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IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' NEW DELHI)  
BEFORE SHRI RAJ PAL YADAV, J.M. & SHRI K.D. RANJAN A. M.

I.T.A. No.3297 /Del/2011  
Assessment year : 2008-09

Shri Jag Mohan Singh Rawat,  
K-5, Ganga Bldg. Staff Quarter,  
IGNOU, Maidangarhi, N.Delhi.

(Appellant)

(PAN /GIR/No.AENPR-0306-K)

v.

ITO,

Ward-26 (2),  
New Delhi.

(Respondent)

Appellant by : Shri Ved Jain, C.A.

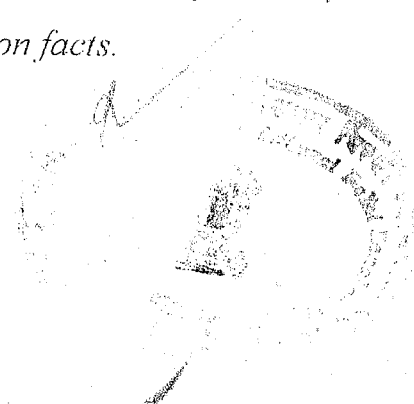
Respondent by : Ms. Y.Kakkar, Sr. DR.

ORDER

PER K.D. RANJAN, AM:

This appeal by the assessee arises for assessment year 2008-09 arises out of order of Ld CIT(A)-XIV, New Delhi. The grounds of appeal raised by the assessee are as under:-

1. *On the facts and circumstances of the case, the order passed by the Ld CIT(A) is bad both in the eye of law and on facts.*



2. (i) On the facts and circumstances of the case, the Ld CIT(A) has erred both on facts and in law in confirming the addition of ₹.24,48,500/- made by the Assessing Officer on account of deposits in the bank account.
- 2(ii) On the facts and circumstances of the case, the Ld CIT(A) has erred both on facts and in law in confirming the above addition ignoring the evidences and explanation furnished by the appellant to prove the same.
3. On the facts and circumstances of the case, the Ld CIT(A) has erred both on facts and in law in not allowing the set off of cash withdrawals made during the year before the deposit in the books of account and in not allowing the credit of the cash in hand available on the opening deposits.
4. (i) On the facts and in the circumstances of the case, the Ld CIT(A) has erred both on facts and in law in confirming the addition of ₹.3,90,530/- made by the Assessing Officer on account of capital gain on sale of flats.
- 4 (ii) On the facts and circumstances of the case, the Ld CIT(A) has erred both on facts and in law in holding that capital gain arising on sale of DDA flat is short term capital gain ignoring the date of acquisition of the flat by which the holding period of the flat is more than 36 months and consequently the gain will be a long term capital gain.
- 4 (iii) That the above said addition has been confirmed rejecting the explanation and evidences brought on record by the appellant.

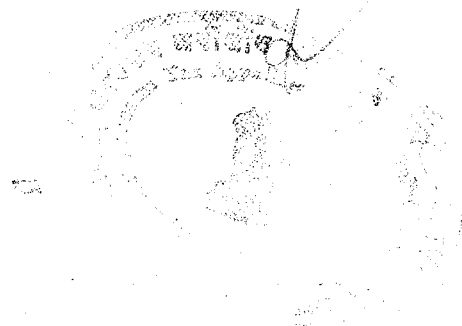
4. (iv) That the Ld CIT(A) has erred both on facts and in law in not allowing appellant the benefit of indexation of cost of acquisition and the cost of improvement.

That the appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The first issue for consideration relates to confirming the addition of Rs.24,48,500/- made by the Assessing Officer on account of deposits in the bank account. The facts of the case stated in brief are that the assessee during the relevant previous year engaged in the business of software development, data repairing job and data processing under the name & style of M/s Roop System. The Assessing Officer selected the case for scrutiny under CASS on the basis of AIR information. As per AIR information, the assessee has deposited cash of Rs.43,66,894/- in two bank accounts detailed as under:-

1. PNB Asaf Ali Road Branch	Rs.18,82,394/-
2. PNB IGNOU Maidan Garhi Branch.	Rs.24,48,500/-

The assessee vide affidavit dated 24.11.2010 denied having any bank account with PNB Asaf Ali Branch. As regards the source of cash deposit amounting to Rs.24,48,500/- in PNB Maidan Garhi Branch, it was stated by the assessee that the deposit represented the income of the previous years earned by the assessee and his wife. It was further stated that the cash was lying at his home and was deposited in the bank account as per entries appearing in the bank account. The Assessing Officer however, rejected this



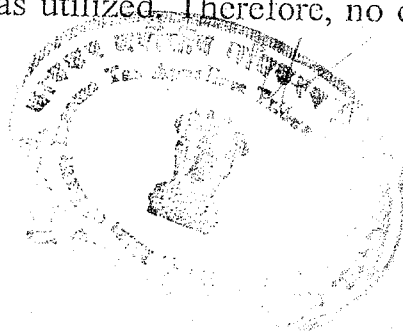
contention of the assessee and added the amount of Rs.24,48,500/- under section 68 of the Act.

3. Further the Assessing Officer found that the assessee had sold flat No.24, Sector-6, Pocket-1, Dwarka New Delhi for Rs.19,50,000/- on 15.7.2007. The said flat was purchased on 9.11.2005 as per conveyance deed executed by the assessee with DDA. The assessee had not disclosed capital gain earned on the sale of flat. The said flat we, therefore, set aside the order of Ld CIT(A) and restore the matter back to the file of the assessing officer for a fresh decision after providing adequate opportunity of being heard to the assessee. The flat was purchased by the assessee for Rs.14,43,930/- Assessee also spent Rs.1,15,540/- to execute the conveyance deed. Thus, the total cost of the flat worked out to Rs.15,59,470/- <sup>15,59,470</sup> The assessee also claimed renovation charges of Rs.60,000/- for which no evidence was filed by the assessee. The Assessing Officer in view of these facts, determined the capital gain at Rs.3,19,530/- and added the same as short term capital gain as a period of holding was less than 36 months.

4. Before the Ld CIT(A), it was submitted that the assessee had been working in Delhi since 1986 as a salaried person and his wife is working in IGNOU and she also supported him financially. The assessee submitted a copy of his account No.68906 in PNB Branch from 1.4.2007 to 31<sup>st</sup> March, 2008 in which he had claimed that there were cash deposit of Rs.24,48,500/-. There was cash withdrawal of Rs.7,72,000/- also and claimed set off for the same. The assessee further claimed the set off cash balance of M/s Roop System for a sum of Rs.6,85,227/-. The Ld. CIT(A)

considered the above facts. He observed that the assessee had deposited Rs.19,85,000/- between 2.6.2007 to 8<sup>th</sup> October, 2007 before making any withdrawals. Thereafter, he had made withdrawal of Rs.1,00,000/- on 13.11.2007 and another withdrawal of Rs.1,20,000/- on 22.12.2007. Thereafter, he had again deposited cash amounting to Rs.4,99,500/- between 26.12.2007 to 14.1.2008. The intervening gap between withdrawal of Rs.2,20,000/- and deposit of Rs.4,99,500/- could not be explained by the assessee. The balance amount of cash withdrawal of Rs.5,50,000/- (Rs.7,70,000/- - Rs.2,20,000/- ) was made by the assessee between 18.2.2008 to 14.3.2008. No deposits were made after these withdrawals. In view of the above facts, Ld CIT(A) concluded that the assessee could not be given any benefit of set off cash withdrawal of Rs.7,70,000/-. As regards opening cash balance as on 1.4.2007 of M/s Roop System, there was no evidence to substantiate his claim. Therefore, Ld CIT(A) upheld the addition of Rs.24,48,500/- as un-explained cash credit.

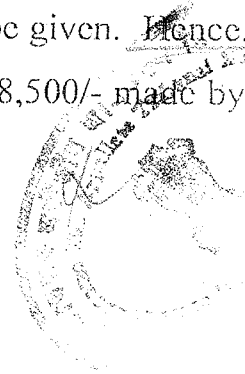
5. Before us, Ld AR of the assessee submitted that the assessee and his wife Smt. Saroj Rawat had savings for the last 17 years which was deposited in the bank account. The assessee had opening balance of M/s Roop System of Rs.6,85,227.22 as on 1.4.2006. Therefore, the cash deposited in the bank account is out of past savings and also the opening balance of M/s Roop System of which the assessee is proprietor. Therefore, no addition can be made on account of cash deposited in the bank account. On the other hand, Ld Sr. DR submitted that books of M/s Roop System were neither produced before the Assessing Officer nor before the Ld CIT(A). It was also not known as to how the cash withdrawn was utilized. Therefore, no credit can



be given out of the cash deposited from the cash withdrawn. He placed reliance on the following decisions:-

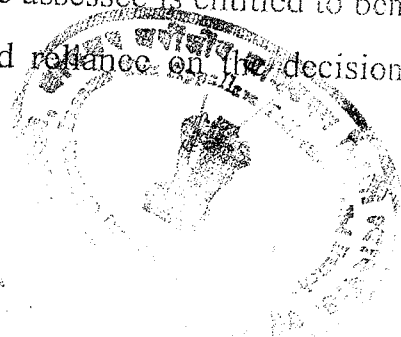
1. Roshan Di Hatti v. CIT 107 ITR 932.
2. CIT v. Sumati Dayal (SC). 214 ITR 801
3. CIT v. Durga Pd. More (SC) 82 ITR 540.

6. We have heard both the parties and gone through the material available on record. From the order of CIT(A), it is clear that the assessee has deposited Rs.19,85,000/- between 2.6.2007 to 8.10.2007 and no withdrawals were made during this period. Thereafter, the assessee has withdrawn Rs.2,20,000/- and deposited Rs.4,99,500/-. Thus, the assessee had made deposits of Rs.19,85,000/- and another net deposit of Rs. 2,79,500/- (4,99,500 - 2,20,000). Therefore, the deposits of Rs.22,64,500/- (19,85,000 + 2,79,000) in the bank account are not supported by any evidence. The assessee had also claimed set off opening cash balance of M/s Roop System for Rs. 6,85,227/-. According to Ld CIT(A) no evidence has been filed before the Assessing Officer or before him in support of his contention that opening balance of Rs. 6,85,227/- was with him in the books of Roop Systems. In the absence of any such evidence, in our considered opinion, no set off can be given. Similarly, it is un-believable that when the assessee was having bank account, he was keeping his past savings in cash in house for last 17 years. It is settled law that the onus was on the assessee to prove his contention with evidence. Therefore, only set off of Rs.2,20,000/- against the deposit of Rs.24,48,500/- can be given. Hence, we uphold the addition of Rs.22,28,500/- as against Rs.24,48,500/- made by the and confirmed by the Ld CIT(A).



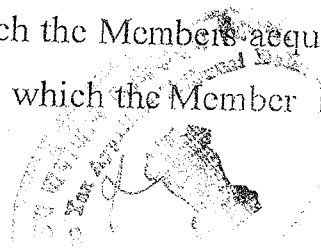
7. The next issue for consideration relates to confirming the addition of Rs.3,90,530/- made by the Assessing Officer on account of capital gains on sale of flat. The facts relating to this ground have already been narrated in paragraph 3 above. Before CIT(A) it was contended that short term capital gain has been determined at Rs.3,90,530/- without giving deduction on account of improvement expenses. The assessee also purchased SFS Flat No.24, Sector-6, Pocket-I, Dwarka, New Delhi vide conveyance deed dated 4.8.2004 and had carried out renovation expenses on the same for an amount of Rs.60,000/-. However, on perusal of conveyance deed with the DDA revealed that deed was registered by the Sub Registrar, Delhi on 9.11.2005 vide Registration No. 17765 in Block-1, Volume 1767 on page 127-128 and the possession was handed over to the assessee after due registration on 14.11.2005. As per the sale deed, it could be seen that sale deed was executed on 20<sup>th</sup> August, 2007 though the payment of Rs. 2 lakh was received by the assessee on 15.7.2007 from the vender. Ld CIT(A) however, noted that no bills, vouchers or any other evidence was submitted by the assessee for incurring the expenses of Rs.60,000/-. Therefore, the Assessing Officer has rightly computed capital gain of Rs.3,90,530/-.

8. Before us Ld AR of the assessee submitted that registration for flat of SFS flat was made on 22.1.2004 and conveyance deed was executed on 4.8.2004. Therefore, the date of purchase should be 4.8.2004. The assessee executed sale deed on 20<sup>th</sup> August, 2007. Therefore, the said flat was held by the assessee for a period of more than three years and therefore it was a case of long term capital gain. Accordingly, the assessee is entitled to benefit of indexation. Ld AR of the assessee placed reliance on the decision of



Hon'ble Delhi High Court in the case of CIT v. RI. Sood. According to the Hon'ble Delhi High Court for exercise of right in the property, there is no need for registration. Ld AR of the assessee also relied on the decision of Hon'ble Gujarat High Court in the case of CIT v. Amilaben Upender Shah reported in 262 ITR 657 (Guj.). He also placed reliance on the decision of the ITAT Delhi Bench 'I' in the case of Praveen Gupta in I.T.A. No.2558/Del/2010 dated 13.8.2010. On the other hand, Ld Sr. DR submitted that the period of holding is to be taken from the date of registration. He placed reliance on the decision of Hon'ble Delhi High Court in the case of Ravi Kumar Narula v. CIT 249 ITR 480.

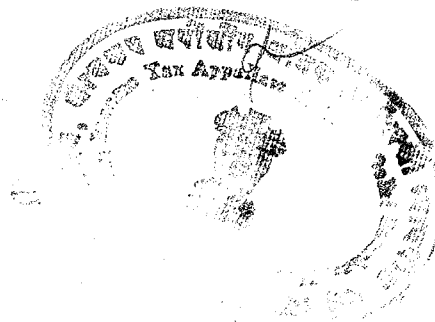
9. We have heard the parties and gone through the material available on record. In this case, the assessee was allotted flat in SFS Scheme on 22.1.2004 when the assessee paid registration amount of rupee one lakh. The assessee made payment of Rs.10,00,000/- on 30.6.2004 and another amount of Rs.13,60,499/- on 26.06.2004. Conveyance Deed was registered on 4.8.2004 on which the amount incurred was of Rs.1,15,540/-. Thus the full and final payment to DDA was given on 4.8.2004. The flat was allotted to assessee in SFS Scheme. The sale deed was executed on 20<sup>th</sup> August, 2007. Therefore, the date of sale is to be taken as 20<sup>th</sup> August, 2007. Hence, the assessee held the flat for a period of 3 years 16 days which is more than three years. Hon'ble Gujarat High Court in the case of Amilaben Upendra Shah (supra) held that while computing the capital gain tax in the case of transfer of share by a person who is a Member in a Co-operation Housing Society, the relevant date would be the date on which the Member acquires the shares in the cooperative society and the date on which the Member had





sold the share in the said cooperative society will be relevant for calculating the period of holding. In this case, the assessee acquired shares in cooperative society and was allotted on 15.11.1979. She transferred those shares on 4.12.1982. Thus, the assessee held the share and allotment of flat in the said cooperative society for a period of more than 36 months. It was held that capital gain arising from sale of said flat was long term capital gain and the assessee was therefore entitled to benefit of section 80T of the Act. ITAT Delhi Bench 'T' in the case of Praveen Gupta v. ACIT in I.T.A. No. 2558/Del/2010 for assessment year 2007-08 in order dated 13<sup>th</sup> August, 2008 has held that by making payment to the builder and having received allotment letter in lieu thereof, the assessee will be holding capital asset and therefore the benefit of indexation has to be granted to the assessee on the basis of acquiring the said asset. ITAT while holding so observed as under:-

*"29. According to the aforementioned definition, capital asset means property of any kind held by an assessee whether or not connected with the business or profession and it excludes certain items which while considering the facts of the present case are not relevant. Therefore, it has to be seen that whether by entering into an agreement vide which the assessee was allotted a particular flat by allotment letter whether the assessee has held any asset or not? By entering into an agreement to allot a flat, the assessee has identified a particular property which he is intended to buy from the builder and the builder is also bound to provide the applicant with that property by accepting certain advance amount and making agreement for balance payment as scheduled in the agreement. Thus, going into the*



*provisions, it is not necessary that to constitute a capital asset the assessee must be the owner by way of a conveyance deed in respect of that asset for the purpose of computing capital gain. The assessee had acquired a right to get a particular flat from the builder and that right of the assessee itself is a capital asset. The word 'held' used in Section 2 (14) as well as Explanation to Section 48 clearly depicts that assessee must have some right in the capita asset which is subject to transfer. By making the payment to the builder and having received allotment letter in lieu thereof, the assessee will be holding capital asset and, therefore, the benefit of indexation has to be granted to the assessee on the basis of payments made by him for acquiring the said asset and the assessee has rightly claimed the indexation benefit from the dates when he has made the payments to the builder. Therefore, we see force in the claim of the assessee. The Assessing Officer is directed to provide the benefit of indexation to the assessee in the manner in which the assessee has claimed."*

10. In the case of the assessee, the assessee made application to DDA under HIG Housing Scheme, 2003 on 23.1.2004. The draw was made on 25.2.2004 and flat No.24 was allotted to the assessee. The assessee paid registration money of Rs.1 lakh and the balance amount was to be paid at Rs. 13,33,930/-. The assessee made payment in installments as per the schedule of payment given in the allotment letter. Therefore, the assessee got right in the flat at least on the day on which the draw was made i.e. on 24.2.2004 when flat No.24 was allotted to the assessee. Therefore, the assessee's case is squarely covered by the decision of Hon'ble Gujarat High

Court in the case of Amilaben Upendra Shah (supra) and the decision in the case of Praveen Gupta (supra). Since, the flat was held by the assessee for more than three years, benefit of indexation is to be allowed and the capital gain arising on sale of transfer is liable to be taxed as long term capital gains and not as short term capital gains.

11. In view of the above, the Assessing Officer is directed to compute the capital gains arising on sale of flat as long term capital gain after allowing the benefit of indexation as per law. As regards the contention of the assessee that an amount of Rs.60,000/- was incurred on renovation, no evidence was filed by the assessee for incurring expenditure on repairs. In the absence of any evidence, the benefit of repairs cannot be allowed. We uphold the order of CIT(A) on this issue.

12. In the result, the appeal filed by the assessee is partly allowed.

13. Order pronounced in the open court on the 27<sup>th</sup> day of February, 2012.

Sd/-

(RAJ PAUL YADAV)

JUDICIAL MEMBER

Dt: 27.2.2012.

IIMS

Sd/-

(K.D. RANJAN)

ACCOUNTANT MEMBER

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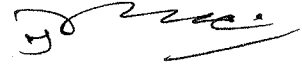
1. The appellant. R.P.A.D



2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayaak Bhawan, Khan Market, New Delhi.

True copy.

By Order



(ITAT, New Delhi).

सहायक पंजीतर  
Assistant Registrar  
आयकर अपील अदिकरण  
Income Tax Appellate Tribunal  
नई दिल्ली New Delhi



Recd - By Hand Mr Hira Lal, Staff, TC - Khan MKT, 6th floor  
26/02/2012