

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1066/Hyd/2017  
Assessment Year: 2006-07**

Ajay Kochar,  
Secunderabad.

vs. Income-tax Officer,  
Ward – 10(4), Hyderabad.

PAN – AJCPK 4727B

(Appellant)

(Respondent)

**ITA No. 1067/Hyd/2017  
Assessment Year: 2006-07**

Late Vijay Kochar, Rep. by L/R  
Vishal Kochar, Secunderabad.

vs. Income-tax Officer,  
Ward – 10(4), Hyderabad.

PAN – AIPPK2621Q

(Appellant)

(Respondent)

Assessee by : Shri Sanjay Mutha  
Revenue by : Smt. B. Vishnu Priya

Date of hearing : 12/04/2018  
Date of pronouncement : 23/05/2018

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

Both these appeals filed by the assesseees are directed against a common order dated 02/01/2017 of CIT(A) – 9, Hyderabad for AY 2006-07.

ITA No. 1066/Hyd/2017

2. Briefly the facts of the case are, the AO observed that during the AY under consideration, the assessee along with two other family

members had entered into a sale cum general power of attorney with M/s Mahanagar Realtors in respect of property at Sy.No. 96, Begumpet Hyderabad admeasuring 1345 sq.yds. or 1224.58 sq. mts. Original holding and after effecting 138 sq.yds in road widening, the total land is 1206.5 sq.yds. for a consideration of Rs. 45 lakhs as per the deed. The AO further observed that the value of the property given by Sub-Registrar Vallabh Nagar on reverse side of the deed is Rs. 1,32,71,500/-.

2.1 The assessee had filed his return of income declaring a capital gain of Rs. 58,700/- and stated that the total sale receipts of the above property was Rs. 45 lakhs and his share being 1/3<sup>rd</sup> had received only 15 lakhs and thereby computed the capital gain.

2.2 The AO issued notice to the assessee u/s 148 of the Act on the ground that the assessee had understated his income from capital gain and as per the provisions of section 50C of the Act whereby the value adopted for the stamp duty shall be deemed to be the full value of the consideration received as a result of such transfer. In response to the notice issued, the assessee had filed a letter dated 30/10/2008 requesting to treat the original return filed as compliance to the notice.

2.3 The AO obtained the value of the said property from Sub-Registration Office, which was Rs. 11,000/- per sq.yd. and the same was adopted, which comes to Rs. 1,32,71,500/- (Rs.11000 x 1206.5)

2.4 In reply to the show cause notice, the assessee filed a letter dated 27/11/2009 wherein he stated that the property was under litigation due to which, no buyers were ready to buy and finally Sri Yadav Rao who agreed to purchase the property for Rs. 45 lakhs with the pending -litigation and, therefore, it was wholly incorrect for the AO to adopt a value of an exaggerated amount of Rs. 1,32,71,500/-. Further, it was stated that the family members were

unaware of the registration value as all the charges were paid by the buyers and the role of him or their family was just being signatories and requested to accept the sale value at Rs. 45 lakhs only.

2.5 The AO rejected the submissions of the assessee and referring to the provisions of section 50C of the Act, treated the sale consideration of property at Rs. 1,32,71,500/- as against Rs. 45,00,000/- admitted by the assessee.

2.6 The assessee had claimed an amount of Rs. 3,54,600/- being paid towards protection and the same was supported by affidavits/vouchers. Accordingly, the AO worked out the cost of improvement at Rs. 6,32,732/-.

2.7 Further, the assessee had claimed an amount of Rs. 3,06,000/- being fees paid towards advocate. On verification of the vouchers produced, the AO noticed that the assessee had produced an affidavit for only Rs. 1,06,000/- and produced self made vouchers for the balance amount. Accordingly, the AO accepted Rs. 1,06,000/- towards fee paid to Advocate against Rs. 3,06,000/- claimed by the assessee.

2.8 Assessee claimed expenditure of Rs. 4,45,600/- towards land levelling, construction of compound wall and a room. From the details submitted by the assessee, AO noticed that the assessee claimed the above amount based on self made vouchers and hence, the AO disallowed the same.

2.9 Apart from the above additions, the AO made other disallowances/additions, which are not subject matter of appeal.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). The CIT(A) passed a consolidated order in both the appeals under consideration, as under:

4. As regards the adopting the value as per SRO for the purpose of 50C, the CIT(A) observed that the claim of the assessee that because of pending litigation, the land fetched less than the market value is not correct. Thus, the claim of assessee that in the method of valuation 30% should be reduced for encumbrances cannot be accepted. Further, he observed that from the sale agreement it is clear that there were no encumbrances on the property as on the date of entering into agreement. In view of the above observations, the CIT(A) confirmed the findings of AO.

5. As regards the claim of deduction of an amount of Rs. 3,06,000/-, the CIT(A) observed that after going through the receipts produced by the assessee, it was noticed that they are self made vouchers without even the complete address of the recipient and hence are not amenable for any further verification. He, therefore, upheld the action of the AO.

6. As regards the assessee's claim of expenditure of Rs. 4,45,600/- towards land levelling, construction of compound wall and a room, CIT(A) observed that after going through the valuation report, it was noticed that the valuer did not give any basis for his valuation except stating that it is based on his professional experience, whereas, AO has gone by the Government value which is yardstick to be followed. He further observed that in comparison the valuation report does not specify any parameters or comparable instances as to why the valuation should not be Rs. 450/- but should be Rs. 650/-. In view of the above observations, the CIT(A) held that the AO has correctly followed the bench mark value instead of an estimation made by valuer which is without any basis. He, therefore, confirmed the action of AO.

7. Aggrieved by the order of CIT(A), both the assesseees are in appeal before us raising the following grounds of appeal:

*1. The Id. Commissioner of Income Tax (Appeals), Hyderabad, has erred in sustaining the order of the assessing officer in adopting the valuation as per SRO for the purposes of Sec 50C. The Commissioner( appeals) erred in taking the view that that disputes did not exist on the land sold and on such basis rejecting the claim that the valuation of land sold should be reduced by 30% from the value as determined u/s 50C for the litigation that exists as is mandated by the guidelines for valuation issued by the Directorate of Income - Tax.*

*The assessee begs to point out that the assessee had sought a remission in value under Sec 50C is with respect to disputes with unrelated parties, and not with respect to disputes within the family which the commissioner (appeals) has erroneously believed, while considering the appeal.*

*The appellant begs to submit that certified copies of the court orders of dates subsequent to the date of sale have been submitted before the income tax officer which is clearly articulated in the remand report by the assessing officer. These facts has been completely not considered by the commissioner (appeals) while rejecting the plea made by the assessee that he had to sell the property under extreme distress because of several unresolved disputes, police cases and litigation for more than 20 years.*

*2. The Id. CIT (Appeal) has erred in confirming the view taken by learned ITO, in allowing of Rs.1,06,000/- only out of the total expenditure incurred towards advocate fee of Rs.3,06,000/- on the basis that the remaining amount is supported only by self made voucher. The Assessee begs to point out that the fees paid is acknowledged by the recipient and it is humbly submitted that the CIT(appeals) ought to have appreciated that for litigating in more than 10 ongoing matters over 20 years the legal cost would be far more than 1.06 lac's allowed.*

*3. The Id. CIT (Appeal) has erred in confirming the view of learned ITO, in disallowing the expenditure incurred towards land levelling, construction of wall and a room of Rs. 4,45,600/- on the basis that the same is on the basis of self made vouchers. The appellant begs to submit that the evidence by way of affidavit filed by the engineer who carried out the above referred work and the evidence of the existence of such compound wall and room in the police FIR's which served as corroborative evidence has not been taken note of by the*

*learned commissioner appeals while rejecting the plea of the assessee.*

*For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal."*

8. As regards ground No. 1, Id. AR submitted that assessee along with other family members sold the land in which there were disputes pending before the Courts. In support of the same, he submitted that the assessee had filed the additional evidence before the CIT(A). The Id. CIT(A) had called for the remand report and the same is placed on record. Ld. AR submitted that this land was sold in the year 2005 but litigation was continued in the courts, the same was acknowledge by AO in his remand report, the same was reproduced in para 4 of the remand report. He further submitted that Id. CIT(A) has not considered the same and came to conclusion that there is no dispute in the land by the reason that the family agreed to sell the property jointly. He brought to our notice that there is no dispute in the family but there are other outside parties, who are interested in the property, pending litigations in the courts are evident, the relevant papers are submitted before the CIT(A) and AO. The same was overlooked by the Id. CIT(A) while passing the order. He submitted that as per the guidelines for valuation of immovable properties, 2009 issued by the Directorate of Income-tax, with reference to methods of valuation Chapter 5, item 5.2.1.3 factors of adjustment, disputes on rights and encumbrances, there is adjustment proposed to the extent of 30%, he prayed that this should be extended to this case as the litigations were continued after sale of land existed.

9. Ld. DR, on the other hand, objected to such adjustment and submitted that it was not brought on record any encumbrance certificate or issue before AO. He relied on the orders of revenue authorities.

10. Considered the rival submissions and perused the material on record. It is noticed that assessee has sold the property with the disputes in the property. This property was having disputes within the family and outside parties claiming to be the owners. The same was demonstrated by the assessee before the AO during remand proceedings. The same was acknowledged by AO in his remand report. The assessee has filed a paper book of ownership documents of various people, list of complaints filed. Even though, AO has not expressed his opinion in the remand report. Further, it is noticed that Id. CIT(A) has adjudicated the matter merely confirming the disputes within the family. But, we notice that there are disputes with outside parties who were claiming the ownership. Assessee has settled the issues with the few but some disputes were unsettled at the time of sale, which is evident from the list of cases pending for which the court orders were submitted subsequent to the date of sale. In our view, the assessee is eligible to claim the adjustment in the valuation of land to the extent of 30% as per the guidelines for valuation of Immovable Properties, 2009. Therefore, ground raised by the assessee is allowed.

11. As regards ground No. 2, Id. AR submitted that no doubt the vouchers are prepared by the assessee, but, signed by the lawyers who are in receipt of legal fees for representing in various cases pending in the courts. These expenses are genuine. At the same time, Ld. DR opposed the submission and submitted that the vouchers submitted are not genuine.

12. Considered the rival submissions and perused the material on record. We notice that assessee has legal disputes with the parties, who are claiming to be the owners of the land. Considering the same, in our view, assessee might have spent the same defending the cases. Since these vouchers are self-made, we remit this issue back to the file of AO in order to give one more opportunity to assessee to file proper confirmation from the respective lawyers who received

legal fee with their details such as, address and PAN details. AO is directed to verify the same and, if found proper, it may be allowed.

14. As regards ground No. 3, Id. AR submitted that the assessee has filed an affidavit from the builder who had built the compound wall and room before the AO during remand proceedings. Ld. CIT(A) has not considered this evidence and rejected the claim of the assessee by observing that there is no corroborative evidence. He submitted that the assessee has submitted the "FIR" in which it shows that there exist compound wall and a room in the land. The "FIR should be considered as corroborative evidence and claim of the assessee should be allowed. At the same time, Id. DR opposed the above submission and submitted that all the vouchers are self-made and cannot be relied upon.

15. Considered the rival submissions and perused the material on record. We notice that the evidence submitted before the authorities to show that there existed compound wall and room adjacent to the land during remand proceedings. We remit this issue back to the file of the AO to consider the submissions of the assessee and determine the value with the assistance from DVO with reasonableness and allow the same as cost incurred to build the compound wall and a room. Accordingly, ground raised by the assessee is allowed for statistical purposes.

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

17. As the facts and grounds are identical in ITA No. 1067/Hyd/2017 in the case of Late. Vijay Kochar to that of ITA No. 1066/Hyd/2017 in the case of Ajay Kochar, following the conclusions drawn therein, we allow this appeal also for statistical purposes.

18. To sum up, both the appeals under consideration are allowed for statistical purposes.

Pronounced in the open Court on 23<sup>rd</sup> May, 2018.

Sd/-

**(P. MADHAVI DEVI)  
JUDICIAL MEMBER**

Sd/-

**(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Hyderabad, Dated: 23<sup>rd</sup> May, 2018

*Kv*

Copy to:-

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- 3) *ITO, Ward – 10(4), Hyderabad.*
- 4) *CIT(A) – 9, Hyderabad.*
- 5) *Pr. CIT, Hyd.*
- 6) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 7) *Guard File*