

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'SMC' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No. 744/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2016-17)

Shri Somasundaram Vijay Kumar Secunderabad PAN:BYMPK9364A	Vs.	Income Tax Officer Ward 4)1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Vishnu Teja L, CA	
राजस्व द्वारा / Revenue by:	Shri K.N. Suresh Babu, DR	
सुनवाई की तारीख / Date of hearing:	29/08/2024	
घोषणा की तारीख / Pronouncement:	02/09/2024	

**आदेश/ORDER**

This appeal filed by the assessee is directed against the order dated 10/06/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. The brief facts of the case are that the assessee is an individual and not furnished his return of income for the A.Y 2016-17 u/s 139 of the I.T. Act, 1961. The assessment has been subsequently reopened u/s 147 of the I.T. Act, 1961 for the reasons recorded as per which information available with the

Department shows that the assessee has sold an immovable property vide document No.1679/2015 for a consideration of Rs.1,06,48,000/-. Therefore, the assessment has been reopened and called upon the assessee to file the return of income. The assessment has been completed u/s 143(3) of the Act and determined the total income at Rs.34,19,920/- by making addition of Rs.32,95,934/- towards disallowance of indexed cost of acquisition claimed by the assessee and expenses of transfer.

3. The assessee carried the matter in appeal before the learned CIT (A) but could not succeed. The learned CIT (A) dismissed the appeal filed by the assessee and upheld the additions made by the Assessing Officer towards disallowance of expenses of transfer and cost of acquisition.

4. The assessee carried the matter in further appeal before the Tribunal and the ITAT vide order dated 22.01.2020 in ITA No.1289/Hyd/2019 set aside the issue to the file of the Assessing Officer for further examination. In pursuant to the directions of the Tribunal, the Assessing Officer issued notice u/s 141 dated 26.02.2021, 11/08/2021 and 27/08/2021 and called upon the assessee to file necessary evidences. Since the assessee failed to file any evidences in support of deduction towards the cost of acquisition and expenses of transfer, the Assessing Officer taking note of relevant facts has allowed indexed cost of acquisition towards construction of building in the year 1999-

2000 by taking Rs.250/per sft and has allowed total indexed cost of acquisition at Rs.15,93,266/-. The Assessing Officer had also disallowed expenses of transfer for Rs.6.00 lakhs claimed to have been paid to the tenant for vacating the house. Thus, the Assessing Officer by taking into sale consideration received by the assessee for Rs.48,39,200/- has allowed cost of acquisition for Rs.15,93,266/- and arrived at the Long-Term Capital Gain at Rs.32,45,934/- and made addition to the total income.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A) the assessee has furnished the copy of valuation report from the registered valuer in which the cost of construction during the financial year 1999-2000 was worked out to Rs.15,98,000/- which comes to Rs.726 per sft. The learned CIT (A) after taking into all relevant details and also statement of total income filed by the assessee observed that when the assessee himself claimed cost of construction at Rs.500 per sft, it is impossible to believe the valuation report submitted by the registered valuer to arrive at the cost of Rs.726/per sft. Therefore, taking into account the cost of construction claimed by the assessee which was at Rs.500 per sft and cost of construction adopted by the Assessing Officer at Rs.250/sft has directed the Assessing Officer to adopt the cost of construction at Rs.380/sft and compute the indexed cost of acquisition.

6. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in directing the Assessing Officer to adopt average rate of Rs.380/sft without appreciating the fact that the rate adopted by the Assessing Officer at Rs.250 per sft is without any basis and not supported by evidences whereas the rate adopted by the assessee is supported by valuation report and as per the said valuation report, the cost of construction claimed by the assessee is much lesser than the valuation arrived at by the registered valuer. Therefore, the learned CIT (A) should have taken cost of construction as claimed by the assessee. The learned CIT (A) further submitted that the assessee has claimed expenses of travel of Rs.6.00 lakhs being amount paid to Mr. K. Murari Raj, Tenant for vacating the property and said expenses comes under expenses of travel but the Assessing Officer and the learned CIT (A) not allowed expenses claimed by the assessee only on the ground that no evidence has been filed. Therefore, he submitted that expenses of transfer claimed by the assessee should be allowed.

8. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that except the cost of valuation report, no other evidence was filed to justify the cost of construction of Rs.500 per sft. Further, there is an error in the

valuation report submitted by the registered valuer to arrive at a cost of construction at Rs.726 per sft when the appellant himself claimed cost of construction at Rs.500 per sft. Therefore, the learned CIT (A) after considering the relevant facts has rightly allowed Rs.380 per sft and therefore, the order should be upheld. He further submitted that as per records expenses of transfer, except 2 DDs, no other evidence was filed to establish Mr. Murari Raj was the tenant of the property. Therefore, the Assessing Officer and the learned CIT (A) rightly adopted the construction rate and their orders should be upheld.

9. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the sale of property and full value of consideration received as a result of transfer. The only dispute is with regard to the deduction towards indexed cost of acquisition. The assessee claimed that he has constructed the house in the year 1999-2000 and cost of construction worked out to Rs.500 per sft. The assessee justified the cost of construction of Rs.500 per sft with the help of two valuation reports and as per the said valuation report which are available in page No.19 to 28 of paper book filed by the assessee, the cost of construction of the building in the year 1999-2000 was at Rs.15,97,800/- and if we compute the rate per sft which works out to Rs.726 per sft. The Assessing Officer adopted Rs.250/-per sft and claimed that the sid rate is taken as per Sub Registrar Value but there is no

reference to any instances of registration of any document to justify the rate adopted by the Assessing Officer. The learned CIT (A) having noticed the fact that the cost of construction of the assessee is supported by valuation report submitted by the registered valuer but ignored the said valuation report and considered the average rate of Rs.380 per sft by taking into taking the rate adopted by the assessee and the rate considered by the Assessing Officer. In my considered view, neither the Assessing Officer is justified in adopting adhoc rate of Rs.250 per sft nor the learned CIT (A) is correct in taking average rate of 380 per sft without there being any supporting evidences. At the same time, the assessee justified the cost of construction of Rs.500/- along with valuation report. Therefore, in my considered view when the appellant is able to establish/substantiate the indexed cost of construction with necessary evidences including the valuation report, the Assessing Officer and the learned CIT (A) ought to have accepted the cost of construction as claimed by the assessee. Thus, I set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to adopt the cost of construction as claimed by the assessee.

10. In so far as the expenses of transfer of Rs.6.00 lakhs being the amount paid to Shri K. Murari Raj is concerned, the appellant claimed that Shri K Murari Raj was tenant and was not ready to vacate the house. Unless the tenant vacates the house, the appellant cannot sell the property and hand over the property

possession to the buyer. Therefore, the appellant has paid Rs.6.00 lakhs compensation to Shri K. Murari Raj by way of 2 DDs on 17.04.2015 before the date of registration. I find that although the appellant could not furnish the relevant evidences to prove that Shri K. Murari Raj was tenant of the property but going by the circumstantial evidences i.e. DD paid to Shri Murari Raj on 17.4.2015 which is almost one month prior to the date of transfer of property on 27.5.2015, in my considered view, the claim of the assessee towards expenses of transfer appears to be reasonable and bonafide. Therefore, considering the facts and circumstances of the case and also evidences furnished by the assessee, I am of the considered view that out of Rs.6.00 lakhs towards expenses of transfer considered by the assessee, sum of Rs.3.00 lakhs appears to be reasonable and allowable. Thus, we direct the Assessing Officer to allow expenses of transfer being the amount paid to Shri Murari Raj for Rs.3.00 lakhs out of Rs.6 lakhs claimed by the assessee and recomputed the capital gain from transfer of property.

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

Order pronounced in the Open Court on 2<sup>nd</sup> September, 2024.

Sd/-

**(MANJUNATHA, G.)  
ACCOUNTANT MEMBER**

Hyderabad, dated 2<sup>nd</sup> September, 2024.

***Vinodan/sps***

Copy to:

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2	Income Tax Officer Ward 4(1) IT Towers, AC Guards, Masab Tank, Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*