

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

**BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.586/Bang/2017
(Asst. Year – 2005-06)

Mr. Rajeev Krishnamurthy Purnaiya,
No.39, Purna Krupa,
Crescent Road,
Bengaluru.
PAN – AFFPP5977D

. Appellant

Vs.

The Asst. Commissioner of Income-tax,
Circle – 6(1),
Bengaluru.

. Respondent

Appellant by : Shri Balram R Rao, Advocate
Respondent by : Smt. Padmameenakshi, JCIT

Date of Hearing : 11-10-2017
Date of Pronouncement : 13-10-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Commissioner of Income-tax (Appeals) - 1, Bangalore dated 8/12/2016 for asst. year 2005-06.

2. Briefly stated, the facts of the case relevant for this appeal are as under:-

2.1 The assessee filed his return of income for asst. year 2005-06 on 24/3/2006 declaring income of Rs.58,77,923/- on account of salary, house property, short term capital gains ('STCG') on sale of mutual funds and long term capital loss ('LTCL') of Rs.12,57,986/- on account of sale of undivided share of land at No.51, Palace Road, Bangalore of which the assessee was one of the 4 co-owners; the others being Shri Sanjeev Purnaiya, Shri Madhav Purnaiya and Rajeev Purnaiya, each having an equal share of 25% therein. The case was taken up for scrutiny and the assessment was completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') vide order dated 13/11/2007, wherein the total income of the assessee was determined at Rs.76,55,677/-; which was inclusive of the assessee's share in the Long Term Capital Gain ('LTCG') on sale of the said property being computed at Rs.51,67,140/-. The only issue of addition of Rs.51,67,140/- pertained to the computation of the assessee's share of LTCG on sale of undivided share in land at 51, Palace Road, Bangalore for which the assessee had declared LTCL of Rs.12,57,986/- in the return of income filed for asst. year 2005-06.

2.2 Aggrieved by the order of assessment dated 13/11/2007 for asst. year 2005-06, the assessee preferred an appeal before the CIT(A)-I, Bangalore, who dismissed the assessee's appeal vide order dated 8/12/2016.

3.1 The assessee, being aggrieved by the order of the CIT(A)-1, Bangalore dated 8/12/2016 has preferred this appeal, wherein he has raised the following grounds:-

“1.The order of the Commissioner of Income Tax (Appeals) I, Bengaluru dated 08.12.2016 in ITA No. 11/CIT(A)-1/BR/14-15for the above mentioned assessment year is contrary to law, facts and in the circumstances of the case.

2. The CIT(A) failed to appreciate the fact that the value arrived on reverse index method were upheld by various higher authorities in case if the value as at 01.04.1981 is not available.

3 The CIT(A) confirming the order passed u/s 143(3) w.r.t the cost of purchase as Rs.126 per Sq.Ft. as at 01.04.1981 even though the honorable ITAT have considered Rs.200 per Sq Ft. in the other co-owners hand, without assigning proper reasons and justification is against equity and law.

4 The CIT(A) failed to appreciate the fact that the honorable ITAT in the hands of other co- owners have held that the cost as on 01.04.1981 to be adopted at Rs.200 per Sq.Ft. against Rs. 126 per Sq.Ft. as adopted by the Assessing Officer.

5 The CIT(A) failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.

6 The Appellant craves leave to file additional grounds/arguments at the time of hearing.”

CAPITAL GAINS ON SALE OF PROPERTY AT 51, PALACE ROAD, BANGALORE

3.2 The grounds raised by the assessee (Supra) all pertain to sole issue of the computation of the assessee's share of 25% of the capital gains arising on sale of the said property at 51, Palace Road, Bangalore, along with three other co-owners. The assessee contends that the Id CIT(A) had grossly erred in upholding the cost of purchase of the said property at Rs.126/- per sq. ft. as on 1/4/2981 without assigning any reason even though it was brought to his notice that a co-ordinate bench of this Tribunal has held the cost of purchase at Rs.200/- per sq. ft. in the hands of the other co-owners as on 1/4/1981 in its order in ITA Nos.1361 & 1386/Bang/2011 dated 25/4/2014. It was prayed by the Id AR that the assessee's case is covered by the aforesaid order of the Tribunal in case of the other Co-owners, Madhav Purnaiya and Sanjeev Purnaiya (Supra) and therefore the cost as on 1/4/1981 be adopted at Rs.200 per sq. ft. as against Rs.126 per sq. ft. adopted by the Assessing Officer ('AO').

3.3. Per contra, the Id DR for Revenue supported the orders of the authorities below.

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement cited. The facts of the matter as emanate from the

record are that the assessee had inherited property at No.51, Palace Road, Bangalore along with his mother and two brothers which was transferred in the year under consideration i.e. Assessment Year 2005-06. The assessee in his return of income had declared a LTCL of Rs.12,57,986 on account of sale of his share of the undivided share of land in the said property by adopting the FMV as on 1.4.1981 at Rs.700 per sq. ft. The assessee made this estimation of FMV as on 1.4.1981 at Rs.700 per sq. ft. using the cost inflation index in the reverse direction on the basis of the registered sale deed dt.31.3.2005. The Assessing Officer, in the case on hand did not agree with the method adopted by the assessee to estimate the FMV as on 1.4.1981. The assessee found that in the case of the assessee's brother, Sri Rajeev Purnaiya, who also had a share in the same property, the ACIT, Circle 6(1), Bangalore had made a reference to the District Valuation Officer(DVO) and the DVO vide his report dt.30.3.2007 estimated the FMV of the said property as on 1.4.1981 at Rs.126 per sq. ft. The Assessing Officer, in the case on hand, adopted the same value; viz. Rs.126 per sq. ft. as FMV as on 1.4.1981, as estimated by the DVO, and computed the LTCG of the assessee at Rs.51,67,140.

3.4.2 We find that this very same issue on identical facts pertaining to the computation of LTCG/LTCL on sale of the said property situated at 5/1, Palace Road, Bangalore in the cases of two other co-owners, viz., Shri Sanjeev Purnaiya and Shri Madhav Purnaiya has been considered and adjudicated by a co-ordinate bench of this Tribunal in

its order in ITA Nos.1361 & 1386/Bang/2011 dated 25/4/2014 for asst. year 2005-06. At para 5.4 of its order (Supra) the co-ordinate bench was of the view that the cost of purchase of the said property as on 1/4/1981 to be Rs.200 per sq. ft and held as under:-

5.4 The only issue before us for adjudication is whether the FMV of the said property as on 1.4.1981 has to be adopted at Rs.126 per sq. ft. as done by the Assessing Officer or Rs.200 per sq. ft. as directed by the learned CIT (Appeals). Evidently, both these values are estimates only. The DVO in his report has estimated the FMV at Rs.126 based on the sale price of certain properties nearby. As per the details on record, it is a matter of fact that the two properties used for comparison by the DVO are small properties and not comparable with the size of the property in question. We also find that while the DVO himself has mentioned that the said property is in a prime locality, he has not factored in or given due weightage to the same in his report. We also find that the Assessing Officer, in his order of assessment, has noted that commercial property in an area like Kempegowda Road was fetching the price of Rs.200 per sq. ft., based on properties*

registered in 1981. This being the case, we are of the considered opinion that the estimation of Rs.200 per sq. ft. as the FMV as on 1.4.1981 for this land adopted by the learned CIT (Appeals) to take into account the fact of the large size and location of the property in a prime area appears to be in order. We also note that before us, revenue has failed to bring on record any evidence to controvert the finding of the learned CIT (Appeals). In this view of the matter, finding no reason to interfere with the finding of the learned CIT (Appeals), we concur with and, therefore, uphold his order.

3.4.3 Following the aforesaid order of the co-ordinate bench of this Tribunal in the cases of Madhav Purnaiya and Sanjeev Purnaiya in ITA Nos.1361 & 1386/Bang/2011 dated 25/3/2014 for asst. year 2005-06 which covers this issue squarely in favour of the assessee, we set aside the orders of the authorities below on this issue and direct the AO to adopt Rs.200/- per sq. ft. as the FMV as on 1/4/1981 while re-computing the assessee's share of LTCG/LTCL on sale of the said property at 51, Palace Road, Bangalore. We hold and direct accordingly. Consequently, the ground raised by the assessee are allowed.

4. In the result, the assessee's appeal for asst. year 2005-06 is allowed.

Order pronounced in the open court on **13th October, 2017.**

Sd/-
(N.V VASUDEVAN)
JUDICIAL MEMBER
Bangalore
Dated : 13/10/2017
Vms

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore