evidence as brought on record by the assessee. The assessee shall also be given opportunity of hearing on the same.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 18.04.2024.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 18<sup>th</sup> April, 2024.

dk

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi