

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 876/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Ghanshyam Das Thakawani, Bijlani Distributors, Shop NO. 32-33, Mayur Market, Cinema Road, Ajmer.	बनाम Vs.	ITO, Ward 1(2), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADXPT 0725 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 14/11/2018
उद्घोषणा की तारीख / Date of Pronouncement : 26/11/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 25/09/2017 of Id. CIT(A), Ajmer for the A.Y. 2009-10. The assessee has raised following grounds of appeal:

- "1. Rs. 37,97,637/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the taxing of the Long Term Capital Gain (LTCG). The LTCG so taxed being contrary to the provisions of law and facts, the same kindly be deleted and the LTCG of Rs. 77,420/- as declared by the assessee, kindly be directed to be accepted.*
- 2. Rs. 37,97,637/-: the Id. CIT(A) further erred in law as well as on the facts of the case in confirming the disallowance of the indexed*

cost of acquisition Rs. 37,97,637/- (in relation to the actual cost of construction of Rs. 16,90,015/- incurred in F.Y. 1994-95 (A.Y. 1995-96). The disallowance so made and confirmed by the Id. CIT(A), kindly be deleted and directed to be allowed in fully, as claimed.

3. *The Id. A.O. further erred in law as well as on the facts of the case in charging interest U/s 234A, 234B, 234C and 234D of the Act and as also in withdrawing interest U/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*
4. *The appellant prays you honour indulgences to add, amend, or alter of or any of the grounds of the appeal on or before the date of hearing."*

2. The only issue raised by the assessee in this appeal is regarding the indexed cost of construction/improvement while computing the capital gain on sale of residential property. The assessee filed his return of income on 30/09/2009 declaring total income of Rs. 1,98,050/-. Since the assessee has not disclosed the capital gain from sale of the immovable property in question vide sale deed dated 13/10/2008, therefore, the Assessing Officer has reopened the assessment by issuing a notice U/s 148 of the Income Tax Act, 1961 (in short the Act) on 16/2/2016. In response to the notice U/s 148 of the Act, the assessee filed return of income on 03/6/2016 declaring total income of Rs. 2,97,150/- which includes long term capital gain of Rs. 77,420/- on sale of residential property. The assessee claimed benefit of indexed cost of acquisition and indexed cost of improvement total amounting to Rs.

58,45,580/-. The dispute is only regarding the cost of construction as claimed by the assessee of Rs. 16,90,015/- incurred in the F.Y. 1994-95 and the indexed cost of the same was claimed at Rs. 37,97,640/-. The Assessing Officer disallowed the claim of the assessee on the ground that the assessee failed to prove that the construction was done at second floor and third floor of the property. The Assessing Officer concluded that the assessee has failed to prove that some construction was done on second floor and third floor in the year 1994-95 and consequently the Assessing Officer computed the long term capital gain of Rs. 38,75,057/- by disallowing the claim of indexed cost of construction of Rs. 37,97,637/-.

3. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and contended that the old structure was improved by the assessee and property was reconstructed in the year 1994-95 after getting the sanction from U.P. Avas Avam Vikas Parishad, Bareilly. The assessee has also placed reliance on the valuation report dated 20th September, 2008. The Id. CIT(A) called for a remand report and thereby confirmed the disallowance of claim and consequential addition made by the Assessing Officer.

4. Before us, the Id AR of the assessee has submitted that the assessee purchased a house in Bareilly in the year 1984. Initially, the assessee spent Rs. 3.00 lacs on repair and renovation on the ground floor of the house, however, subsequently in the F.Y. 1994-95, the assessee further constructed the first floor and thereafter small mumti and Dam Dama at second floor. Thus, the Id AR has submitted that the assessee has incurred Rs. 16,90,015/- on construction of first floor and a mumti at second floor. The Id AR has referred to the valuation report dated 20th September, 2008 at pages 85 and 90 of the paper book and submitted that the valuer has estimated the cost of construction of the first floor and a mumti at second floor of Rs. 17,39,084/- and after allowing a deduction on account of self supervision, the cost of construction was arrived at Rs. 16,08,652/-. Since, no construction was done at second floor and third floor of the house, therefore, the disallowance made by the Assessing Officer on the ground that the claim of the assessee is regarding construction of second floor and third floor is without any basis. The Id AR has submitted that the assessee was an NRI between the period 1st April 1982 to year 2001 and hence the source of investment was duly explained as precedence of income earned by the assessee from abroad to his bank account with OBC bank, Ajmer and withdrawal from the said account. The Id AR has referred to

the remand report of the Assessing Officer and submitted that the Assessing Officer has admitted the fact of construction of first floor and mumti at second floor which initially considered at second floor and third floor. The Assessing Officer has also accepted the year of construction to be 1994-95 and therefore, once the assessee has established the fact that the construction was carried out in the year 1994-95 then the indexed cost of construction is an allowable claim of the assessee. The Id AR has also referred to the said plan duly approved by the U.P. Avas Avam Vikas Parishad, Bareilly dated 25/2/1993 and submitted that this shows that the construction was carried out by the assessee in the 1994-95. In support of his contention, he has relied upon the various decisions on the point that once the assessee has produced valuation report in support of his claim then the Assessing Officer cannot ignore or brushed aside the valuation report produced by the assessee.

5. On the other hand, the Id DR has relied upon the orders of the authorities below and submitted that there are two valuations reports produced by the assessee. First valuation by the same valuer was done on 20/6/2006 in which there is no mention of construction of first floor and mumti at second floor. The second valuation report is after more than two years and it is only for the first floor and a mumti at second

floor which shows that it is an afterthought manipulated document to claim the deduction on account of alleged construction. Thus, the Id DR has submitted that the assessee has failed to produce the evidence in support of the construction except the valuation report dated 20/09/2008.

6. We have considered the rival submissions as well as relevant material on record. During the course of proceeding before the Id. CIT(A), the assessee supported its claim by valuation report dated 20/09/2008 as well as sale deed dated 13/10/2008. The assessee has also supported his claim with the site plan sanctioned by the U.P. Avas Avam Vikas Parishad, Bareilly dated 25/02/1993. The Id. CIT(A) called for a remand report, we find that in the remand report, the Assessing Officer accepted the fact of construction carried out by the assessee at the first floor in the year 1994-95, however in absence of documentary evidence of expenditure, the claim was not accepted by the Assessing Officer. The Id. CIT(A) also confirmed the rejection of the claim on the similar reasoning. Once the factum of construction of first floor and a munti at second floor is accepted then the claim of cost of construction cannot be rejected out rightly without examining the correctness of the amount of the claim. The dispute is only regarding the cost of

construction as the construction itself is accepted. We also find that the year of construction is supported by the sanction of plan which applied in the year 1993 and was sanctioned on 25/2/1993 by the Executive Engineer, U.P. Avas Avam Vikas Parishad, Bareilly. Since the assessee has not given the supporting evidence and also not maintained any account of cost of construction, therefore, the same can be considered only on estimation basis. The valuation report has determined the cost of construction on estimation basis at Rs. 16,08,650/- by considering the total constructed area of 299 sq.mtrs.. However, as per the sanctioned plan dated 25/2/1993, the proposed area to be constructed at ground floor, first floor and mumti is not matching with the area shown in the valuation report. Therefore, instead of rejecting the claim in toto, the correct amount of cost of construction was required to be examined on proper verification of record. Neither the Assessing Officer nor the Id. CIT(A) has examined and verified the correctness of cost of construction claimed by the assessee but rejected the claim for want of evidence of expenditure. Since the construction of the property is accepted, therefore, the claim of the assessee cannot be rejected outrightly. Accordingly, in the facts and circumstances of the case, we set aside the issue of cost of construction and indexed cost to the record of the Assessing Officer for proper verification and examination of claim and

then decide the same after giving adequate opportunity of hearing to the assessee. Since the property is situated in the State PWD jurisdiction, therefore, for estimation of cost of construction, PWD rates are applicable.

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

Order pronounced in the open court on 26th November, 2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26th November, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ghanshyam Das Thakawani, Ajmer.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(2), Ajmer .
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 876/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar