

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

**ITA No.8356/Del/2025
Assessment Year 2017-18**

Prem Prakash A-32, 2nd Floor, Amar Colony, Lajpat Nagar-4, New Delhi-110024 PAN No.AGWPP9248D	Vs.	Income Tax Officer Ward- 54(1) Delhi
Appellant		Respondent

Appellant	Sh. Akshat Jain, CA Sh. Rajat Jain, CA
Respondent	Sh. Manoj Kumar, Sr. DR

Date of Hearing	14.01.2026
Date of Pronouncement	11.02.2026

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against the order of the Ld.Commissioner of Income Tax (Appeals)/NFAC in sustaining the addition made by the AO in respect of the claim made towards the cost of improvement while computing the capital gains.

2. Brief facts of the case are that the assessee is an individual, the assessment proceedings u/s.147 of the Act were initiated in the case of the assessee on the basis of the information in Insight Portal that the assessee had sold an

immovable property for an amount of Rs.83,80,000/- and the assessee did not file return of income. In response to notice u/s.148 dated 15.03.2024 the assessee filed return of income on 17.05.2024 declaring capital gains of Rs.1,54,497/- after claiming indexed cost of acquisition at Rs.5,08,794/- and indexed cost of improvement of Rs.77,16,709/- apart from declaring income from other sources of Rs.12,737/-. However, the AO denied 50% of indexed cost of improvement and made addition of Rs.38,58,354/- on the ground that the assessee failed to provide documentary evidences regarding the claim for cost of construction. Further the AO was of the view that since the contractor Sh. Ganga Prasad was only aged 16-17 years at the time of construction and he did not have essential qualifications and experience for the construction work.

3. On appeal the Ld. CIT(A)/NFAC upheld the addition on the ground that the assessee had only submitted breakup of the construction expenses which is a hand written note and the same is said to have been given by contractor Sh. Ganga Prasad and the said handwritten note cannot be construed as satisfactory evidence.

4. Before me the Ld. Counsel for the assessee made the following submissions :-

(i) The addition was made without considering the fact that the contractor vide his confirmation has himself admitted to conduct the construction work and to receive the amount of Rs.13,65,000/- for the same, which concretises the fact that the claimed construction expenditure is genuine.

(ii) The addition was made arbitrarily on assumption and presumption basis, as the list of construction expense was accepted by the Ld. AO and only 50% of the expenses claimed was disallowed, which shows that the disallowance was done purely on guess work and no cogent evidence was available with the Ld. AO for making the disallowance.

(iii) The addition was made without appreciating the fact that the notice was issued to the contractor by the verification unit, wherein the contractor again admitted to conduct construction work on the impugned property, which further concretizes the fact that the construction work was done by the said person at the agreed consideration of Rs. 13,65,000/-

(iv) The addition was made merely by postulating presumption that the construction work cannot be undertaken by a person 16-17 years of age or by a person not having a certain qualification, whereas the contractor of small construction work does not have such criteria of age or qualification.

(v) The addition was made without considering the documentary evidences furnished by the appellant, such as sale and purchase deed from where it is clearly ascertainable that at the time of purchase of property there were only one hall and two rooms, whereas at the time of sale of property there were additional two floors, which is not possible without incurring substantial cost of construction.

(vi) The addition was made without pointing out any defect or short comings in the documentary evidences furnished by the appellant, such as list of claimed construction expenses and confirmation received from contractor himself, and has plainly stated them to be not satisfactory, without mentioning any requirement specifically from where his good self could borrow his satisfaction.

(vii) The addition was made on an ad-hoc basis without bringing into record any cogent evidence to prove that the expenses claimed by the appellant were inauthentic.

5. On other hand the Ld. DR supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below and the evidences furnished on record. In the course of assessment proceedings the assessee to substantiate the cost of construction made by him furnished a confirmation letter from Sh. Ganga Prasad who is the contractor who undertook the construction work confirming that he had received payment of Rs.13,65,000/- towards cost incurred on for construction of the property. In order to verify the genuineness of the conformation and breakup given by the contractor for the cost of construction, the AO issued notice u/s.133(6) of the Act to Sh. Ganga Prasad on 26.11.2024 calling for various details. However, Sh. Ganga Prasad did not respond to the said notice. The AO once again made reference to verification unit of the department and requested to collect the details from Sh. Ganga Prasad in respect of construction work. In response to the same reply was received from Sh. Ganga Prasad the contractor which is narrated by the AO at page-11 of the assessment order. In reply to notice u/s.133(6) of the Act the contractor confirmed that he had undertaken the construction work and the confirmation given earlier was also enclosed. He also furnished his Aadhar card and PAN Card alongwith copy of return for the A.Y.2024-25

narrating that is presently earning commission income from real Estate business and also employed in Sathi Associates. The reply given by Sh. Ganga Prasad also suggest that he was earlier engaged in contractual construction work from 1990 to 1996 and from 1997 he was working for salary and the construction work undertook by him pertains to the period when he was involved in the contractual business. However, the AO even though he did not doubt the work performed but he was of the view that the assessee did not substantiate the authenticity of the claim for the expenses. Accordingly the AO denied 50% of the cost of construction claimed by Assessee and added the same as income of the assessee.

7. The conclusion drawn by the AO appears to be misplaced. The contractor Sh. Ganga Prasad in response to notice u/s.133(6) of the Act had categorically replied that he had undertaken the work and breakup of cost of construction was also provided. He has furnished his where abouts, details of Aadhar Card, PAN card and the income tax return for the A.Y.2024-25 and also stated that he had undertook the construction work during the period 1990 to 1996 and the construction work carried out by him pertains to that period. The reply, the confirmation and the breakup given by the contractor cannot be simply brushed aside. The AO is not in doubt about performing the work by the contractor. It is also not known how adhoc disallowance to the extent of 50% of the cost of construction is denied and 50% of cost of construction is allowed to the assessee on ad-hoc basis. Therefore, I am of the view that there is no basis for denying the cost of

construction to the assessee in the given facts of the case and thus, the addition made by the AO in respect of 50% cost of construction of Rs.38,58,354/- is hereby directed to be deleted. Ground No.2 of grounds of appeal of the assessee is allowed.

8. Ground No.1 of grounds of appeal of the assessee is in respect of challenging the reopening of assessment by issue of notice u/s.148 and since no arguments were advanced on this ground, this ground is treated as not pressed and the same is dismissed as not pressed.

9. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 11.02.2026.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Dated: 11.02.2026

*N.E.H.A., S.P.O.**

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi