

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.112/Nag./2023
(Assessment Year : 2018-19)

Shabbir Ahmed Ahmed Ali
Hindustan Stores, Old Bhandara Road
Itwari, Nagpur 440 002
PAN – ADOPA1745K

..... Appellant

v/s

National e-Assessment Centre
Delhi

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 08/08/2024

Date of Order – 14/08/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 17/02/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2018-19.

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

“Ground No.1 That the Lower Authorities erred in Law and Fact in not considering the cost of Improvement to the property under consideration at Rs.23,26,486/- as per year wise details furnished in the computation of Income and adopted index cost of improvement as nil. In as much as the improvement to the property was made during financial year 13-14 and the assessment has been done during F.Y 20-21 and documentary evidence being bills vouchers etc were furnished during the course of Assessment

proceedings. The claim of index cost of improvement as per computation of income at Rs.23,26,486/-be kindly considered and Indexed cost of property as per computation be kindly accepted.

That the disallowance on account of cost of improvement at Rs.23,26,486/- be kindly modified taking into consideration full facts of the case and documentary evidence filed on record considering the prudence of probability under the facts and circumstances specially the fact that most of the expenses were Incurred during F.Y 13-14 and security of documentary evidence was done in 2021 without giving any opportunity to the appellant to corroborate and justify the documents under reference. The disallowance be modified considerably."

3. The addition made by Assessing Officer is on account of long term capital gain arising from transfer of residential property.

4. Facts in Brief:- In the present case, the assessee is an individual who filed his return of income for the year under consideration electronically on 30/08/2018, declaring total income at ₹ 17,040, and the said return of income was processed under section 143(1) of the Income Tax Act, 1961 ("the Act") on 18/12/2016, determining total income at ₹ 17,040. During the course of assessment proceedings, the Assessing Officer observed that during the year under consideration, the assessee has sold immovable property i.e., residential property on 02/05/2017 situated at House No.61, Nagsen Co. Op. House Mortgage Society Ltd., City Survey No.659 of Mouza Mankapur, Nagpur at ₹ 80,50,000. Accordingly, notice under section 142(1) of the Act was issued to the assessee. The assessee furnished his reply along with its enclosures. The Assessing Officer, on a perusal of assessee's reply, it was observed that the assessee has sold the said immovable property during the year under consideration and worked out capital gain on the same which comes to ₹ 32,49,216. The assessee has worked out capital gain which reproduced as under:-

"Capital Gain

1. Capital gain on sale of Residential Property – MANKAPUR

Sale/Transfer Price as on 02/05/2017	80,50,000	
Value adopted or assessed by Stamp		
Valuation adopted or assessed by Stamp		
Valuation Authority 02/05/2017	80,50,000	
Deemed value of the asset being greater of the above two (sec.50C)	80,50,000	
Less: Indexed Cost of Acquisition (108000x272/129)	22,77,209	
(Coat as on 25/04/2007 – ₹ 10,80,000)		
Indexed cost of improvement with indexation	23,62,575	
Expenses on Transfer	1,61,000	48,00,784
		32,49,216

Capital Gain

Less: Exemption:

Under section 54 – ₹ 34,05,731 invested in Residential Property
(With a period of 1 year before the date of transfer / sale)

0"

Therefore, notice u/s.142(1) of the I.T. Act issued to the assessee on 05/03/2021. The assessee was asked to furnish evidences of indexed cost of improvement of Rs.23,62,675/- claimed in the working capital gain. In response, the assessee furnished his reply. On going through the reply filed by the assessee the following discrepancies noticed:

1. The assessee has furnished copy of purchase deed of sold immovable property of Rs.10,08,000/-. However, while working of capital gain, the assessee has taken purchase cost of Rs.10,80,000/-.
2. The assessee has furnished certain evidences of cost of improvement claimed to have been expended in the said immovable property. From perusal of the same, it is found that no authenticity of the Bills/Invoices established, certain Bills/Vouchers mentioned as estimate of the items, no tax identity of suppliers, no details of nature of payments found on certain bills etc.

In view of the above, it is held that the bills/vouchers and supporting documentary evidences are after thoughts. The same are not verifiable as well as reliable. Therefore, the cost of improvement claimed by the assessee of Rs.23,62,575/- in the working of long term capital gain in the sale consideration of immovable property is not allowable as expenses incurred by the assessee towards the cost of improvement and therefore the capital gain is hereby worked out as under:

Capital Gain

1. Capital gain on sale of Residential Property – MANKAPUR

Sale/Transfer Price as on 02/05/2017	80,50,000
--------------------------------------	-----------

Value adopted or assessed by Stamp

Valuation adopted or assessed by Stamp
Valuation Authority 02/05/2017

80,50,000

Deemed value of the asset being greater
of the above two (sec.50C)

80,50,000

Less: Indexed Cost of Acquisition 108000)

+ Stamp duty of ₹ 15,470 + regi. Charges ₹ 930

+ Franking Charges ₹ 10,080 = ₹ 10,34,480 x 272/129) 21,81,229
(Coat as on 25/04/2007 - ₹ 10,80,000)

Expenses on Transfer

57,07,771

1,61,000

Capital Gain

Less: Exemption:

Under section 54 -invested in Residential Property jointly with 05

Other co-purchasers. The assessee's shares comes to 1/6th

in purchase consideration of residential property

(1/6th of ₹ 85,01,000)

14,16,833

Long Term Capital Gain

42,90,398

Further, the assessee has claimed u/s. 54 of Rs.34,05,731/- in respect of newly purchased residential property of Rs.85,01,000/- along with 05 other co-purchasers. The purchased deed registered vide deed No.6E80/2016 with Joint. Sub-Registrar, Nagpur City-3, Nagpur. The said residential property is situated at House No.678, Ward No.44, City Survey No.793 in Sheet No.141, Old Bhandara Road, Itwari, Nagpur. Hence, the 1/6th of Rs.85,01,000/- comes to 14,16,833/- is allowable exemption u/s. 54 of the I.T. Act.

In view of the above, the long term gain in the transfer of residential property in the hands of assessee comes to Rs.42,90,938/- and is hereby added to the total income of the assessee.

The income tax calculated on this LTCG is taxed at special rate @ 20%.

Penalty proceedings u/s. 270A of the I.T.Act is initiated separately for under reporting of income."

5. All the documentary evidences were submitted before the Assessing Officer without printing out any specific defects. The entire cost of improvement was disallowed. The learned CIT(A) has passed a cryptic order and dismissed the assessee's appeal by observing in Para-6.2, which reads as follows:-

"6.2 Decision:-

I have perused the assessment order, ground of appeal and submission and evidences furnished by the Appellant carefully. I find that the following defects in the claim of cost of improvement:

- 1. Payment of corporate taxes is not cost of improvement of the house*
- 2. All the expenses are incurred in cash and in many bills/vouchers few amount is paid in cash as advance and for balance amount nothing is mentioned whereas the Appellant has claimed that the same is incurred during FY 2013-14.*
- 3. Except the bills of Anil Corner, remaining all the bills/vouchers are either estimates or delivery challans or handwritten descriptions without the name and address of the issuer or without the name of the Appellant and without any bill number.*
- 4. In respect of bills of Anil Corner, most of the bills are in the name of Hindustan Stores or Hindustan Traders.*
- 5. In respect of expenses of Rs.2,57,824/- there are not details as the Appellant himself mentioned as paid for labour and miscellaneous charges.*
- 6. Appellant has not demonstrated with supporting evidence that the above expenditure has already been disclosed by him in the return of income for A.Y. 2014-15.*

From the above facts, I find that though the Appellant had furnished certain bills/vouchers but the same were not found reliable and verifiable. During the course of appellate proceedings, the Appellant has reiterated the same arguments and produced the same evidences.

The Appellant has not produced any evidence to prove conclusively that he had incurred the expenses of Rs.18,81,714/- on account of cost of improvement in FY 2013-14 in respect of the flat sold. Therefore I am unable accept the contention of the Appellant and as such the action of the AO of not allowing the deduction on account cost of improvement while computing the long term capital gain is confirmed. Therefore the ground of appeal raised by the Appellant becomes. In the result, the ground raised by the Appellant is dismissed."

6. We find that no enquiry or verification whatsoever has been carried to demolish the variety of the evidences. A general remark that these are not reliable and verifiable is unpalatable in the absence of any specific finding as to the defects. The observations of the learned CIT(A) are flimsy and unsupportable. However, it is also a fact that no evidence whatsoever it is

submitted before us. The transactions have taken place during the financial year 2013-14 i.e., nearly a decade ago. In view of the long passage of time and taking a pragmatic view the disallowance is restricted to ₹ 10,00,000. The assessee gets a relief of ₹ 13,26,846 only. Accordingly, the issue raised by the assessee are partly allowed.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 14/08/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/08/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur