

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी दुर्गारत्न, न्यायिक सदस्य एवं श्री जी मंजूनथ्र लेखक सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.301/Chny/2020
निर्धारण वर्ष /Assessment Year: 2013-14

The Asst. Commissioner of
Income Tax,
Non Corporate Circle-11(1),
Chennai.

Shri Sambandam Dorairaj,
No.87, Sanjivirayan Koil Street,
Vs. Old Washermanpet,
Chennai – 600 021.
[PAN: AAIPD 5379F]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. K. Meenakshi Sundaram, ITP
: Mr. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 21.09.2021

घोषणा की तारीख /Date of Pronouncement

: 30.09.2021

आदेश / ORDER

Per V. Durga Rao, Judicial Member:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-13, Chennai in I.T.A No.112/2018-19/CIT(A)-13/AY 2013-14 dated 29.11.2019 relevant to the Assessment Year 2013-14.

2. The only issue involved in this appeal is with regard to the cost of improvement claimed by the assessee u/s. 54 of the Income Tax Act, 1961 (hereinafter as "the Act"). The brief facts of the case are that the assessee has purchased a flat at No.3, M.R. Garden, Ideal Homes, No.25, Paruthipattu Village and the following expenditure was incurred for the purpose of renovating the house, as under:

1.	<i>Septictank and compound wall construction</i>	<i>Rs. 4,50,000/-</i>
2.	<i>Replasting Labour work</i>	<i>Rs. 6,75,000/-</i>
3.	<i>Tiles removing and relaying</i>	<i>Rs. 3,50,000/-</i>
4.	<i>Plumbing and electrical work</i>	<i>Rs. 2,50,000/-</i>
5.	<i>Painting work</i>	<i>Rs. 3,75,000/-</i>
6.	<i>Main door change and carpentry work</i>	<i>Rs. 2,00,000/-</i>
	Total	Rs.23,00,000/-

3. The A.O has asked the assessee bills and vouchers for the above expenditure incurred by him. The assessee has not filed bills and vouchers and submitted that he has purchased an old flat and he renovated the house and incurred the above expenditure and submitted that same may be allowed. The A.O has deputed the Inspector of Income Tax to make an enquiry about the house whether the assessee has carried any renovation work or not? The assessee being an employee at Mumbai, his brother's son was asked to open the doors of the house for the necessary enquiries for the purpose of ascertaining that whether the assessee carried out any improvement or not. Accordingly, his brother's son opened the house for the enquiry, accordingly Inspector has visited the house and made an enquiry and

taken photographs and also he made enquiry with the neighbours, neighbours said that they were not aware of the improvements done by the assessee. On the basis of the reports submitted by the Inspector, the A.O came to the conclusion that the assessee has not carried out any improvement at the house purchased by the assessee and accordingly, he disallowed the entire amount.

4. On appeal, the Ld. CIT(A) has disallowed an amount of Rs. 5,00,000/- and directed the A.O to allow the improvement cost to the extent of Rs. 18,00,000/-. For the sake of convenience, the relevant portion of the order is extracted as under:

“6. Now, I have carefully gone through the undisputed / uncontroverted facts marshalled and presented by the AO/AR, as reflected, essentially, in the excerpts from the assessment order and the submissions of the AR quoted supra as also the discussion aforesaid bolstered by supporting evidence relied on by the rival parties but on a relative and comparative consideration of the same, I am persuaded by the more substantive and meritorious reasoning / substantiation adduced by the AR on the issue at hand.

7. Firstly, the AO appears to have not appreciated the fact that any new buyer of an undisputedly old house will carry out improvements to make the house habitable to his convenience and he should have taken into account this human nature while appreciating the facts to verify for which he should have also been better served to have referred the case to the departmental valuer for a more scientific valuation of the improvement than drawing an adverse inference on the basis of an Inspector's report who was obviously not an expert in valuation matters. The AO also appears to have come to an arbitrary conclusion by taking pictures of a neighbors house and by comparing the same with the house of the assessee and then holding that since both the houses looked alike there had been no improvement at all except the shifting of a septic tank from the backyard to the front and that since all the doors, handles etc resembled that of the neighbors house the building had been constructed by the same builder and the same remained as such without any improvement which inference therefore can only be said to be based on assumptions and conjectures besides being arbitrary and whimsical and not based on any worthwhile evidence.

7.1 The further facts are also not in dispute that when the AO caused the said local enquiries through the Inspector to find out the extent of improvement expenses, the assessee was undisputedly in Bombay and the relative of the assessee showed the house to the Inspector, who took photographs of the house from different directions / angles as stated earlier and the same were copied in the order though no details were stated as to why this exercise was done i.e. to point

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out that no improvement was carried out by the assessee and since the house was one of houses built by a builder in the same fashion, the construction was uniform in many respects which led the AO to come to the conclusion unilaterally and in an arbitrary manner without any detailed investigation and enquiry and without any cross verification with the assessee / Builder as contended earlier thereby violating the principles of natural justice too and resulting in the addition of Rs.23,00,000/- to the total income by stating in the assessment order that "the enquiry made with the tenants and neighbours and photos of main door, septic tank, compound wall, tiles etc of the assessee's house and that of the neighbour's house indicate they are identical /because the houses on this street were developed by a builder] Even the handle of the main, door of the assessee's house and the one of the neighbour's house seem to be identical. The electrical switches are also identical. As the assessee failed to substantiate his claim of improvement cost of house property, the exemption claimed u/s 54 amounting to Rs.23,00,000/-, the same is disallowed as not proved."

7.2 It is common practice that an old house undisputedly purchased in the instant case would have many defects / disadvantages which normally does need to be rectified for dwelling purposes and the expenses claimed would therefore be towards renovation of the same and does not appear to be excessive or unreasonable for a Residential Class II Type II Upper middle class construction in a relatively upper middle class area in Avadi, Chennai.

7.3 The AO would therefore have done better to conduct basic enquiries with the Builder as to details of the cost of improvements as claimed in the matter rather than ascertain the same from neighbours / tenants who would have been hardly aware of any such development, much less the intricate details of the said improvement.

7.4 In the absence of any such exercise carried out by the AO, the details recorded by the Inspector who visited the new house are only the facts he had seen on the spot and not corroborative evidences to buttress his observations and disprove the evidences presented by way of bills and invoices. Therefore the inference drawn by the Assessing Officer that the features that had been noticed by the Inspector were all done -already by the Builder and not by the assessee appears to be based on only surmises, conjectures, and presumptions on the basis of which assessment cannot be made without proper evidences collected and also disproving the contention of the appellant and not the Assessing Officer's own imagination which he appears to have done in the instant case.

7.5 It is also not in dispute that the improvement expenses incurred for making the house habitable also qualify for deduction under section 54. The following case law supports this view which fact has not been called into question by the AO either.

Nirupama K. Shah vs ITO (2013) 52 (II) ITCL 63 (Mum «B" Trib)

8. Details of improvements made at Plot No. 3, M.R. Garden, Ideal Homes, No.25, Paruthipattu is seen to be the following under the various heads:

- i. Septic tank and compound wall construction - Rs.4,50,000/-**
- ii. Replasting Labour Work - Rs.6,75,000/-**
- iii. Tiles Removing and relaying - Rs.3,50,000/-**
- iv. Plumbing and Electrical Work - Rs.2,50,000/-**
- v. Painting Work - Rs.3,75,000/-**
- vi. Main door change and carpentry work - Rs.2,00,000/-**
- Total - Rs.23,00,000/-**

8.1 During the course of appellate proceedings, the appellant was called to furnish the documentation relating to the expenses on the aforesaid works and on

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a random test check of the same it is seen that the assessee was not in a position to produce satisfactory evidence relating to tile removing and relaying and painting works amounting approximately to 4.95 lakhs. Therefore the above rounded off to Rs.5 lakhs is being held to be not properly explained and therefore **disallowed**.

9. Further in this connection it is pertinent to mention that in law there is a principle called appreciation of facts on the basis of preponderance of probability which would be applicable in the Instant case. Income Tax law being a special law and under this law evidence for anything and everything is not imperative and Income Tax Officers are not equated with the Judicial Officers of the Civil Court who follow Indian Evidence Act and decides any issue only on the basis of strict evidences produced by both parties.

The following case laws support the proposition that strict proof is not necessary for reaching a decision in income tax matters;

(i) **CIT vs. Smt. Vimalaben Bhagavandhas Patel (1979) 118 ITR 134 (Guj)**

(ii) **Anraj Narain Dass vs CIT (1951) 20 ITR 562 (Punj)**

(iii) **Laxmin Co vs CIT (1959) 37 ITR 461 (All)**

(iv) **Devi Dass Madhav Prasad vs CIT (1967) 63 ITR 356 (All)**

9.1 The Income Tax Officer has discretion to take into account the principle of preponderance of probabilities and the facts of a case has to be appreciated in the light of the above legal principles and the facts obtained in an impugned case.

9.2 The assessee in the instant case was and is now working in Mumbai and wanted to have a house for his permanent residence whenever he visits Chennai on vacation and other occasions and being a native of Tamilnadu he needed a house for his residence after retirement from service and keeping these considerations in mind the assessee purchased an old house at Paruthipattu which was renovated at a cost of Rs.23,00,000/-, and the Inspector who visited the renovated house therefore formed an opinion on his own without any expert advice that the house was not renovated at all but only a new house in the present form had been purchased, which does appear to reflect the ground reality and was arrived at without much basis hence does not have much evidentiary value.

9.3 In view of the above discussion including the facts and attendant circumstances of the case and the relevant case laws relied on by the rival parties and the material on record, as discussed in the foregoing paras, an amount of Rs.5 lakhs out of the impugned Rs.23 lakhs is disallowed and added back to be sustained **allowing** the balance of Rs.18 lakhs in favour of the appellants. Therefore this ground is **partly allowed**. “

5. On being aggrieved, the Revenue carried the matter before the Tribunal.

6. The Ld. Departmental Representative strongly supported the order passed by the A.O and submitted that the assessee has not filed

any evidence to support his case and also further submitted the Ld. CIT(A) order may be reversed.

7. On the other hand, the Ld. Authorized Representative strongly supported the order passed by the Ld. CIT(A).

8. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. We find that the case of the assessee is that he is residing at Mumbai and he has purchased an old house at Chennai and subsequently, repairs are carried in the house. The counsel for the assessee has submitted before us that the repairs carried by the assessee long back, five years ago and therefore, he is not able to produce evidence before the A.O. He further submitted that the entire repair works/improvements carried out by his relatives and he is not able to collect the bills and vouchers since he is residing at Mumbai. We have gone through the assessment order and the report of the Inspector. We find that the Inspector has enquired with the neighbours and the neighbours has stated before him that they are not aware of the improvements carried out by the assessee. Mainly, based on the enquires made with the neighbours, he came to the conclusion that the assessee has not carried out any improvement work and disallowed the entire expenditure claimed by the assessee. On appeal, the Ld. CIT(A) is of the opinion that if the

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A.O wanted to know exactly about the improvement works carried out by the assessee, he should have been enquired through a builder who constructed the building inspite of neighbours. Further, the Ld. CIT(A) keeping in view the above and also by considering all other factors and also take into consideration that the assessee is not residing at Chennai he is only residing at Mumbai, he disallowed an amount of Rs. 5,00,000/- for lack of evidence and directed the A.O to allow the benefit u/s. 54 of the Act to the extent of Rs. 18,00,000/-. We have gone through the entire order of the Ld. CIT(A), we find that the disallowance made by the Ld. CIT(A) to the extent of Rs. 5,00,000/- is fair and reasonable and we find that no interference is called for. In view of the above, the appeal filed by the Revenue is dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 30th September, 2021 in Chennai.

Sd/-
(श्री जी मंजूनाथ)
(G. MANJUNATHA)

लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 30th September, 2021.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF