

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2016/Del/2021**

**[Assessment Year : 2011-12]**

ACIT, Central Circle-17, New Delhi.	vs	Shri Karsan Bhai Khimabhai Patel, 8A/8, 2 <sup>nd</sup> Floor, Pusa Road, Karol Bagh, New Delhi -110005. <b>PAN-ANTPP5589K</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Shri Waseem Arshad, CIT DR
<b>Respondent by</b>		Shri Nirbhay Mehta, Adv.
<b>Date of Hearing</b>		21.08.2023
<b>Date of Pronouncement</b>		25.08.2023

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A)-27, New Delhi dated 16.09.2021 for the assessment year 2011-12. The Revenue has raised following grounds of appeal:-

1. *"The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*
2. *The Ld. CIT(A) has erred in deleting addition of Rs. 73,32,026/- in absence of supporting evidence of purchase and cost of improvement by ignoring the fact that the assessee failed to furnish the evidence during the assessment and remand proceeding also.*
3. *The Ld. CIT(A) has erred in fact by deleting the addition made by the AO amounting to Rs. 1,15,70,000/- on the ground that the assessee failed to produce evidence of cancellation of MoU related to the transaction of transfer of property in question.*

4. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. The Revenue has filed application dated 28.12.2021 seeking condonation of delay. It is stated that there was a delay of 15 days in filing the appeal and there was reasonable cause for not filing the appeal in time. It is seen that the present appeal was filed on 30.12.2021 by hand. The impugned order was passed on 16.09.2021. It is stated that service of notice was affected on 08.10.2021. For the reasons stated in the application, the delay is condoned and the appeal is taken up for hearing.

3. Facts giving rise to the present appeal are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (“the Act”), was conducted by the Investigation Wing of the Department on 14.12.2016. The residential premises of the assessee were also covered. Thereafter, a notice u/s 153A of the Act was issued to the assessee on 31.03.2018 and duly served upon the assessee. However, the assessee did not file his return of income during the allotted time. However, in response to notice issued u/s 142(1) of the Act, the assessee filed his return of income, declaring income of INR 22,68,140/- on 17.08.2018. Thereafter, a notice u/s 143(2) of the Act was issued and served upon the assessee. The Assessing Officer (“AO”) thereafter, framed the assessment u/s 153A r.w.s. 144A of the Act dated 26.12.2018 and made various additions. The AO made additions in respect of agricultural income, purchase of agricultural lands, purchase agreement of flat and shop in the building M/s. Vardhman Enclave, sale consideration received in respect of Flat

No.204 & 205 in the building known as “Hari Om, Mira Road (East)”. Thus, the AO assessed the income of the assessee at INR 3,14,70,018/- against the declared income of INR 22,68,140/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, the Ld.CIT(A) deleted the addition of INR 77,60,500/- purported to have been received as consideration for sale of property i.e. “Hari Om, Mira Road (East), Mumbai” deleted the addition of INR 1,15,70,000/- made in respect of MoU between M/s Vikunj Enterprises Pvt.Ltd. and the assessee for purchase of flat and shop in the building of M/s Vardhman Enclave. Ld.CIT(A) deleted the addition of INR 73,32,026/- made on account of Long Term Capital Gain (“LTCG”) on sale of property as “income from other sources”. Ld.CIT(A) also deleted rest of other addition.

5. Aggrieved against this, the Revenue preferred appeal before this Tribunal.

6. As per grounds of appeal, the Revenue has challenged the deletion of INR 73,32,026/- and addition of INR 1,15,70,000/- in respect of capital gain and addition made on account of purchase agreement in respect of properties in the building M/s. Vardhman Enclave. Ld.CIT DR representing the Revenue supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the additions.

7. On the other hand, Ld. Counsel for the assessee supported the findings of Ld.CIT(A) and submitted that the AO was not justified in making the

additions and he submitted that qua Ground No.1, the AO accepted the Remand Report. He drew our attention to the relevant portion of the impugned order where Ld.CIT(A) has recorded the contents of the Remand Report.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) in para 12.2 & 12.3 of the impugned order has decided the issue by observing as under:-

*12.2. "During the course of appellate proceedings, the appellant had filed all the relevant evidences w.r.t. these transactions and relevant portion of remand report of the AO is as under:*

*".....During the remand report proceedings the assessee has submitted copies of purchase deeds in respect of both the properties as evidence for cost of acquisition and copies of bills in respect of expenses incurred towards cost of improvement of both properties. The above evidence has been verified and it was found that assessee has incurred expenses amounting to Rs. 17,81,220/- and Rs. 37,26,120/- towards cost of acquisition and cost of improvement respectively. The than AO has made the addition of Rs. 73,32,026/- under the head income from other sources on account of non-production of documentary evidence in respect of expenditure incurred for purchase of property and for cost of improvement....."*

*12.3. The AO had verified the cost of acquisition of Rs 17,81,220/- & cost of improvement of Rs 37,26,120/- w.r.t. sale of this property. He had no remarked adversely on the indexation claimed by the appellant. The sale consideration of Rs 90 lakhs on sale of these properties had also been verified. The treatment of sale consideration of an asset shown as capital asset, cannot be taxed under the residuary head "Income from other sources". The income*

*had been correctly shown by the appellant under the head "Capital Gains". Further the AO had verified the indexed cost of acquisition/improvement claimed by the appellant to be correct as per the records of the appellant. In these facts & circumstances of the case, it is held that the transactions of the appellant are taxable under the head capital gains and the indexed cost of acquisition/improvement claimed by the appellant at Rs. 73,32,026/- is allowable expenditure under this head. The net income of Rs. 16,67,974/- has been correctly offered by the appellant under the head capital gains and no interference is called in this computation/income filed by the appellant. Accordingly, the treatment of AO to treat the sale consideration of Rs. 90,00,000/- as income from other sources after disallowance of Rs. 73,32,026/- of expenses is not sustainable and is hereby deleted. This ground of appeal is allowed."*

9. The facts that the AO has verified indexed cost of acquisition and cost of improvement claimed by the assessee to be correct as per the records of the assessee. This fact is not rebutted by the Revenue by placing any contrary material. Therefore, we do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby, affirmed. Hence, the ground raised by the Revenue is dismissed.

10. Now, coming to addition of INR 1,15,70,000/- on the ground that the assessee failed to produce evidence of cancellation of MoU related to transaction of transfer of property.

11. Ld.CIT DR for the Revenue vehemently argued that Ld.CIT(A) was not justified to delete this addition. Admittedly, he submitted that agreement has been acted upon as per the own showing of the assessee, a sum of INR

5,00,000/- was paid therefore, the AO was justified in making the addition of the entire amount as the document issued to be ready as a whole.

12. On the other hand, Ld. Counsel for the assessee submitted that the AO was not justified in making the impugned addition as undisputedly the transaction could not culminate and no Sale Deed was executed. Therefore, the AO was not justified in making the impugned addition.

13. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) has decided the issue by giving a finding on facts by observing as under:-

*13.3. ".....In these facts & circumstances of the case, it is held that the appellant had made payment of Rs. 5,00,000/- only w.r.t. this MOU and this payment has been verified by the AO from records. Accordingly, the addition of Rs. 1,15,70,000/- made by the AO on account of undisclosed investment in property is not sustainable and is hereby deleted."*

14. The finding recorded by Ld.CIT(A) is that only INR 5,00,000/- was paid which was not rebutted by the Revenue by placing any contrary material. In our considered view, the AO ought to have brought some evidence by making inquiry from the concerned builder about the transactions. The AO without making independent inquiry, was not justified in treating the total sale consideration as unexplained investment. Therefore, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby, affirmed. Ground No.3 raised by the Revenue is thus, dismissed.

15. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25<sup>th</sup> August, 2023.

**Sd/-**

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**



**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI