

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA Nos.4608 & 965/Del/2016
Assessment Year : 2011-12

Veena Gupta,
5015, Bazar Sirkiwalan,
Delhi.
PAN: AGWPG5994K

Vs. ITO,
Ward-46(5),
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri S.S. Gupta, CA
Department By : Shri F.R. Meena, Sr. DR

Date of Hearing : 23.02.2017
Date of Pronouncement : 27.02.2017

ORDER

These two appeals by the assessee relate to the assessment year 2011-12. One appeal is against the order of the CIT(A) pursuant to assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') dated 2.12.2015 and the other appeal is against the order of the CIT(A) pursuant to an application filed by the assessee u/s 154 for non-disposal of

certain grounds in the original order. As such, both the appeals are taken up for consideration by this consolidated order.

2. First issue raised in these appeals is against the confirmation of addition of Rs.36 lac. The facts apropos this issue are that the assessee deposited a sum of Rs.40 lac in her savings bank account vide four transactions – one in November, 2010 and the other three in March, 2011. On being called upon to explain the source of such bank deposits, the assessee furnished details of withdrawals from her savings bank account from 14.07.2010 to 16.12.2010 totaling Rs.74 lac. It was explained that the cash was withdrawn for the purpose of purchase of property which deal did not materialize and, hence, the cash was re-deposited in the bank account. The assessee also produced stamp papers which were purchased, but, afterwards cancelled because of the cancellation of transaction. The AO made an addition of Rs.36

lac, being bank deposit entries of March, 2011 on the premise that the assessee did not provide particulars of the property, area of the property, etc., which she wanted to purchase and also name and particulars of the person from whom she wanted to purchase the property etc. The Id. CIT(A) sustained the addition. The assessee is in appeal before the tribunal.

3. I have heard the rival submissions and perused the relevant material on record. It is noticed from the assessment order itself that the assessee withdrew a sum of Rs.74 lac from her savings bank account in the second half of the calendar year 2010. A sum of Rs.36 lac was re-deposited in the month of March, 2011 and the assessee's claim is that the remaining amount was re-deposited in the next financial year. The AO has made an addition of Rs.36 lac by treating the amount of deposits in the bank as unexplained. It is strange that when the assessee categorically submitted details of cash withdrawals from the same bank account which was re-

deposited, the AO did not get convinced and made addition on extraneous issues, being, the non-submission of details of property which was sought to be purchased, but, finally not purchased. The assessee has specifically contended that the amount was withdrawn from the bank for the purpose of purchase of some property, which transaction did not materialize. The AO has not shown that the cash so withdrawn was used elsewhere and was not available for re-deposit. In such circumstances, the presumption has to be that the amount withdrawn a few months before its re-deposit is out of earlier withdrawals, which does not call for any addition. I, therefore, order to delete the addition of Rs.36 lac. This ground is allowed.

4. The next issue is against computation of capital gain. The assessee sold on 25.2.2011 a property bearing no. 2856/1, Kucha Ghashi Ram Bazar, Sirkiwalan, Hauz Qazi, Delhi, for Rs.1,75,000/- and declared long-term capital gain of

Rs.41,505/-. The AO, made certain alterations in the computation of capital gains and made an addition of Rs.1,49,060, which came to be sustained in the first appeal.

5. This property was purchased by the assessee on 7.2.2002 for a sum of Rs.40,000/- and stamp charges amounting to Rs.5,200/- were paid, thereby giving cost of acquisition at Rs.45,200/-. The assessee, while calculating capital gain on the transfer of this property, adopted cost of acquisition at Rs.50,000/-, thereby, including a sum of Rs.4,800/- towards brokerage and registration expenses at the time of purchase. Since the assessee had no evidence of spending Rs.4,800/-, the AO did not consider this amount as part of cost of acquisition which action was upheld in the first appeal.

6. Having heard both the sides and perused the relevant material on record, it is seen that the assessee claimed to have spent a sum of Rs.4,800/- as part of cost of acquisition of the property in 2002. Despite the failure of the assessee to

produce any evidence in support of such payment before the authorities below, the position continues to remain the same before me as well. Under these circumstances, I am not inclined to accept the assessee's request for inclusion of Rs.4,800/- in cost of acquisition.

7. The second component of the calculation of capital gains is the claim of the assessee for spending Rs.50,000/- as cost of improvement, detailed as under:-

	Nature of work	Work done by	Date of work	Amount
1	WC fitting with badarur, Cement, labour charges	Suresh Kumar	15.03.2010	14500/-
2.	POP ceiling 150 feet wall 360	Nitesh Kumar	12.03.2010	19320/-
3.	Wooden Door and window	Vijay Sharma	16.03.2010	19400/-

8. The AO did not accept the assessee's claim as, in his opinion, this amount was in the nature of repairs and maintenance, for which the assessee was availing statutory deduction in the computation of income under the head

`Income from house property'. He, therefore, refused to include Rs.50,000/- as cost of improvement. No relief was allowed in the first appeal.

9. Having heard both the sides and perused the relevant material on record, it is noticed that the first item in the above list is a sum of Rs.14,500/- incurred for sanitary fittings etc., done by the assessee as a fresh exercise to renovate the premises. The second item is POP ceiling on which a sum of Rs.19,320/- was incurred. This is, again, not in the nature of repairs and maintenance and has to be treated as cost of improvement. The last item is expenditure of Rs.19,400/- on door and window. This is also a case of replacement of the earlier window and door and not its repair. As the assessee was intending to sell the property, she considered it expedient to improve the property before sale, so that a handsome price could be received. Since these three amounts are in the nature of cost of improvement and do not fall in the realm of repair

and maintenance, I hold that the computation of capital gain should be done treating these three amounts as 'Cost of improvement'.

10. The last aspect of the computation of capital gain is determination of 'Full value of consideration'. The assessee sold this property for a sum of Rs.1,75,000/-, which was taken as a full value of consideration. Circle rate for stamp duty purpose was mentioned at Rs.2,66,049/- in the sale deed itself. The AO adopted this figure for computing capital gain, which came to be affirmed in the first appeal. The assessee is aggrieved against adoption of such amount as full value of consideration.

11. I do not find any reason to disturb the adoption of this amount as full value of consideration in terms of section 50C of the Act. This action is approved. The AO is directed to recompute the amount of capital gain on transfer of this property in the terms indicated above.

12. The last issue raised in this appeal is against an addition of Rs.83,436/- made by the AO under the head 'Income from house property.' The assessee declared income from house property at Rs.75,223/-, as under:-

Rental income from 2663, Gali Arya Samaj Sita Ram Bazar, Delhi.	1,08,000/-
2856/1, Gali Ghashi Ram, Bazar Sirkiwalan, Delhi	<u>8,140/-</u>
Total	1,16,140/-
Less: House Tax	<u>8,678/-</u>
	1,07,462/-
Less 30% repair	<u>32,239/-</u>
Income from house property	75,223/-

13. The AO required the assessee to produce a copy of rent agreement for demonstrating the rental income at Rs.1,08,000/-. Nothing of this sort was placed on record. The AO determined annual ratable value of this property at Rs.2,25,996/- by multiplying ratable value as residential at Rs.73,332/- with 3 to convert into commercial property let out value. This led to the addition of Rs.83,436/-.

14. I have heard both the sides and perused the relevant material on record. The contention of the assessee about the receipt of house rent of Rs.1,08,000/- is unsubstantiated inasmuch as neither any rent agreement was placed on record nor the rent payment was received through cheque. It is seen that the AO has adopted annual value of the property at Rs.2,25,996/- which has been disputed by the assessee as not in accordance with the Rules of House Tax Department. Under these circumstances, I set aside the impugned order and remit the matter to the file of the AO for deciding this issue afresh as per law, after allowing a reasonable opportunity of being heard to the assessee.

15. In the result, both the appeals are partly allowed.

The order pronounced in the open court on 27.02.2017.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, February, 2017.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.