

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1760/MUM/2024
Assessment Year: 2011-12

Rajen Rajmalbhai Mehta, 501, Swagat Complex, Near Mehta Park, Nanpura, Surat, Gujarat – 395001 (PAN : AABPM4155D)	Vs.	Assistant Commissioner of Income Tax, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 11.07.2024
Date of Pronouncement : 27.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2022-23/1050973556(1), dated 20.03.2023, against the assessment order passed by the Assistant Commissioner of Income Tax, Circle 16(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 25.03.2014 for Assessment Year 2011-12.

2. Grounds taken by the assessee are reproduced as under:

- “(1) Under the facts and circumstances of the case Hon. CIT(A) has erred in disallowing the repairing expenses of Rs. 4,90,000/-.*
(2) The ‘a’ grants leave to produce the repairing Agreement.
(3) The delay in filing the appeal be condoned.”

3. At the outset, there is a delay of 325 days in filing the present appeal before the Tribunal as noted by the registry. In this respect, petition for condonation of delay alongwith affidavit is placed on record. On perusal of the same, it is noted that assessee has explained the reason for the delay in filing the present appeal owing to spouse of the assessee suffering from various diseases and assessee being a senior citizen could not take appropriate actions within the prescribed time. Considering the submissions made by the assessee, we find it appropriate to condone the aforesaid delay and take up the matter for adjudication.

4. Before us, none appeared to represent the case of the assessee. However, a paper book containing 60 pages is placed on record, filed on 12.06.2024. Considering the material placed on record and with the able assistance of Id. Sr. DR, we take up the matter *ex parte qua* the assessee for its adjudication.

5. The short point involved in the present appeal is in respect of disallowance made towards claim of cost of improvement of Rs.4,90,000/- incurred in 1983-84 while computing long term capital gain on the transfer of jointly owned house property by the assessee.

6. Brief facts of the case in this respect are that assessee filed his return of income on 30.09.2011 reporting total income at Rs.35,31,133/-. During the year, assessee had sold a flat jointly owned along with his spouse on which long term capital gain was earned. Details of the computation furnished by the assessee are as under:

(Room No.3 on Second Floor, 58-B, Krishna Niwas, Walkeshwar, Mumbai)

Sale Consideration* / Date of Sale	Indexed Cost of acquisition#	Indexed Cost of improvement \$	Exemption/ Deduction	Capital Gains
15840000/-	919397/-#	2876053/-	7400000/-\$	4644550/-

31/08/2010				
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*The sale consideration of the flat is Rs.31680000/- The assessee's share is 50%
The cost to the previous owner as per Balance sheet is Rs.300000/- The assessee has worked the indexed cost as $150000 \times (711/116)$.

\$ The assessee has taken indexed cost of improvement as $245000 \times (711/140)$

7. The only issue before us is in respect of claim of Rs.4,90,000/- towards cost of improvement. In this respect, assessee made a submission before the Id. Assessing Officer explaining the facts of the same. The said submission is reproduced in para 4.1 of the impugned assessment order and is extracted below for ease of reference.

"During the year under consideration the assessee had received consideration for disposing off residential premises. The assessee had sold the property at 58-B, Krishna Niwas, Walkeshwar, Mumbai. The assessee's father was the original tenant of the said property which was acquired by the father of the assessee Mr. Rajmal Mohanlal Mehta in 1967 as a tenant (Pagdi). Mr Rajmal Mohanlal Mehta had made improvement in this property amounting to Rs.4,90,000/- in FY 1983-84 apart from previous cost of Rs. 3,00,000/- incurred by him. Mr Rajmal Mohanlal Mehta died in 1984 and the tenancy right was vested with his wife Mrs. Vimlaben Rajmal Mehta. Since the death of Rajmal Mohanlal Mehta, Mrs. Divyaben Rajen Mehta wife of the assessee, Mr. Rajen Rajmal Mehta and Vimlaben Mehta, mother of the assessee have been under possession of the said premises and Mrs. Vimlaben become the tenant and had paid rent after that. In the year 1993-94 Vimlaben made a major renovation civil work of the property as it was demanding repairs. In the year 2007 as the health of Vimlaben was not good she executed an affidavit dated 23.07.2007 to the effect that the said premises were transferred to her son Rajen Rajmal Mehta and his wife Mrs. Divyaben Rajen Mehta by way of distribution of property to all her sons. So though the document for tenancy right was executed in favour of the assessee in the year 2007, the assessee and his wife got the right in the said property through inheritance and accordingly cost inflation index from the date the previous owner held the said property would be applicable in determining the indexed cost of acquisition and indexed cost of improvement."

8. However, Id. Assessing Officer did not entertain the claim of the assessee for the following three reasons:

- i) The so-called renovation agreement is not registered.
- ii) There is no evidence of any payment made
- iii) No original agreement could be produced for verification.

9. Aggrieved, assessee went in appeal before the Id. CIT(A), who had substantially allowed the appeal of the assessee except for sustaining

the disallowance to the extent of Rs.4,90,000/- towards cost of improvement incurred in 1983-84. While sustaining the disallowance, Id. CIT(A) held that the assessee is not having direct evidence for the cost of improvement so incurred except the balance sheet. According to him, the genuineness of cost of improvement is not verifiable and that assessee does not have any other evidence. He thus, did not accept the claim so made by the assessee. However, he allowed the cost of improvement of Rs.11,20,000/- incurred in Financial Year 1993-94 based on submissions and evidences furnished by the assessee. It is important to note the finding of the Id. CIT(A) while allowing the indexation of cost of acquisition claimed by the assessee which has been taken with respect to what is incurred by the previous owner. Thus, the indexation benefit has been allowed from the year in which cost of acquisition was incurred by the previous owner by following the decision of Hon'ble Jurisdictional High Court of Bombay including in the case of CIT vs. Manjula J. Shah [2011] 355 ITR 474 (Bom.)

10. We note from the submissions that assessee had incurred renovation expenses for the property 158-B, Krishna Awas, Mumbai as under:

i) Expenses in Financial Year 1983-84	-	Rs.4,90,000/-
ii) Expenses in Financial Year 1993-94	-	Rs.11,20,000/-
iii) Total improvement cost	-	Rs.16,10,000/-
iv) Share of assessee at 50%	-	Rs.85,000/-

10.1. According to the assessee, the asset was acquired in 1967. Being such an old property, it required renovation and repair. For the renovation work done in Financial Year 1983-84, assessee had accounted for the said expenses in his books of accounts duly disclosed in his balance sheet. Assessee had furnished the copy of balance sheet

to demonstrate the said fact. Assessee claimed that similar issue had come up in case of spouse also for her share in the said transaction of transfer of house property. In her case, copy of renovation agreement was placed on record and was accepted. According to the assessee, this agreement could not be furnished in his case and therefore was subjected to disallowance for want of documentary evidence.

10.2. Assessee has placed on record, copy of the said renovation agreement to demonstrate incurring of expenses of Rs.4,90,000/-. The original agreement is in vernacular Gujarati language for which a translated version in English, duly notarised by notary public is placed on record. From the said translated version of the agreement, details of expenses incurred tabulated therein is extracted for ease of reference:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>Water Proofing Flooring (with Material & Labour)</i>	<i>1,28,000/-</i>
2.	<i>R.C.C. Structure & Repairing of masonry slabs of brick wall & Water Proofing with Material & Labour & Lead</i>	<i>1,15,000/-</i>
3.	<i>Bathroom Flooring & Water Proofing & Bathroom Fitting & (Pipe, Cock, Tank, Wash Basin, Commode & Other Fittings) Material & Labour (4 Bathroom) with Water Proofing</i>	<i>1,07,000/-</i>
4.	<i>Wall Tiles of Kitchen, Kitchen Marble Material & Labour (Kitchen Sink, Fitting, Pipe, Tank, Cock & Other Fittings Common area Wash Basin & Fittings)</i>	<i>33,000/-</i>
5.	<i>Electric Fittings, Wiring Switches, Fan Nos. 6, Light Fitting Material & Labour</i>	<i>36,000/-</i>
6.	<i>Colour Work & P.O.P. Material & Labour</i>	<i>71,000/-</i>
	Total Amount Rs.	4,90,000/-

11. We note that the disallowance has been sustained by ld. CIT(A) and that made by the ld. Assessing Officer is for want of documentary evidence in respect of claim of cost of improvement incurred in Financial Year 1983-84 of Rs.4,90,000/-. Before us, in the paper book, assessee has adequately demonstrated by furnishing the renovation agreement for which the original is in vernacular language i.e., Gujarati and duly

notarized translated version in English, wherein all the details of the said expenses are contained therein. Further, assessee has duly accounted for all these expenses in his books of accounts and reported in his balance sheet. This fact has not been disputed by the authorities below. Accordingly, once the claim of the assessee is duly corroborated vide documentary evidences as required by the authorities below, we allow the claim of the assessee so made in respect of cost of improvement incurred in Financial Year 1983-84 of Rs.4,90,000/- for which the indexation benefit be given from the year in which said cost of improvement was incurred.

12. Accordingly, ground taken by the assessee in this respect is allowed.

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

Order pronounced on day of 27 September, 2024 under Rule 34 of
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai