

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER**

**I.T.A .No.-1653/Del/2015  
(ASSESSMENT YEAR-2009-10)**

Faqir Chand, 3391, Qutab Road, Sadar Bazaar, New Delhi PAN-AJNPM3000E <b>(APPELLANT)</b>	vs	ITO, Ward-39(3), New Delhi  <b>(RESPONDENT)</b>
--	----	---

<b>Appellant by</b>	<b>Sh.T.R.Talwar, Adv.</b>
<b>Respondent by</b>	<b>Sh.Amrit Lal, Sr. DR</b>

<b>Date of Hearing</b>	<b>23.09.2015</b>
<b>Date of Pronouncement</b>	<b>16.11.2015</b>

**ORDER**

The present appeal has been filed by the assessee assailing the correctness of the order dated 22.01.2015 of CIT(A)-XX, New Delhi pertaining to 2009-10 assessment year. The Ld. AR inviting attention to the record submitted that the defect pointed by the Registry has been cured which fact is found from the noting by the Registry dated 15.09.2015. It is also the submissions of the ld. AR that the original grounds are being substituted by the following grounds:-

*“THAT THE Ld A.O has passed the impugned assessment under section 148 of income tax act without Considering all the facts which make the assessment unreasonable, unjustified and bad in law.*

*That the action on the part of the assessing officer is highly arbitrary improper and without application of mind unreasonable, unjustified and bad in law and deserves to be deleted so that the proper justice can be given to the applicant.*

*That the facts and circumstances of the LD assessing officer has erred while making addition of Rs. 8,01,000/ on account of long term capital gain whereas the property has been sold for 28,10,000/- And the cost of acquisition comes to be 36.5.lakhs.*

*i. Consider the cost property as on 1.4.1981 whereas you have taken the land cost only.*

*ii. Consider the value of ground floor plinth area i.e. y.. of the total land as Commercial and remaining floors are residential.*

*iii. Allow the benefit of cost of construction of 2nd and 3rd floor which has been constructed after 1981 by me some sort of financial help was*

*taken from the family members and the same was returned in due course I am entitled for the deduction of construction cost.*

*V. charge the capital gain for fifty percent area sold by dividing the property.*

*I BECAUSE in any case keeping in view the variation in views of courts th CIT (A) should have followed the view favourable to the assessee.*

*2 appellant craves for leave to add/alter amend any of the grounds of appeal before or at the time of hearing.”*

2. The Ld. Sr. DR on considering the grounds raised originally when compared with the substituted grounds had no objection if the vague and general original grounds are substituted by the specific grounds. In view of the above, stated position of the parties and considering the two sets of grounds the original grounds raised are substituted by the revised grounds reproduced above.

3. In the light of the above, referring to the material available on record, the Ld. AR submitted that in the facts of the present case, the assessee had returned in income of Rs.1,53,750/- which was processed u/s 143(1). The said return it was stated was subjected to re-opening as a result of the information that the assessee had sold an immovable property bearing No.3377, Ward No.122, Qutab road, Sadar Bazar, Delhi to Mrs. Lalita Sharma and Mrs. Anju Mehandiratta jointly vide sale deed dated 02.06.2008 for a consideration of Rs.28,10,000/-. In view of the fact that the return of income did not disclose income from the sale of properties after confronting the same to the assessee and considering the submissions advanced by the assessee's son addition of Rs.8,01,105/- was made in the following manner:-

*5.10 In view of the above discussion and considering the facts & circumstances of the assessee's case, the Long term capital gain arisen to the assessee on sale of Qutab Road property has been worked out as under :-*

*Cost of Land of property No. 3377 as on 01.04.1981*

*Cost of land of ground floor of 41.8 sq. mtrs (commercial)*

*(as per L & D's rate on 01.04.1981 - Rs. 6000 x 41.8)*

*Rs.2,50,800*

*Cost of land of 1st floor of 41.8 sq. mtrs (Residential)*

*(as per L & D's rate on 01.04.1981 - Rs. 2000 x 41.8)*

*Rs. 83,600*

*Cost of construction of Ground floor on 01.04.1981*

*(as per CPWD rate on 01.04.1981 for ground floor)*

*Rs. 70,668*

*Cost of construction of 1st floor on 01.04.1981*

*(as per CPWD rate on 01.04.1981 for first floor)*

*Rs. 66,600*

*Cost of construction of 2nd & 3rd floor in F.Y. 1998-99*

*(as per CPWO rate applicable -Rs. 675 sq.ft. x 300 per sq.ft)*

*Comes to Rs. 2,02,500. Since expenses were born by joint*

*Family, therefore, only 50% expenses are treated as the*

*expenses borne by the assessee*

*Rs.1,01,250*

<i>Indexed cost of Land (commercial) In F.Y. 2008-09</i> <i>(Rs. 2,50,800 x 582 / 100)</i>	Rs. 14,59,656
<i>Indexed cost of Land (Residential) In F.Y. 2008-09</i> <i>(Rs. 83,600 x 582 / 100)</i>	Rs. 4,86,552
<i>Indexed cost of bldg.of Ground &amp; 1st floor in F.Y. 2008-09</i> <i>[(Rs. 70,668+66,600) x 582 / 100]</i>	Rs. 7,98,900
<i>Indexed cost of Building of 2nd &amp; 3rd floor in F.Y. 2008-09</i> <i>(Rs. 1,01,50 x 582/351)</i>	<u>Rs. 1,67,885</u>
<i>Total cost of acquisition</i>	Rs. 29,12,993

5.11. Now, applying the applicable rates in respect of sale of Property No. 3377, Qutab Road, Sadar Bazar, Delhi-110006 for Ground, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floor, the total value of Land and Building, as per the Notified Circle rates, is worked out as follows :-

<i>(i) Cost of proportionate land at Ground floor (commercial)</i> <i>(Rs.18,400 x 20.9 sq.mtr. x 3)</i>	Rs. 11,53,680
<i>(ii) Cost of proportionate land for 1st, 2nd &amp; 3rd floor (Residential)</i> <i>(Rs.18,400 x 20.9 sq.mtr. x 3 x 1)</i>	Rs. 11,53,680
<i>(iii) Cost of construction of Ground &amp; 1st floor</i> <i>(Rs.6410 x 167.2 sq.mtr. x 0.7)</i>	Rs. 7,50,226
<i>(iv) Cost of construction of 2nd &amp; 3rd floor</i> <i>(Rs.6410 x 113.8 sq.mtr. x 0.9)</i>	Rs. 6,56,512
<i>(v) Total value of proportionate Land and construction cost</i> <i>(i) + (ii) + (iii) + (iv)</i>	Rs.37,14,098

5.12 In view of the above, the minimum value of property No. 3377, Qutab Road, Sadar Bazar, Delhi-110006 for the purpose of sales comes to Rs. 37,14,098/- whereas the assessee has computed the same at Rs. 28,10,000/-. Similarly, after allowing benefit of indexation, the cost of acquisition of capital asset i.e. property No. 3317 is worked out at Rs. 29,12,993/-. Thus, there was Long term capital gain of Rs. 8,01,105/- (Rs. 37,14,098 - Rs. 29,12,993). Since the assessee has not shown any Long term capital gain in his return of income, therefore, the Long term capital gain chargeable to tax as per section 48 of I.Tax Act has been taken at Rs. 8,01,105/-."

4. It was submitted that the issue was challenged in appeal before the CIT(A) on various grounds including the arguments that in the calculations the cost of acquisition for the Third Floor has not been considered and has not been indexed. The property under consideration it was pointed out consisted of Ground Floor, First Floor, Second Floor and Third Floor. It was submitted that the sale price of Third Floor has been included however the indexed cost of acquisition of the said floor had not been considered. It was also submitted that apart from that the AO has allowed only 50% of the cost of construction on the faulty reasoning that the construction costs were met from taking loans and financial help from family members which ultimately was paid in due course. Thus, it was his submission that justice has not been done as probably because

the assessee was represented by his son both before the AO and the CIT(A), thus he may not have been able to put the facts across properly. Accordingly the addition it was submitted could not be sustained on facts alternatively the issue it was submitted may be restored for verification of the claims put forth.

5. The Ld. Sr. DR did not have any objection if the issues are verified as he was unable to state whether for working of the capital gain the acquisition cost of the Third Floor was left out as claimed by the assessee and since correspondently the sale price of the same has been included he said the facts may be verified. He was also unable to justify as to how only 50% of the cost of acquisition of the asset can be allowed on the reasoning that the assessee sought financial help from the family members since the ownership of the specific property vested in the assessee solely thus he stated that the claim may also be verified.

6. Having heard the rival submissions and perused the material available on record wherein evidently the assessee may not have been properly represented on account of the fact that the all along representation before the tax authorities was by his son Sh. Sanjay Mehndiratta who may not have been conversant with the technicalities of the issues. The background of the representation is evidenced from the following extract of the submissions advanced before the CIT(A):-

3. *“Total indexed cost of land and construction comes to Rs.35,71,911 whereas the property has been sold for Rs.28,10,000. Hence no capital gain is applicable in the instant case. Due to stressor circumstances the I was not in a position to recall that the sale of property from which there is no capital gain to be referred in the ITR. The omission was just an oversight.*

4. *Moreover half portion of the property was sold to Mrs Lalita Sharma and the remaining half was transferred in the name of the daughter-in-law i.e. w/o elder son Sanjay Mehndiratta, who and his wife had been incurring expenses on my behalf for a long period durin the illness of my wife of spinal tuberculosis during 2003-04 and cervical cancer of during 2003-04 and cervical cancer of during 2007-08 illness of my-wife had put the complete family in a real tight corner and 50% of the property was disposed off under compelled circumstances to clear the debts.*

.....

*In the light of the facts and details mentioned above I can surely say that no capital gain is applicable in this case. You are requested to drop the proceedings Initiated. Some more documentary evidences are to be submitted for which some mere time is required, you may please allow some time. I would also like to submit that I am an old man of 76 years age having hearing problems with other diseases. My wife has recently undergone a bypass surgery in November 2014, so I am unable to attend your goodself office, have authorized my son to file a reply on my behalf. (Copy of Power of attorney already submitted in your office.)”*

6.1. Similarly the background of the case is brought out from another explanation extracted in the impugned order at page 4. Relevant extract is reproduced from the same:-

2. *“During the year apart from other income a property bearing no Ward no. 122, Qutab Road. Sadar Bazar Deihi-6 was sold consideration, in cash, was received in advance,*
3. *No money was received by the assessee from her daughter in law Smt. Anju Mehndiratta, since she and her husband Shri Sanjay Mehndiratta had been incurring expenses on assessee's behalf from a long period and as a mark of gratitude and reward to them the assessee transferred half of the property to her. The consideration for the remaining half was utilized by the assessee in medical treatment of himself and his spouse suffering from cancer of cervix.*
4. *The property was acquired in 1971 (copy enclosed) Construction was undertaken on the property later on. First floor during 1974-75 and second floor in 1998-99.*
5. *The net long term capital loss on the sale of property (copy enclosed) is Rs.2,62,110/-.*
6. *There was no tax liability on account of capital gains, there being long term capital loss, the sale was omitted by oversight to be reported in the return of income.*
7. *In addition, due to strenuous circumstances, the assessee was not in a position to even recall that the sale of property from which there is no capital gains is to be reported. The omission was unintentional and just an oversight.”*

6.2. In the context of the above facts, it has been argued by the ld. AR that the finding arrived at in the impugned order does not address the issue. The position was not disputed by the Ld. Sr. DR.

7. Accordingly in the light of the submissions made by the parties before the Bench and considering the peculiar facts and circumstances of the case, I am of the view that in the interests of substantial justice, it would be appropriate to restore the issue back to the file to the CIT(A) who shall verify the claim of the assessee namely that the cost of acquisition should include the cost of the Third Floor also whose sale price has been taken into consideration. Similarly disallowance of 50% of the expenses incurred on the ground that contributions have been made by family members to whom ultimately the amounts were returned or settled otherwise in subsequent years needs to be examined on facts and *prima facie* it cannot be disallowed for the purposes of the working of the cost of acquisition. Accordingly the impugned order is set aside and the issue is restored back to the CIT(A) with a direction to pass a speaking order in

accordance with law after giving the assessee a reasonable opportunity of being heard. The said order was pronounced on the date of hearing itself in the open Court.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**The order is pronounced in the open court on 16<sup>th</sup> of November, 2015.**

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated: 16/11/2015

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI