

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI S.K.YADAV, JUDICIAL MEMBER
AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**IT A No.1323(Bang) 2016
(Assessment year : 2012-13)**

Shri G.S.Sathyanarayana Gupta,
No.165/166, 1st Cross, 5th Main,
APMC Yard, Yeshwanthpur,
Bangalore -560 022

Pan No.AHLPS2459R

Appellant

Vs

The Income Tax Officer,
Ward-6(2) (4),
Bangalore

Respondent

**Assessee by : Shri C. Sandeep, CA
Revenue by : Shri AR Sreenivasan, JCIT**

**Date of hearing : 04-08-2016
Date of pronouncement: : 17-10-2016**

ORDER

PER SHRI A.K.GARODIA, AM

This is an assessee's appeal directed against the order of the ld.
CIT(A)-6, dated 25-04-2016 for the assessment year 2012-13.

2. The grounds raised by the assessee are as under;

“1. That the order of the ld.CIT(A) in so far is prejudicial to the interest of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the ld.CIT(A) erred in law and on facts in holding that the value of consideration received by the appellant is Rs.2,91,98,930/- instead of Rs.2 crore.

3. That the ld. CIT(A) ought to have held that the market value of the land transferred to the developer should not be taken as consideration applying the principles laid down in S.50D of the Act.

4. That the ld. CIT(A) erred in law and on facts in considering the guidance value of the built up area received as part of the sale consideration even though it does not exist on the date entering into agreement.

5. That the ld. CIT(A) erred in law and on facts in computing 20% in excess of guidance value of the built up area received as sale consideration on the ground that it is a commercial property.

Each of the above ground is prejudice to one another, the appellant craves the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise either before or at the time of hearing of the appeal”.

3. It was submitted by the ld.AR of the assessee that the issue in dispute is covered in favour of the assessee by the Tribunal order rendered in the case of ACIT Vs Smt Sarojini M Kushe in ITA No.989/Bang/2014 dated 27-04-2016, copy available on page 1 to 5 of

the paper book. He also placed reliance on the Tribunal order rendered in the case of ACIT Vs Shankar Vital Motor Co. Ltd in ITA No.35/Bang/2015 dated 18-03-2016, copy available on pages 6-15 of the paper book. Reliance was also placed on the judgment of the Hon'ble Karnataka High Court rendered in the case of CKIT Vs T. K. Dayalu reported in 60 DTR 403(Kar.) and copy available on pages 16-18 of the paper book.

4. The ld. Dr of the revenue supported the orders of the authorities below.

5. We have considered the rival submissions. In the present case, the AO has adopted the guidance value fixed by the State Government for (to be constructed flats) or (to be acquired flats) which were not in existence on the date of joint development agreement (JDA). In the case of ACIT Vs Smt. Sarojini M Kushe (Supra), the Tribunal decided the issue in favour of the assessee by following another Tribunal order rendered in the case of ACIT Vs Shankar Vittal Motor Co. Ltd. (Supra) and observed that it was held in that case that at the time of signing the JDA, the capital gain has to be computed only on the guidance value of the land and therefore, the action of the AO in adopting the guidance value for the built up area to be received by the assessee is not proper and this cannot be approved. However, since the guidance value of the land being transferred by the assessee on the date of signing of the JDA is not available on record., we feel it proper to restore the matter back to the file

of the AO with a direction that the AO should re-compute the amount of capital gain by adopting the guidance value of the land in question at the time of signing of the JDA after providing adequate opportunity of being heard to the assessee. We order accordingly.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

(SUNIL KUMAR YADAV)
JUDICAL MEMBER

Place: Bangalore:

D a t e d : 17.10.2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

(A.K. GARODIA)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
6. आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....