

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " A " (SMC)**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. No.387/Bang/2016 (Assessment Year : 2006-07)		
Smt. Vinatha M Reddy, Alahalli,Anjanapura Post, Bangalore-560 062 PAN AAHPR 8319N	Vs.	Income Tax Officer, Ward 9(1), Bangalore.
Appellant		Respondent.

Appellant By : Shri H. Guruswamy, ITP. Respondent By : Smt. Renuka Devi, JCIT (D.R)
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Date of Hearing : 19.7.2016.

Date of Pronouncement : 22.7.2016.

ORDER

This appeal by the assessee is directed against the order dt.28.12.2015 of the Commissioner of Income Tax (Appeals)-3, Bangalore for the Assessment Year 2006-07.

2. The assessee has raised various grounds however the only issue arises from the grounds raised by the assessee is whether in the facts and circumstances of the case the CIT (Appeals) is justified in upholding the action of the Assessing Officer by taking the undivided portion of land attributable to

the flat sold by the assessee having area of 1,210 sq. ft. only to the extent of 300 sq. ft.

3. The assessee is having her share in built up area of the residential project constructed on the land belonging to the family. After completion of the joint development project the assessee got her share of constructed flat out of which a flat having area of 1210 sq. ft. was sold during the year. While computing the capital gain, the assessee claimed undivided share of land apportioned to the flat in question of equal area of 1,210 sq. ft. The Assessing Officer considered the undivided share of land of 300 sq. ft. as mentioned in the sale deed. Therefore the capital gain arising from the transaction in question was recomputed by the Assessing Officer by reducing the cost of land of the undivided share. The CIT (Appeals) has confirmed the action of the Assessing Officer.

4. Rival submissions as well as relevant material on record has been considered. The Id. AR has submitted that the undivided share of land should be considered at 1,210 sq. ft. equal to the area of the flat in question.

5. On the other hand, the learned Departmental Representative has submitted that the Assessing Officer has taken the undivided portion of the land as mentioned in the sale deed.

6. It is pertinent to note that the undivided share in the land of the project has to be divided to the total constructed/super built up area of the project. Therefore, the total land of the project has to be apportioned to the total super built up area of the project and in the same ratio the area of undivided share of the land has to be attributed to the area of the each flat in the project. Accordingly, this issue is set aside to the record of the Assessing Officer to recalculate the area of undivided land attributable to the flat in question in the same ratio of the area of the total land of the project to the total super built up area of the project. The Assessing Officer is directed to recompute the capital gain by assigning the undivided land area as per the above observations.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22.7.2016.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

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