

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI  
BEFORE SHRI R.P. TOLANI AND SHRI S.V. MRHROTRA

ITA No. 556/Del/2013

Asstt. Yr: 2009-10

Mrs. Smiti Golyan,  
C/o Nulon India Ltd.,  
Nulon House, Ishwar Nagar,  
Mathura Road, New Delhi.  
PAN: AALPG 4650 K

Vs. Income-tax Officer,  
Ward 13(3), New Delhi.

( Appellant )

( Respondent )

Appellant by : Shri K.R. Manjani Adv.  
Respondent by : Smt. Renuka Jain Gupta Sr. DR

**ORDER**

**PER R.P. TOLANI, J.M.:**

This is assessee's appeal against the order of CIT(A)-XVI, New Delhi dated 07-12-2012 relating to A.Y. 2009-10. Following grounds are raised:

*"1. Learned A.O. as well as CIT(A) have erred on facts as well as in law in not allowing litigation expenses for 15 years in various courts as well as electricity charges of tenant which were incurred to improve the valuation of property, on which account, the appellant has been able to get sale price of Rs. 7.5 crores even though the property was let out for meager amount of Rs. 1000/- p.m.*

*2. Learned A.O. as well as CIT(A) have erred on facts as well as in law in making the addition of Rs. 16 lacs, received from Master Yash Golyan in whose account firstly with M/s Vitir Chattels Pvt. Ltd. and then with M/s Nulon India, this*

*amount was lying for many years since 2003 and was simply transferred to account of appellant, in this year.”*

2. Apropos first ground, the facts, in brief are: The property in question i.e. house property bearing no. 51A, New Friends Colony, New Delhi originally belonged to one Smt. Bina Devi Golyan. Same was illegally sublet by the original tenant M/s Amin Chand Pyarelal to one Shri Anil Gupta, without the permission of Smt. Bina Devi. For eviction of this illegal occupant, Smt. Bina Devi instituted many legal proceedings since 1992 and vide order dated 18-12-2006, High Court finally passed the order evicting Mr. Gupta and the possession was restored to Smt. Bina Devi. Thereafter on 24-04-2007 (A.Y. 2008-09) she gifted the property to her daughter in law Smt. Shakuntla and grand daughter in law Smt. Smiti Golyan i.e. assessee. Both of them sold this property during the year in question for a sale consideration of Rs. 15 crores i.e. each got a share of Rs. 7.5 crores. The assessee thereafter filed her return of income offering 7,50,00,000/- under the head “Income from capital gains”. While calculating the long term capital gains the assessee claimed following expenditure incurred by Smt. Bina Devi to defend the above legal proceedings for restoration of possession, towards improvement/ cost of the property:

(i)	cost of acquisition after indexing :	Rs. 72,85,828/-
(ii)	Litigation expenses after indexing:	Rs. 2,16,20,948/-
(iii)	Electricity expense (unpaid expenses, paid by the assessee):	Rs. 3,65,315/-

2.1. The A.O., however, observed that these litigation expenses and electricity charges neither related to the transfer of the asset nor they were supported by any evidence to be held as attributable to cost of acquisition.

The A.O. excluded these amounts from the cost of acquisition of the property while calculating the long term capital gains.

2.2. Aggrieved, the assessee preferred first appeal before Id. CIT(A), where effectively following submissions were made:

*"In order to improve market value, drawback, encumbrances on right and title of her property No.51-B, Friends colony which was let out to a firm, M/s. Amin Chand Pyare Lal for paltry sum of Rs.2,000/- p.m. which was increased to Rs.2,200/- p.m. in July 1992. Your honour are aware that in Delhi where the rents are below Rs.3500/- p.m., these are governed by Delhi Rent Control Act and the tenant cannot be evicted. However, in this case, the tenant had sub-let the property to Shri Anil Kumar Gupta without the consent and knowledge of the landlord. The nature of the tenant could be gauged from the fact that the litigation dragged on from June 1992 to 18<sup>th</sup> December 2006 and the matter has been rolling and roaming from Additional Rent Controller to High Court in which stay petitions and objections even about the ownership of the landlords were raised. After fighting the case in Hon 'ble Delhi High Court in regard to stay and miscellaneous applications for more than three years, the matter came back to Additional Rent Controller where the petition for eviction was originally filed. The matter was ultimately settled in Hon'ble High Court on 18.12.2006 when Shri Ani! Gupta was ordered to vacate the premises. Even though, the Hon 'ble High Court had also ordered that the tenant will also pay arrears of rent, electricity and water charges but Shri Ani! Gupta did not pay it and the landlords could ill afford fresh litigation for this especially because, the Shri Ani! Gupta was not tenant and it was very difficult to proceed against partners of the firm who are not easily traceable. On getting possession, it was found that Rs.3,65,315/- were payable and if this was not paid, electricity for property would had been disconnected, resulting in great drawback, encumbrances, on the property. The list of litigation which has occurred alongwith copies of petition for eviction filed in 1992, order dated 31.8.1995 of Hon'ble Delhi High Court orders dated 11.8.1999 of Smt. Asha Menon, Additional*

*Rent Controller running into 32 pages, orders dated 13.4.2005 of Shri S.M Chopra, Additional Rent Controller and Hon'ble Delhi High Court orders dated 18.12.2006 are attached. From this, it is clear that the litigation has dragged for 15 years and it travelled twice to Hon'ble Delhi High Court. During the above period, many of the lawyers and senior lawyers, munshis, clerks juniors etc. were engaged to file eviction' petitions, appeals etc. and defend various petitions for stay, petitions raising objections, counters, rejoinders, supplementary etc. In nut shell, the appellant had spent on:-*

- 1. Court Fee*
- 2. Court Expenses*
- 3. Typing & Photostat*
- 4. Certified copies of orders*
- 5. Postage, courier, miscellaneous expenses*
- 6. Fees of Advocates and senior advocates, juniors, clerks, munshis.*
- 7. Salary of person who was engaged to pursue the litigation.*
- 8. Conveyance, Transport and*
- 9. Telephones etc.*

*In above manner, the owner spent Rs.2,16,20,948/- in period of 15 years. Since the appellant is half owner, half of these expenses for eviction of the tenant were really tress-passer. These expenses are allowable as per under mentioned judgments, because it is on account of this that the appellant has been able to sell her half portion of property for Rs. 7,50,00,000/- otherwise no person would had given more than Rs.50 Lacs for whole of the property because it was let out as stated above only for Rs.2,200/- p.m. The capitalized value of the property would be far less than Rs.50 Lacs for whole property i.e. Rs.25 Lacs for appellant's portion.*

*i. 298 ITR 268 (Karn) Mrs. June Perrett v. Income-tax Officer*

*"Capital gains-deductions-expenditure incurred wholly and exclusively in connection with transfer-sale of property received under will-expenditure incurred on obtaining probate, travel expenses of executors and expenditure on evicting illegal tenant-deductible-income-tax act, 1961, s. 48. "*

ii. 241 CTR 364 (Mad.) V. LAKSHMI REDDY Vs. INCOME TAX OFFICER "Capital gains-Deduction under s. 48-Amount spent for rectifying the defects in the title to the property and removing encumbrance to transfer-Is expenditure incurred in connection with the transfer for the purpose of computation of capital gains as per s. 48. "

2.3. Ld. CIT(A) rejected the claim of the assessee, by observing as under:

*"3.3.1 I have considered the findings of the A.O. as well as all the submissions of the AIR of the appellant. During the relevant F.Y the assessee has sold house property for a consideration of Rs.15 crores as per sale deed dated 03/07/2008 and as the assessee was having 50% shares in the property, therefore, sale consideration of Rs. 7,50,00,000/- was shown under the head income from capital gain in the return. The cost of acquisition of the property after indexing was shown at Rs. 72.85 lakhs. In addition, the assessee has claimed 50% of expenses claimed to have been incurred during the year 1992-93 to 2007-08 in connection with transfer of capital asset U/S 48. The assessee has also claimed the expenses of Rs. 3,65,315/- on account of electricity dues paid. The A.O. disallowed the claim of the above expenses of Rs.1,48,18,703/- u/s 48 on the ground that expenses of Rs. 1,44,53,388/- on account of legal charges is neither related to transfer of the assets nor supported by any evidence and the electricity charges of Rs.3,65,315/- are not related to transfer of asset. A.O. recorded that even after giving sufficient time, the A/R failed to furnish supporting evidences. The A.O, however, accepted the cost of acquisition of the property after indexation at Rs.72.85 lakhs on the basis of the deed of purchase of the property produced by the A/R. The appellant submitted that the property was purchased by Bina Devi Golyan in the year 1989-90 and the property was under occupation of tenant. After eviction petitions filed in the court and fighting the case in the court for 15 years the possession of the property was taken from the tenant and expenses of Rs.2.16 crores after indexation was incurred by Bina Devi Golyan during the year 1992-93 to 2007 -08 to contest the case in different courts. The expenses were in the nature of court fee, court expenses, typing & photostat, certified copies of orders,*

*postage, courier, miscellaneous expenses, fees of advocates and senior advocates, juniors, clerks, munshis, 'salary of person who was engaged to pursue the litigation, conveyance, transport and telephones etc. The property was vacated by the tenant on the basis of order of Hon 'ble\_High Court dated 18.12.2006 and the property was gifted by Bina Devi Golyan to her daughter-in-law Shakuntala Devi Golyan and granddaughter-in-law Smiti Golyan, the appellant, on 24.04.2007 during the A.Y. 2008-09. The submission of the appellant is that the expenses were incurred by the earlier owner during the A.Y. 1993-94 to A.Y. 2008-09 before the property was transferred to the appellant. However, the appellant has failed to furnish any evidence in support of the above claim of expenses of Rs. 1.44 crores. No year wise details of expenses paid under different heads such as, court fee, court expenses, typing & photostat, certified copies of orders, postage, courier, miscellaneous expenses, fees of advocates and senior advocates, juniors, clerks, munshis, salary of person who was engaged to pursue the litigation, conveyance, transport and telephones etc. were filed. No documentary evidence in support of the above expenses were filed despite sufficient opportunities were allowed by the A.O. During the course of appellate proceedings also on 03.12.2012, the A.R of the appellant was requested to furnish the details of the above expenses along with supporting evidences. The A.R submitted that the particulars are not available. In the absence of any details and documentary evidences in support of the expenses claimed by the appellant, the genuineness of the expenses claimed are not proved. The appellant has failed to discharge the onus cast upon her, to prove that expenditures claimed are genuine. Therefore, the expenses are not allowable to the appellant as incurred in connection with transfer of capital asset u/s 48. In the case of B.N. Pinto v. CIT [1974] 96 ITR 306 (MYS) Hon'ble Mysore High Court have held that:*

*"It was not claimed that there was any evidence on record in support of the plea that certain amount represented lawyer's fees, etc., apart from her own assertion to that effect. In the circumstances referred to by the ITO in his order, such a plea could not be*

*accepted. The Tribunal was, therefore, correct in proceeding on the basis that there was no evidence in support of the assessee's contention.*

*Therefore, the Tribunal was justified in not deducting the amount in question while computing the capital gains. "*

*In view of the above, as the expenses claimed are not supported by any head wise, year wise detail and documentary evidence, therefore, the claim of the appellant is not allowable merely on the basis of her own assertion. The appellant has failed to discharge the onus cast on her to prove that the expenses claimed are genuine. In order to claim that the expenditures are incurred in connection with transfer of capital asset, the burden of proving the necessary facts in that connection is on the assessee. Reliance is placed on the decisions of Hon'ble Supreme Court in the case of CIT Vs. Calcutta Agency Ltd. (SC) 19 ITR 91 and Lakshimaratan Cotton Mills Co. Ltd. Vs. CIT (SC) 73 ITR 634. In view of the above factual and legal position the claim of expenses of Rs.1,44,53,388/- are not allowable to the appellant as incurred in connection with transfer of capital asset u/s 48. The A.O. is justified in disallowing the expenses claimed.*

*3.3.2 Regarding the electricity charges of Rs. 3,65,315/- the appellant submitted that on getting possession of the property it was found the said amount was not paid by the earlier tenant. The claim was made because it was paid by the appellant and if not paid, the electricity facility would be disconnected. From the above submission it is evident that the said expenditure of Rs.3.65 lakhs is no where connected with the transfer of the property. The said payment of electricity charges is in the nature of general maintenance of property and therefore not deductible while computing capital gain.*

*3.3.3 In the case of CIT vs. Mithlesh Kumari (Del) 92 ITR 9 it has been held by Hon'ble Delhi High Court that ground rent paid for taking the purchased plot in possession is in the nature of expenditure on maintaining the capital asset and not for*

*acquisition thereof. Hence, not includible in cost of acquisition. Similarly, in the case of Kiran Bansal vs. ACIT (ITAT, Del) 10 ITR (Trib) 180 Hon'ble ITAT Delhi and in the case of S. Sudha vs. ACIT (ITAT, Chennai) 10 ITR (Trib) 206; 131 ITD 575 ITAT Chennai have held that expenditures on tiles laying, white washing, electrical re-wiring, wood work etc. are on general maintenance of property and not for improvement of property. Therefore, not deductible while computing capital gains. In view of the above facts and decisions, the said electricity charges paid being in the nature of general maintenance of property, is not allowable while computing capital gain u/s 48. The appeal fails in this ground.*

2.4. Apropos the second ground, A.O. found that in the personal balance sheet of the assessee an amount of Rs. 16 lacs was shown as unsecured loan received from her son Master Yash Golyan. Assessee was required to file confirmation and copy of bank a/c in this behalf to substantiate the cash credits, which according to A.O. was not filed. It was thus held that assessee has failed to prove the identity, creditworthiness and capacity of Master Yash Golyan to advance this amount and added as unexplained cash credit in the income of the assessee u/s 68 of the Act.

2.5. In first appeal, the assessee furnished explanation to the effect that since 2003, in its account Yash Golyan owned an amount of Rs. 16 lacs balance with M/s Vitir Chattels Pvt. Ltd., which is assessed to income tax. This amount was further transferred by Yash Golyan to another company M/s Nulon India Ltd. as share application money. Shares remained to be allotted and the amount continued with Nulon as deposit, subsequently this amount was gifted by Yash Golyan to his mother i.e. the assessee by way of entries I respective personal accounts in Nulon Ltd. In support thereof assessee submitted ledger account of M/s Vitir Chattels Pvt. Ltd. for the impugned year and the copies of a/cs from Nulon India Ltd. Ld. CIT(A)



however did not accept the assessee's version and confirmed the addition by following observations:

*4.3 ..... The submission of the appellant is found to be without any merit because no such explanation was furnished before the A.O. The A.O. gave ample opportunity to the appellant to file the particulars in respect of all unsecured loans during the assessment proceedings. The appellant submitted the particulars in respect of all the unsecured loans except the unsecured loans received from Yash Golyan. The version of the appellant in the appellate proceedings was never submitted before the A.O. Further, no confirmation and copy of I.T. return of Yash Golyan [or his natural guardian, when minor] since A.Y. 2004-05 to 2009-10 was filed to prove that the said share application money was already disclosed in the return already filed. Further, no ledger account of Nulon India Ltd. and Vitir Chattels Pvt. Ltd. duly signed and verified by authorized personnel was filed. No audited financial statement and copy of I.T. return of these companies were filed for A.Y. 2004-05 to A.Y. 2009-10 to prove the share application money in the hand of Yash Golyan. No request letter of Yash Golyan for transfer of share application money from Vitir Chattels Pvt. Ltd. to Nulon India Ltd. is filed although the unsigned ledger account says it has transferred the share application money on the request of Yash Golyan. Further, no reason has been ascribed as to why the application money is lying unallotted for such a long period. In view of the above, the addition made by the A.O u/s 68 is justified. The appeal fails in this ground.”*

2.6. Aggrieved on both the issues assessee is before us.

3. Ld. Counsel for the assessee adverting to grounds contends that the facts about on going property dispute between the assessee, M/s Amin Chand Pyare Lal and Anil Kumar Gupta have not been denied by any of the lower authorities. The above amounts have been excluded from cost of acquisition mainly by observations that necessary evidence for incurring of

expenditure was not produced by the assessee. Smt. Bina Devi was a non-resident and the property disputes i.e. restoration of possession and connected litigations were going on in Delhi. Chronology of the legal proceedings starting from 6-11-1992 onwards before Rent Controller, Rent Control Tribunal and Hon'ble Delhi High Court dispute are placed on the record. Smt. Bina Devi being not physically present in India had to contest multifarious litigation through legal attorneys, senior advocates and battery of other lawyers. The spectrum of litigation speaks volumes about legal expenses in a place like Delhi. The expenditure incurred is attributable to the heads mentioned in the statement in this behalf. Thus, the title of the assessee for peaceful enjoyment of property was endangered and to save the same it was imperative to contest the multifarious proceedings, the expenses are, therefore, includable in cost of acquisition in terms of sec. 68. Finally vide order dated 30-4-2007 the Hon'ble Delhi High Court decided the suit in favour of the assessee and directed Anil Gupta to vacate the premises which was handed over to assessee.

3.1. While vacating the property, the said Anil Gupta wantonly did not pay the outstanding electricity charges which could have lead to disconnection and subject to the conditions of reconnection along with entire dues and relevant penalties, thus incurring of electricity expenses also became imperative for peaceful enjoyment of property. The assessee was thus compelled to make the payment as in the absence of electricity and water connection, use of the title of peaceful enjoyment was impaired. To perfect the title and usufruct of the property Smt. Beena Devi had to pay the outstanding electricity dues in this behalf. This is towards the improvement of the title and eligible for inclusion in cost of acquisition. Besides, on 4-7-2007 Smt. Bina Devi filed a contempt of court petition against the said Anil

Gupta for failing to pay the outstanding dues as directed by Hon'ble Delhi High Court, this also shows the genuineness of the claim.

3.2. As per provisions of sec. 48 of the I.T. Act in case of acquisition of the property by way of gift or inheritance the cost of acquisition of the property will be the same as in the hands of the original owner/transferor/donor. The cost of acquisition includes the cost of improvement of the property which includes the cost incurred on defending or improving the title. Thus in the hands of Smt. Beena Devi the cost of acquisition will include the original cost as well as the cost of litigation and payment of outstanding electricity dues which were necessary for defending the title and for enjoyment of peaceful possession and usufruct of the property.

3.3. The lower authorities have neither doubted the multifarious litigation engaged in by Smt. Bina Devi as also the outstanding electricity dues. Both the donees i.e. Smt. Shakuntla Golyan, mother in law of the assessee and the assessee claimed 50% of such expenses incurred towards the improvement of property which is duly included in cost of acquisition in the hands of Smt. Been Devi. The only reason for disallowing the above amounts proposed by A.O. is to the effect that the assessee failed to adduce evidence towards incurring these legal expenses. The fact of the matter is that the legal expenses have been incurred not by the assessee but by her grand mother in law as it is only after the improvement and clearance of title, the property was gifted to both the donees. Thus, the expenditure was incurred by Smt. Bina Devi and this claim has been made by the assessee based on her information.

3.4. Apropos second ground of appeal, Id. Counsel contends that the confirmation from the said M/s Vitir Chattels Pvt. Ltd. and Nulon India Ltd. were duly filed before the CIT(A). The above amount is continuing in their

books way back from the year 2003 in the name of Shri Yash Golyan. He subsequently became major and the confirmation was also filed by him in the capacity of major. The assessee discharged her primary onus by explaining that the amount in question was owned by Shri Yash Golyan from 2003 and the amount has been transferred through internal book transfer in the account of Nulon India Ltd.. These concerns are related with the assessee family. It will be travesty of justice to add the same amount in the hands of mother when the department by way of assessment in the case of both the companies have accepted these credits as belonging to Yash Golyan. Ld. CIT(A) has not given any cogent reasons to discard this evidence. On one hand and at the same time relied on the same evidence and pointing out that no request letter of Yash Golyan or transfer of share application money from M/s Vitir Chattels Pvt. Ltd. and Nulon India Ltd. was filed. This implies that ld. CIT(A) has accepted the fact that the amount came as opening balance of Yash Golyan in the account of M/s Vitir Chattels Pvt. Ltd. and its transfer to Nulon India Ltd. is not accepted as the transfer request letter was not filed. In related concerns the funds are transferred from one entity to another on oral instruction. Besides, when the credit and share application money is accepted in Nulon India, there is no justification on technical objection. It is pleaded that the assessee's onus for explanation of cash credit is primary in nature, which stands discharged. Thus, ld. CIT(A) failed to consider the issue properly, therefore, the addition should be deleted.

4. Ld. DR supported the order of lower authorities.
5. We have heard rival contentions and gone through the entire material available on record. Though detailed arguments are made by both the

parties, we have mentioned them in brief, as we are inclined to set aside the matter back to the file of assessing officer for following reasons.

- (i) No cross verification from the returns or accounts of Smt. Beena Devi who was the original owner of the property have been carried out to verify as to what amount was spent from her books, bank of account or cash in hand in respective years. This is so because the assessee is claiming 50% of expenses incurred by Smt. Beena Devi in defending and improving her title over the property. This becomes a crucial factor for ascertainment of claim of the assessee.
- (ii) There is no indication as to what has been done by department in the case of Smt. Shakuntla Golyan on these issues i.e. , the another co-owner to whom half of the property was gifted by Smt. Beena Devi along with the assessee.
- (iii) Apropos the cash credit of Master Yash Golyan, on one hand the ld. CIT(A) finds fault with assessee's explanation that the documents were not filed before assessing officer and at the same time he has adverted to the merit of the documents that it amounts to giving contradictory findings. Besides, both the companies i.e. M/s Vitir Chattels Pvt. Ltd. and Nulon India Ltd. are claimed to be regularly assessed and family related concerns of the assessee. If the amount of Mr. Yash Golyan is lying in one of the family related concern i.e. Vitir Chattels Pvt. Ltd. and then transferred to another concern i.e. Nulon India Ltd. and both of them are assessed, in these circumstances the assessee's discharge of onus is to be weighed from the assessment record of these concerns.

5.1. In our considered view, both the issues have not been examined properly and require methodical verification of facts and record. Thus it will

be in the interest of justice to set aside both the issues back to the file of assessing officer to decide the same afresh in accordance with law after giving the assessee an opportunity of being heard, keeping our observation in mind.

6. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 21-2-2014.

Sd/-  
( S.V. MEHROTRA )  
ACCOUNTANT MEMBER  
Dated: 21-02-2014.

Sd/-  
( R.P. TOLANI )  
JUDICIAL MEMBER

**MP**

Copy to :

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR