

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

**BEFORE SHRI S.K. YADAV, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.-6415/Del/2017
(Assessment Year: 2009-10)**

Sh. Gaurav Agarwal B-21, Vasant Vihar Vasant Marg, New Delhi. PAN No. ADAPA9829L	vs	ACIT Circle-1, Muzaffarnagar
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&

**ITA No.-7243/Del/2017
(Assessment Year: 2009-10)**

Sh. Surendra Kumar H.No. 21, Vasant Vihar, Vasant Kunj, New Delhi. PAN No. ADLPK1715A	vs	ITO Ward 2(4), Muzaffarnagar
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Assessee by	Sh. Ankit Gupta, Adv.
Revenue by	Sh. S.L. Anuragi, Sr. DR

Date of Hearing	14.05.2018
Date of Pronouncement	15.05.2018

ORDER

PER SHRI S.K. YADAV, J.M.

These two appeals are preferred by the assessee against the respective order of CIT(A). Since common issue is involved in these appeals, these were heard together and are being disposed of through this consolidated order.

2. Common issue in both the appeals is with regard to the computation of capital gain accrued on sale of immovable property. For the sake of reference, we extract the grounds in this regard raised in ITA No. 6415/Del/2017 as under:

1. *“That the Ld.CIT(A) has erred both on acts and in law in confirming the order of assessment dated 18.10.2016.*
2. *That the Ld.CIT(A) has further erred in holding that a capital gain of Rs. 39,98,452/- had accrued to the assessee on the sale of 1/4th share in a residential house owned by her instead capital loss suffered of Rs. 2,73,590/-. The Ld. CIT(A) has failed to appreciate the assessee co-owned the transferred asset as a result of an arbitration award dated 16.3.1993 though was owned by Sh. Shyam Lal and was part of large area of 20 bighas.*
 - 2.1 *That the findings of the Ld. CIT(A) that the cost of acquisition of the transferred asset as on 01.04.1981 as computed by the assessee was improper and excessive is completely misconceived. In arriving at the aforesaid conclusion, the Ld. CIT(A) has failed to comprehend that in 1981 the property had already been constructed and there was no land as such.*
 - 2.2 *That the Ld. CIT(A) has failed to appreciate that the cost of acquisition as claimed by the assessee as on 01.04.1981 in respect of the land on which house property had been constructed was not less than Rs. 1,184/- per sq. meter and the fair market value of land estimated at Rs. 250/- per sq. yard of the land as adopted could not be held to represent the fair market value of the land as on 01.04.1981. There being no basis to adopt the aforesaid sum as the fair market, as such, the Ld. CIT(A) was not legally justified on upholding that the fair market value of land as on 01.04.1981 was Rs. 250/- per sq. yard.*
 - 2.3 *That the Ld. CIT(A) has failed to appreciate that the indexed cost of land and indexed cost of construction as adopted by the assessee did represent the fair market value of the property as on 01.04.1981 and the fair market value adopted by the ld. AO of the entire house property at Rs. 1,10,06,190/- was highly underestimated and overlooked the factual substratum of the case.*
 - 2.4 *That the Ld. CIT(A) has failed to appreciate that to determine the fair market value, the best evidence was an evidence of an expert i.e. valuation report which valuation report could not have been ignored while determining fair market value of the property without examining the said report or the approved valuer.*
 - 2.5 *That in the absence of any adverse brought on record by the AO in rebuttal to the valuation report furnished by the assessee, the Ld.*

CIT(A) has erred in holding that the fair market value as on 01.04.1981 of land was less than Rs. 1,184/- per sq. yard and thus the capital gain computed was totally untenable. That the Ld. CIT(A) has also failed to appreciate that Rs. 1,000/- per sq. meter could not be held to be the cost of super structure as had been adopted by the Ld. AO which was highly arbitrary.

2.6 That in any case and without prejudice the CIT(A) has erred in sustaining the addition of the amount determined as capital gain i.e. of Rs. 39,98,452/-.

3. Facts in dispute in this regard are that both the assesses are co-owners in the residential house which was sold by them and they have computed capital gain thereon. The capital gain computed was disputed by the AO.

4. During the course of assessment proceedings, the Assessing Officer has called the details or the basis of the valuation of land adopted as on 01.04.1981 and the expenditure incurred on improvement of land. The assessee could not furnish the details before the AO and the AO has called the report from the Revenue Authorities and estimated the cost of acquisition as on 01.04.1981 at Rs. 340 per sq. meter against the value adopted by the assessee at Rs. 1,184 per sq. meter. The AO, accordingly, rejected the computation of the capital gain furnished by the assessee and recomputed the capital gain having adopted the cost of acquisition of the land as on 01.04.1981 at 340 per sq. meter. While doing so, the Assessing Officer has also estimated the cost of improvement having rejected the cost of improvement shown by the assessee.

5. Aggrieved the assessee preferred in appeal before the Ld. CIT(A) and reiterated its contention. Before the Ld. CIT(A) assessee has filed the valuer's report in support of his contention

and the CIT(A) rejected the valuer's report on the ground that valuer has estimated the value of the land and the cost of improvement without any basis, whereas, Assessing Officer has adopted the cost of land on the basis of the certificate given by the Revenue Authorities. The Ld. CIT(A), accordingly, confirmed the computation of capital gain made by the AO and the additions resulting thereof were confirmed.

6. Now the assessee is before us with the submission that he has furnished all the relevant information before the lower authorities but they did not accept and confirm the additions. The Ld. Counsel for the assessee further contended that in the case of other co-owners the Tribunal has accepted the contentions of the assessee and deleted the additions. Copy of the order of the Tribunal is placed on record.

7. The Ld. DR, on the other hand, has contended that in the case of one of the co-owner the SMC Bench of the Tribunal has accepted the contention of the assessee without realizing that the report of the valuer was filed first time before the CIT(A) and the CIT(A) has rejected the valuer's report on the ground that the report is not supported by any corroborating evidence. Moreover, the Assessing Officer has not made any comment on the valuer's report, first time submitted by the assessee before the CIT(A).

7.1 The Ld. DR further contended that the order of the SMC Bench of the Tribunal is not binding upon the Divisional Bench. While accepting the contention of the assessee the SMC Bench of

the Tribunal did not realize that this valuer's report cannot be accepted without confronting or calling comments from the Assessing Officer. The SMC Bench has deleted the addition solely relying upon the valuer's report submitted by the assessee which is a gross violation of principal of natural justice. Therefore, the impugned issue should be adjudicated without being influenced with the order of the SMC Bench of the Tribunal.

8. We have carefully examined the orders of the lower authorities and the orders of the Tribunal in the light of the rival submissions, and we find that the assessee has computed the capital gain and adopted the cost of acquisition of land as on 01.04.1981 at Rs. 1,184/- per sq. meter without any basis, whereas the Assessing Officer has adopted the cost of acquisition of land at Rs. 340 per sq. meter as on 01.04.1981 on the basis of the Revenue report obtained by the Assessing Officer from the concerned Revenue Authorities. Moreover, the basis of adopting the cost of improvement was not furnished before the Assessing Officer by the assessee despite the repeated requests of the AO. The valuation report was filed first time before the CIT(A) and the CIT(A) did not call any comments on the valuation reports as he himself has examined it and rejected the same finding no basis on which it was prepared. When the matter reached the Tribunal, the SMC Bench of the Tribunal accepted the valuation report without realizing that this valuation report was strongly criticized by the CIT(A) and it was never confronted to the Assessing Officer for his comments. This additional evidence was accepted by the Tribunal

and the relief was also given to the assessee. In the light of these facts, we do not agree with the findings of the SMC Bench of the Tribunal. Moreover, the order of the SMC Bench of the Tribunal is not binding on Divisional Bench of the Tribunal. We, therefore, examine the issue independently without being influenced with the order of the Tribunal and we are of the view that since the valuation report was not filed before the Assessing Officer and it was relied on by the Tribunal while granting relief, the valuation report should be examined by the Assessing Officer after making necessary enquiry and investigation. We accordingly, set aside the order of the Ld. CIT(A) in this regard and restore the matter to the Assessing Officer to re-adjudicate the issue of computation of capital gain afresh after affording an opportunity of being heard to the assessee.

9. The ground nos. 3 & 4 in ITA No. 6415/Del/2017 relate to the addition made on account of cash deposit in the Saving Bank Account of the assessee.

10. The fact in brief borne out from the record are that the assessee has deposited cash of Rs. 32,26,000/- in its Saving Bank Account for which assessee was asked to explain the source of deposits and in the absence of proper explanation the Assessing Officer has made the addition of the same after treating it to be an income from undisclosed sources. The assessee preferred appeal before the CIT(A) but did not find favour with him and the assessee preferred appeal before the Tribunal.

11. During the course of hearing, the Ld. Counsel for the assessee has contended that before the CIT(A) assessee has furnished detailed explanation with regard to the source of deposits. Most of the deposits were made out of the earlier withdrawal from the Bank. But the CIT(A) did not examine the explanations furnished by the assessee. Therefore, in the interest of the justice, matter may be restored back to the file of the Assessing Officer with the direction to examine the explanations with regard to the source of deposits.

12. The Ld. DR placed the heavily reliance upon the order of the Ld. CIT(A).

13. Having carefully examined the order of the lower authorities in the light of the rival submissions, we find that before the Assessing Officer, assessee did not properly explain the source of deposits despite opportunity afforded by the Assessing Officer. Before the CIT(A) assessee has furnished detailed explanation but the CIT(A) did not consider the same and confirm the additions. Now during the course of hearing, the Ld. Counsel for the assessee invited our attention to those explanations furnished before the CIT(A) on source of deposits and we are of the view that explanation furnished by the assessee should be properly examined by the Assessing Officer after affording an opportunity of being heard to the assessee. Accordingly, we set aside the order of the CIT(A) and restore the matter to the Assessing Officer to re-adjudicate the issue of cash deposit in the Savings Bank Account

afresh in the light of the explanations furnished by the assessee after affording due opportunity of being heard to the assessee.

14. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 15.05.2018

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15.05.2018

*Kavita Arora

Sd/-
(S K. YADAV)
JUDICIAL MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	

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