

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1063/Del/2020
Assessment Year: 2016-17**

Kulvinder Singh Kohli,
47, JorBagh, New Delhi.

PAN: AAHPK9011A
(Appellant)

Versus ACIT, Circle 53(1),
New Delhi

(Respondent)

Appellant by : Shri R.S. Singhavi, Ld. CA
ShriRajatGarg, Ld. CA

Respondent by : ShriAnujGarg, Ld. Sr. DR

Date of hearing : 13.07.2022

Date of order : 28.07.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 27.02.2020, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-23, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. Brief facts, relevant for adjudication of the instant appeal, are that the Assessee's father had acquired the plot/property under consideration situated at J-2-25, B-Block, Park Land, Sector 84, Faridabad vide plot buyer's agreement dated 05.02.2007. Father of the Assessee expired on 18.11.2009. Thereafter memorandum of settlement was made amongst the Assessee and his two brothers and the asset of Assessee's father were divided amongst them

equally on 31.03.2010. Thereafter, in order to give effect to the settlement conveyance deed was executed by M/s. BPTP Ltd. in favour of all the three brothers on 11.12.2013 and during the year under consideration, the Assessee along with other two brothers sold the plot of land for consideration of Rs.65 lacs after paying brokerage of Rs.60,000/- on 08.07.2015 in which the Assessee got 1/3rd share.

Consequently the Assessee claimed the benefit of cost and indexation u/s 49 read with section 55 of the Act and declared the cost of acquisition of the property to the tune of Rs.16,74,212/- and offered the capital gain of Rs.4,72,455/- to tax u/s 54 of the Act.

2.1 The Assessing Office finding no supporting documents qua Assessee's declared cost of acquisition, restricted the cost of acquisition to the tune 50% of the amount claimed, while considering the principle of natural justice and consequently made the adhoc disallowance of Rs.8,37,106/-(50% of Rs.16,74,212/-) along with complete brokerage amount of Rs.20,000/- and added back to the income of the Assessee.

3. The Assessee being aggrieved with the disallowance of Rs.8,37,106/- u/s. 54 of the Act, challenged, along with other additions, which are not in controversy herein in this appeal, before the Id. Commissioner. The Assessee before the Ld. Commissioner also reiterated the said facts and claim as presented before the AO and in support of its claim, also filed various documents.

The Ld. Commissioner after considering the case of the Assessee not only confirmed the adhoc addition of Rs. 8,37,106/- but also enhanced the income by revising the disallowance of Rs. 8,37,106/- to Rs. 12,74,512/- (21,66,666- 8,92,514/-) on the

ground from perusal of above details , it is observed that there is no mention of plot no. J-2-25, Block-J, Parklands, Sector-84, Fardiabad, Haryana in the Memorandum of Settlement. The plot was purchased by the Appellant for Rs. 8,92,514/- on 11-12-2013 and sold for Rs. 21,66,666/- on 08-07-2015. Hence it is held that the Assessee is liable for short term capital gain of Rs. 12,74,512/- (21,66,666- 8,92,514/-).

5. The Assessee being aggrieved is in appeal before us, against the affirmation of adhoc addition and enhancement of the income by revising the adhoc addition, and in support of its case submitted that the order impugned is not only perverse and improper but also against the basic facts of the case in hand.

6. On the contrary, Id. DR supported the order passed by the Id. Commissioner and submitted that the order under challenge does not suffer from any perversity, impropriety and/or illegality, hence, no interference is warranted.

7. We have heard the parties and perused the material available on record and given thoughtful consideration to the claim of the Assessee and the submissions made by the Id. AR and Ld. DR.

7.1 The Assessee has claimed that as the plot/property was originally acquired by Assessee's father in the year 2006-07 which was subsequently acquired by inheritance by the Assessee and his brothers on demise of his father on dated 18.11.2009, therefore, the cost of acquisition and benefit of indexation is to be considered on the basis of original cost and the period of acquisition of plot by the Assessee's father as per provisions of section 49 read with section 48 of the Act.

7.2 The Ld. Commissioner affirmed the adhoc disallowance and enhanced the Assessee's income by observing "*that there is no mention of plot no. J-2-25, Block-J, Parklands, Sector-84, Fardiabad, Haryana in the Memorandum of Settlement. The plot was purchased by the Appellant for Rs. 8,92,514/- on 11-12-2013 and sold for Rs. 21,66,666/- on 08-07-2015. Hence it is held that the Assessee is liable for short term capital gain of Rs. 12,74,512/- (21,66,666- 8,92,514/-)*".

We have given thoughtful consideration to observation of the Ld. Commissioner, from where it clearly appears that the Ld. Commissioner though declined the relief by referring Memorandum of Settlement, however recognized the conveyance deed dated 11.12.2013 in Assessee's and his brothers name, which is offshoot of the original allotment of plot in the name of Assessee's father, therefore this ground of rejection of claim and enhancement is unsustainable .

7.3 From the facts and documents available on record, it clearly appears that the plot/land under consideration was acquired by the Assessee's deceased father on 05.02.2007 and after his demise, the Assessee along with his 02 brothers by dividing the assets on dated 11.12.2013, got executed a conveyance deed with M/s. BTP Ltd. (seller).

7.4 Subsequently, on 08.07.2015, the Assessee along with his two brothers sold the plot jointly on a consideration of Rs.65 lacs after paying brokerage of Rs.60,000/- and consequently received 1/3 of the said amount and accordingly claimed the benefit of cost u/s. 49 read with section 55 of the Act by working out cost of acquisition of 16,74,212/- and capital gain of Rs.4,72,455/- on the premise that the Assessee had acquired the right in plot/property on the death of his father on dated 18.11.2009.

7.5 As per section 49 of the Act, where the capital asset became the property of the Assessee on any distribution of assets on the total or partial partition of a Hindu undivided family etc. etc. etc., the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the Assessee, as the case may be.

Hence, the original cost and the period of acquisition of the property by the previous owner which in the instant case is the father of the Assessee, who got allotted the property on dated 05.02.2007 from M/s. BPTP Ltd, is relevant for computation cost of acquisition and benefit of indexation for claim of capital gain.

Consequently, the Assessing Officer is directed to recompute the capital gain while considering the cost of acquisition and benefit of indexation period, as the cost incurred and date of the acquisition respectively, by the father of the Assessee as on 05.02.2007.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 28/07/2022.

Sd/-

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

Sd/-

**(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-