

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**ITA No. 194/Del/2014
(ASSESSMENT YEAR: 2009-10)**

Sunil Kumar Jain, 94, New Rajdhani Enclave, Vikas Marg, Delhi-110092. PAN-AAHPJ8930H	vs	ACIT, Circle-37(1), New Delhi.
(Appellant)		(Respondent)

Appellant by	Sh.Sanjeev Kawtra, CA
Respondent by	Sh. Kaushlendra Tiwari, Sr.DR
Date of Hearing	06.07.2017
Date of Pronouncement	22.08.2017

ORDER

PER L.P.SAHU, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against the order dated 01.10.2013 of the CIT(A)-XXVIII, New Delhi relating to assessment year 2009-10 on the following grounds:-

1. *“That the Order passed by Ld. CIT (A) is bad in law.*
2. *That the Ld. CIT (A) was not justified on facts and circumstances of the case and in law in confirming the Partial addition of Rs. 3,92,103/- (Total addition Rs 7,84,206/-) made by the Assessing Officer of entire interest paid on borrowed fund from banks utilized for making payment for property which was sold during the year under appeal.*
3. *That the Ld. CIT (A) was not justified on facts and circumstances of the case and in law in enhancing the long term capital gain on sale of plot by giving Indexation benefit on cost of acquisition from Financial Year 2003-*

04 instead of Financial Year 1999-2000 without affording proper opportunity to the appellate .

4. That the Ld. CIT (A) was not justified on facts and circumstances of the case and in law in confirming the Partial addition of Rs. 12,400/- (Total addition Rs 24,800) made by the Assessing Officer on adhoc basis on the plea that personal element in Car Running and Entertainment expenses cannot be ruled out.

5. That appellant craves leave to add, alter and modify any of the grounds during the course of appellate proceedings.”

2. In this appeal filed by the assessee, Ground No.1 is general in nature and does not require any adjudication; in Ground Nos. 2, 3 & 4, the AO made adhoc addition on the car running expenses which has been restricted to 10%.

3. The brief facts of the case are that the assessee filed return of income of Rs.23,97,871/- on 30.09.2009. The case was selected for scrutiny under CASS and notices were issued to the assessee u/s 143(2) of the I.T.Act, 1961 (in short “Act”). During the scrutiny proceedings, the AO noted that the assessee has shown long term capital gain of Rs.10,45,637/- in his return of income for sale of plot B-149, Sun City, Gurgaon. On being asked by the AO, the assessee submitted details of long term capital gain computed is as under:-

S.No.	Particulars	Amount	Cost year Index	Sale year index	Amount	Amount
	Sale consideration					1,70,00,000
	Less					
1.	Indexed cost of Acquisition (1999-2000)	22,30,000	289	582	3336401	
2.	Indexed cost of Acquisition	33750	389	582	50494	
3.	Indexed cost of Acquisition	197340	406	582	282886	
4.	Indexed cost of Acquisition	165708	426	582	226389	
5.	Indexed cost of	92765	447	582	103892	

	<i>Acquisition</i>					
6.	<i>Charges ICICI</i>	3283	447	582	4274	
7.	<i>Indexed cost of Acquisition</i>	48500	463	582	60965	
8.	<i>Indexed cost of Acquisition</i>	34617	463	582	43514	
9	<i>Indexed cost of Acquisition (2003-04) (stamp duty)</i>	6266975	463	582	788119	
10.	<i>Indexed cost of Acquisition (2004-05)</i>	9722	480	582	11787	4908726
	<i>Total LTCG</i>					1,20,91,273

<i>½ share of the assessee</i>	60,45,637
<i>Less NHB Bond Investment</i>	50,00,000
<i>Long Term Capital Gain</i>	10,45,637

4. In response to the query raised by the AO, the assessee submitted documents and perusal of the documents, the AO observed that the assessee has taken loan of Rs.15,00,000/- from ICICI Bank for the purchase/construction of the above said property. The property was booked upon M/s Suncity Project Ltd. and the loan was raised from ICICI Bank in Nov. 1999 and jointly with wife of Rs.15 lacs and Rs.6,25,000/- taken from Bank of Baroda on 20.05.2003 for making of financial payment of the property and the property was registered also in F.Y. 2003-04 in the name of the assessee and his wife. The interest was also computed to the bank on the loan taken from both the banks. The property was sold for Rs.1,70,000/-. During the year under consideration, the assessee claimed cost of acquisition on the cost of the property purchased and interest paid upto 2004-05 on loans. The AO did not allow the indexed value of interest paid of Rs.7,84,206/- and added to the income of the assessee as a long term capital gain.

5. Further the AO observed that the assessee has claimed under car running expenses of Rs.1,12,000/- in his P&L A/c. The AO asked for the log book but

the assessee was unable to submit, therefore, the AO disallowed 1/5 of the car running expenses of Rs.22,400/- and added back to the income of the assessee.

6. Aggrieved by the addition of the AO, the assessee filed appeal before the First Appellate Authority. The assessee submitted detailed written submissions before the Ld.CIT(A) and after considering the written submissions and AO's order, the findings of the Ld.CIT(A) is as under:-

5.3 "To verify the fact the appellant was asked to confirm the date of purchase of a plot, and produce the documents evidencing Registry of the plot and also to produce the financial Statement for the year 1999-2000 and 2000-01. In response the appellant produced Conveyance Deed showing that the property had been registered on 02.07.2003, at Rs.24,61,564/- for which Rs.3,07,750/- had been paid as Stamp Duty. Further, as per the Financial Statement for the year ending 31.03.2000 and 31.03.2001, the value of the Suncity Plot had been shown at Rs.11,15,000/- in the balance sheet of the appellant i.e. Dr.Sunil Kumar Jain. The interest payment to ICICI Bank was not capitalized to the loan account. In the balance sheet for the period ending 31.03.2009 the opening balance of the property has been shown to be Rs.13,68,239/- . It is apparent that hereto the value of the property includes only the amount paid towards Stamp Duty and external development charges, and the interest payment, if any, has not been capitalized. Since the balance sheet does not reflect any capitalization of interest payment, the cost of acquisition can not include the expenditure, if any towards interest. The appellant can therefore not be allowed benefit of indexation on interest. Further as the Registered Sale Deed the property has been registered in the name of the appellant on 02.07.2003. Before this date the payment made to Suncity was an advance. The Assessing Officer is directed to re-compute the capital gains after allowing indexation on cost of acquisition as per the registered agreement at the registered price w.e.f. this date that is 02.07.2003 and not from 1999-2000 as claimed by the assessee. The

appellant had claimed that 100% disallowance of interest has been made in his case, inspite of the fact that he has ownership of only 50% of the property. The claim of the appellant in this regard is accepted, The Assessing Officer is directed to initiate action in the case Mrs.Belia Jain or intimate the Assessing Officer of Mrs.Belia Jain in respect of the rest of the disallowance in respect of including interest payment as part of cost of acquisition.

The appellant thus gets part relief, however, the indexed cost of acquisition is amended as discussed above.”

7. Ld.CIT(A) in respect of adhoc addition i.e. 1/5 of car running expenses reduced to the 10% and partly allowed the appeal of the assessee.

8. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before the ITAT.

9. Ld.AR reiterated the submissions made before the Ld.CIT(A) and he also produced the Paper Book which contains to 1 to 206 pages and he referred section 48 of the Act for true determination of the cost of acquisition of assets. Ld.AR submitted that the plot was booked and taken loan from the ICICI Bank. The ICICI bank paid directly to the vendors and Tri-party Agreement was made and further the assessee took loan from Bank of Baroda for the final payment and the property was got registered in the name of the assessee and his wife jointly. The loan was re-paid with the interest. The payment is also part of the cost of acquisition. The interest has not been debited in the value of assets is not relevant. In this regard, he also relied on the judgement of *Kedarnath Jute Manufacturing Co. Ltd. vs CIT 82 ITR 363 {1971} [SC]*. He also submitted that the loan was taken and utilized for the objective for which it was taken. Utilization of loan for the purpose, it was taken the most important thing while

giving loan claim for the interest. The housing loan was utilized for construction/purchase of house. The loan was not only used for the purchase of plot. The very purpose of the loan was taken for the purchase/construction of the house. He relied on the following judgements:-

- (i) *CIT v Mithlesh Kumari [1973] 92 ITR 9 (Delhi);*
- (ii) *CIT v Travancore-Cochin Chemicals Ltd. [1975] 99 ITR 24 (Ker.) (FB);*
- (iii) *Addl. CIT v K.S.Gupta [1979] 119 ITR 372 (AP); and*
- (iv) *CIT v Maitheryi Pai [1985] 152 ITR 247 (Ker.)*

10. He further submitted that the case laws relied by the AO are in different footings, therefore, in this case, it is not applicable.

11. Ld. DR relied on the order of the lower authorities and he submitted that the AO has considered rightly the cost of acquisition of the assets and he referred section 48 of the Act regarding cost of acquisition. He further submitted that after the acquisition of assets registered in the name of the assessee, no other expenditure can be allowed. He further submitted that in the computation of capital gain, there are three types of expenditure which can be deducted from the net consideration which is as under:-

- (i) Cost of acquisition of assets;
- (ii) Cost of any improvement therein & expenditure incurred wholly and exclusively in connection with the transfer of assets.

12. Therefore, the AO and the Ld.CIT(A) has passed a good reasoned order in respect of Ground No.4. He relied on the order of the lower authorities.

13. After hearing both the sides and perusing the material on record, we observed that the property was booked in the name of the assessee jointly with her wife in the FY 2008-09 and the substantively amount of the cost of property were also paid to vendors. Annual property has got registered in the FY 2003-

04 effect to the issue for giving indexation benefit to the assessee because the substantial value of the property had already been paid at the time of booking of the capital assets. The Tri-party Agreement was also made with the ICICI bank at the time of sanctioning of the loans for the purchase/construction of the plot and the loan amount was directly paid to the vendors. In totality of the facts and circumstances of the case and considering the order of the lower authorities and submissions of the assessee, the assessee is entitled for the indexation benefit from the FY 1999-2000 and onwards in respect of interest paid to the banks in respect of his share in the property. Therefore, this ground is allowed in favour of the assessee.

14. During the scrutiny proceedings, the AO asked for the log book but the assessee submitted that no log book has been maintained. Therefore, the estimation made by the AO and restriction made upto 10% by the Ld.CIT(A) is justifiable. Once the AO or appellate authority raised certain queries and the assessee failed to properly respond the same, the authorities below were quite justified to disallow the expenditure, keeping in view the nature & size of assessee's business and other attending facts & circumstances of the case. In view of the above discussion, Ground No.4 of the appeal is rejected.

15. In the result, the appeal of the assessee is partly allowed.

The order is pronounced in the open court on 22nd August, 2017.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

**Sd/-
(L.P.SAHU)
ACCOUNTANT MEMBER**

Amit Kumar
Date:- 22.08.2017

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI