

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.149/Vizag/2017**
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT, Circle-2(1), Guntur (अपीलार्थी / Appellant)	Sri Kishore Kumar Guntur [PAN No.AFVPK7725E] (प्रत्यार्थी / Respondent)
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C.O. No.56/vizag/2017
(Arising out of I.T.A.No.149/Vizag/2017)
(निर्धारण वर्ष / Assessment Year: 2012-13)

Sri Kishore Kumar Guntur (अपीलार्थी / Appellant)	ACIT, Circle-2(1), Guntur (प्रत्यार्थी / Respondent)
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आयकर अपील सं./**I.T.A.No.190/Vizag/2017**
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT, Circle-1(1), Guntur (अपीलार्थी / Appellant)	Sri Madanlal Ghevarchand Jain Guntur [PAN No.AJFPM2825F] (प्रत्यार्थी / Respondent)
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C.O. No.55/Vizag/2017

(Arising out of I.T.A.No.190/Vizag/2017)

(निर्धारण वर्ष / Assessment Year: 2012-13)

Sri Madanlal Ghevarchand Jain
Guntur

ACIT, Circle-1(1),
Guntur

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

आयकर अपील सं./I.T.A.No.191/Vizag/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT, Circle-1(1),
Guntur

Sri Amrutlal Jain Hundia
Guntur

[PAN No.ABUPJ3814G]

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

C.O. No.54/Vizag/2017

(Arising out of I.T.A.No.191/Vizag/2017)

(निर्धारण वर्ष / Assessment Year: 2012-13)

Sri Amrutlal Jain Hundia
Guntur

ACIT, Circle-1(1),
Guntur

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri M.N. Murthy Naik, DR

प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 03.07.2018

घोषणा की तारीख / Date of Pronouncement

: 11.07.2018

आदेश / O R D E R

PER Bench:

These appeals filed by the revenue are directed against different orders of the Commissioner of Income Tax (Appeals)-1, Guntur {CIT(A)} dated 30.11.2016 for the assessment year 2012-13. The cross objections filed by different assesseees are in support of the orders passed by the Ld. CIT(A). Since the facts are identical all the appeals are clubbed together, heard and disposed off in common order for the sake of convenience.

2. All the grounds of appeals are related to the fair market value adopted by the A.O. as per the provisions of section 50C of the Income Tax Act, 1961 (hereinafter called as 'the Act') for the purpose of computing the long term capital gains on sale of immovable property. During the year under consideration, the assessee along with three other co-owners sold the property situated at Nahur village, Mumbai and disclosed the total sale consideration of the property at ₹ 12.00 crores and offered 1/4th of his share of ₹ 3.00 crores to capital gains. The A.O. collected the sale deed bearing No.ADJ/2092/11/K dated 29.9.2011 and found that the value adopted by the Stamps Valuation Authority of State

Government (herein after referred to as SRO) was valued at ₹ 21,69,07,000/-. Accordingly, 1/4th share of the assessee worked out to ₹ 5,42,26,750/- against the capital gains admitted by the assessee at ₹ 3.00 crores. The A.O. has called for the explanation of the assessee as to why the sale consideration should not be adopted as determined by the SRO and the difference amount should not be brought to tax. In response to the notice issued by the A.O., the assessee submitted their explanation stating that the property in question was leased out on 2.1.1975 for a period of 94 years and the lease period has not yet expired. The assessee is the co-owner for 1/4th of the share of 3 annas out of 16 annas and the total rent receivable from the property was ₹ 3,700/- per month out of which the assessee's share of rent was ₹ 2,081.25ps. p.a. The remaining period of lease is above 58 years and there is no other way for the assessee to get better price for the said property. The assessee stated before the A.O. that the other co-owners Smt Leelavati Leeladhar Tucker and four others have also disposed of their share of 8 annas being 50% on 31.10.2010 for a consideration of 15.00 crores and the property was valued by the SRO at ₹ 23,500/- per sq.ft. Further, the assessee argued that in the other co-owners share of property, the sub-registrar has reduced the area occupied by the tenant

and valued the same on rent capitalization method. In the case of other co-owners Smt. Leelavati Leeladhar Tucker and others for the share of 50% (8 annas) of the property, the market value determined by the sub-registrar was ₹ 9,93,94,000/- and in the case of the assessee, the market value determined by the SRO was ₹ 21,69,07,000/-, which was representing the share of 3 annas out of total 16 Annas. In the assessee's case, the sub-registrar has not reduced the area occupied by the tenant. The Ld. A.R. argued before the A.O. that the value adopted by the sub-registrar in the case of the assessee was exceeding fair market value, therefore requested the A.O. to accept the actual sale consideration as per the sale deed and to complete the assessment proceedings. Not being convinced with the explanation of the assessee, the A.O. adopted the valuation adopted by the SRO for the purpose of payment of stamp duty at ₹ 21,69,07,000/- and assessed the assessee's share of ₹ 5,42,26,750/- to the long term capital gains and taxed the balance amount of ₹ 3,33,98,588/-

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) observed that the assessee along with three others is holding the total landed property of 30,244.07 Sq.mts representing the share of 3 annas and the other co-owners

Smt. Leelavati Leeladhar Tucker and 4 others were holding 50%(8 annas) of the undivided share in the entire property. They sold and registered their right in the property on 30.10.2010 in favour of M/s. D.B. Chandak Realtors, Mumbai for a consideration of Rs.15.00 crores vide document No.ADJ/3430/10/K. Their share of 50% was valued by sub-registrar at ₹ 9,93,94,000/- crores. While valuing the 50% of undivided share belonging to Smt. Leelavati Leeladhar Tucker and 4 others, the sub-registrar reduced the area occupied by the tenant and valued the same on rent capitalization method, whereas in the case of the assessee, no such reduction was allowed. The Ld. CIT(A) further observed that the assessee has raised the objection during the assessment proceedings for adoption of the valuation made by the sub-registrar as excessive, hence, the assessing officer should have referred the valuation to the DVO as provided by sub-section 2 of section 50C of the Act. Accordingly, the Ld. CIT(A) allowed the appeal of the assessee.

4. Aggrieved by the order of the CIT(A), the revenue carried the matter to the Tribunal. During the appeal hearing, the Ld. D.R. submitted that the assessee owns 3 Annas (out of 16 annas) share of immovable property in survey Nos.33(1), 34(1), 37, 38, 44(1), 54(3) and 102 situated at Nahur village, Mumbai in the registration District and

sub- district of Mumbai city, Mumbai within the limits of Municipal Corporation of Greater Mumbai. The property was held jointly and the assessee's share was ¼th share 3 annas out of 16 annas. The assessee along with Amrutlal Jain Hunda, Madanlal Ghevarchand Jain and Smt. Jadavi Bai sold the property to the extent of 30,244.07 Sq. mtrs. to M/s. Manchand Developers Pvt. Ltd., Chembur, West Mumbai vide Document No.ADJ/2092/11/K dated 29.9.2011. The value of the property assessed by SRO for the purpose of collecting the stamp duty was at ₹ 21,69,07,000/- against the actual consideration of ₹ 12 crores. The assessee's 1/4th share worked out to ₹ 5,42,26,750/- as per the rate adopted by the SRO against which the assessee had admitted a sum of ₹ 3.00 crores in the Income tax return. Out of the long term capital gains admitted, the assessee also claimed deduction u/s 54F of the Act amounting to ₹ 1,61,14,559/-. As per section 50C of the Act, the assessee required to adopt the value determined by the authority of State Government for the purpose of payment of stamp duty in respect of the transfer of the property. The assessee has not made any dispute with regard to the stamp valuation authorities for fixing the valuation at higher rate. Therefore, the Ld. D.R. argued that the A.O. has rightly

brought to tax the difference amount, accordingly, submitted that the A.O.'s order required to be upheld.

5. On the other hand, the Id. A.R. submitted that the property was under occupation of the tenant. There was no approach road and the land was marked for government acquisition and also under Railway buffer reserve systems. All these factors contributed to fetch the least price compared to the prevailing market rate. Further, the Id. A.R. argued that the assessee brought to the notice of the A.O. with regard to the sale of property by the co-owner on 31.3.2010, wherein the sub-registrar office has valued the 50% property at ₹ 9,93,94,000/- and reduced the area occupied by the tenant and valued the same on rent capitalization method. In the case of the assessee, though assessees were holding the share of 3 annas out of 16 annas, the property was valued at ₹ 21,69,07,000/- which was exorbitantly excessive. The Id. A.R. further argued that though all these factors were brought to the notice of the A.O., the A.O. ignored plea made by the assessee with regard to the excessive valuation made by the stamps and registration authorities and completed the assessment adopting the value adopted by the sub-registrar office. Since the assessee has raised the objection for adopting the valuation, the Ld. A.R. argued that the A.O. should

have referred the valuation to the Departmental Valuation Officer. Non reference to the departmental valuation cell renders the addition made unsustainable, accordingly, argued that the CIT(A) has rightly deleted the addition and no interference is called for.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We have gone through the papers and documents placed before us. As per the details in the assessment order, on 2.12.1940, Sri Narsingji Manrupji, Sri Gulabchand Narsingji and Sri Rekabchand Bhutaji as partners of M/s. Bhuta Manrupji & Co and Sri Pragji Ramji Thakkar have purchased the immovable properties bearing S.Nos.33(1), 34(1), 37, 38, 44(1), 54(3) and 101(2) situated at Nahur village, Mumbai in the Registration District and Sub District of Mumbai City and Mumbai sub-urban within the limits of Municipal Corporation of Greater Mumbai. Later, due to differences of opinion among the partners, the dispute was referred to the Arbitrators for effecting dissolution and distribution of assets of M/s. Bhuta Manrupji & Co among the partners. The arbitrators passed their Award and decree on 5th December, 1946 stating that the firm M/s. Bhuta Manrupji & Co was dissolved and its assets were distributed among the partners in accordance thereof. Since the

partnership firm M/s. Bhuta Manrupji & Co was holding ½ undivided share in the lands described in the schedule to the Deed of Conveyance dated 2nd December, 1940, the same could not be partitioned by metes and bounds among the partners of M/s. Bhuta Manrupji & Co and as per the proportion fixed by the Award, the partners of the said firm on dissolution became co-owners as tenants in common in the said lands described in the schedule to the Deed of Conveyance dated 2nd December, 1940 and each of them were holding undivided share in the following proportion:

Sl.No.	Name of the party	Share of property
1.	Narasingji Manrupji	3 annas
2.	Gulabchand Narsingji	2 annas
3.	Rekabchand Bhutaji	3 annas

The heir's of Sri Rekabchand Bhutaji (3 annas share holder) are as under:

Sl.No.	Name	Relationship with Rekabchand Bhutaji
1.	Smt. Jadavi Bai W/o (Late) Sri Ghewarchand	Daughter-in-law
2.	Madanlal Ghewarchand Jain	Daughter-in-law
3.	Kishore Kumar Ghewarchand Jain	Grand son
4.	Amrutlal Ghewarchand Jain	Grand son
5.	Smt. Kanchan Devi	Grand Daughter
6.	Smt. Usha Devi	Grand Daughter
7.	Smt. Vina Devi	Grand Daughter
8.	Smt. Trishala Devi	Grand Daughter

From the details described above, Late Sri Rekabchand Bhutaji was holding 3 annas share in the said property situated at Nahur village, which was 30,244.07 sq.mtrs. of land. Smt. Jadavi Bai, W/o (late) Sri Ghewarchand, Sri Madanlal Ghewarchand Jain, Sri Amrutlal Ghewarchand Jain and Sri Kishore Kumar are the legal heirs of the property who sold the property to M/s. Man Chandak Develpers Private Limited, Chembur (West), Mumbai vide document No.ADJ/2092/11/K dated 29.9.2011 for a consideration of ₹ 12.00 crores against which the sub-registrar valued the property at ₹ 21,69,07,000/- for the purpose of stamp duty. On finding the fact that there was a difference in valuation made by the sub-registrar for the purpose of payment of stamp duty and the consideration admitted by the assessee for the purpose of income tax, the A.O. issued the notices to all the co-owners of the property proposing to adopt the stamp duty valuation for the purpose of capital gains as per section 50C of IT Act.. In response to the notices issued by the A.O., the assesses have filed their objections explaining the reasons for receipt of less consideration and also submitted that valuation made by the sub-registrar for the purpose of stamp duty is in excess of market value. The assessee also furnished a chart explaining that the value of the property of the other co-owners i.e Leelavati

Leeladhar Tucker and others which was about 50% or 8 annas was sold on 30.10.2010 and the SRO valued the property at ₹ 9,93,94,000/- @ ₹ 23,500/- per sq.mtr and reduced the market value of the area occupied by the tenant and valued the same on rent capitalization method, whereas, in the case of assessee no such reduction was allowed. The Ld. A.R. argued that though the co-owners have sold the property one year prior to the sale of the property by the assessee and there was no such steep increase of prices in the land in the intervening period. However, though the assessee raised the objection, the A.O. proceeded to complete the assessment adopting value adopted by the sub-registrar office. As observed from the order of the Ld. CIT(A), 50% share of the property belonging to Smt. Leelavathi Tucker and 4 others comprising of 8 annas or 50% in the total property was sold for a consideration of ₹ 15 crores and the sub-registrar valued the property at ₹ 9,93,94,000/- on 20/10/2010 as under:

- | | | |
|--|---|--------------------|
| a) Total area | - | 33,247.57 sq.mtrs. |
| b) Occupied tenant | - | 24,823.80 sq.mtrs. |
| c) Balance FSI (33247.57 – 24,823.80) | - | 8,423.77 sq.mtrs. |
| d) Value of balance of FSI 8,423.77 x 23,500 | - | 19,79,58,595/- |
| e) Value of 50% share (19,79,58,595 x 50%) | - | 9,89,79,297/- |
| f) Rental value (3700x112) | - | ₹4,14,400/- |
| g) Market value – say ₹ 9,93,94,000/- | | |

7. In the case of the assessee, as submitted by the Ld. A.R., the sub-registrar did not reduce the market value occupied by the tenant and the value adopted by the sub registrar is far excessive than the property of the co-owner. Though we are of the view that the rate adopted in the case of other co-owner Leelavati Leeladhar Tucker cannot be adopted in the case of the assessee, due to a time gap between both the transactions, considering the entire facts and merits of the case it is evident that the assessee has brought on record the objections for receiving the lesser consideration than the value adopted by SRO. The A.O. without referring to the valuation of the property to the Departmental valuation cell completed the assessment ignoring the pleas made by the assessee.

8. Ld. CIT(A), while deleting the addition relied on the decision of Hon'ble High Court of Punjab & Haryana in the case of CIT Faridabad Vs. Chandni Buchar 323 ITR 510 which is related to the unexplained investment in purchase of land but not related to the assessment of capital gains and application of section 50C of the Act. Similarly, another case law relied upon by the Ld. CIT(A) was CIT Vs. Madho Properties Ltd. of Hon'ble High court of Kolkata, which was related to

section 269UC r.w.s. 269UD of the Act i.e. acquisition of property by competent authority but not related to the computation of capital gains. The decisions were rendered before introduction of section 50C of the Act. Another decision relied upon by the Ld. CIT(A) is CIT Vs. Rajkumari Vimaladevi 279 ITR 360 pertaining to deemed gift and the assessment year involved was 1981-82 prior to insertion of section 50C of the Act. The Hon'ble High Court of Allahabad decision in the case of Dinesh Kumar Mittal Vs. ITO 193 ITR 770 (1991) was also related to unexplained investment and the assessment year involved is 1984-85 before introduction of section 50C of the Act. Therefore, all the case laws relied upon by the Ld. CIT(A) has no relevance to the assessee's case and has no application.

9. In this connection, it is pertinent to go through section 50C of the Act which reads as under:

- (2) Without prejudice to the provisions of sub-section (1), where—
- (a) the assessee claims before any Assessing Officer that the value adopted or assessed ⁹¹[or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
 - (b) the value so adopted or assessed ⁹¹[or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35

and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

⁹²[*Explanation 1*].—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

⁹³[*Explanation 2*.—For the purposes of this section, the expression “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed ⁹³[or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed ⁹³[or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

As per section 50C of the Act for computing the capital gains in case of a capital asset being land or building or both, if it is less than the value adopted or assessed by any authority of a State Government for the purpose of stamp duty in respect of such transfer the value so adopted or assessed shall for the purpose of section 48 of the Act be deemed to be the full value of consideration received or accruing as a result of transfer. In case of dispute, the assessee is free to approach the stamp valuation authority. In case the assessee did not dispute in any appeal or revision or no reference has been made before any High Court, and objects before the AO for adopting the SRO value for capital gains as per section 50C, the A.O. may refer the valuation of the capital asset to valuation officer and the value determined by the valuation

authority shall be taken as full value for the purpose of capital gains. In the instant case, the assessee has not disputed the valuation made by the stamp valuation authorities for the purpose of stamp duties but objected for adoption of the same for capital gains. The assessee explained that SRO value was not disputed because of payment of stamp duty by the buyer. The assessee also did not request the AO for making reference to the Departmental valuation officer (DVO) for valuing the property. However the assessee brought on record regarding the non exclusion of tenants share and complexities involved in sale of the property and for getting the lesser rate. Therefore in all fairness the AO should have referred to the Departmental Valuation cell for valuing the property as provided in section 50C(2) of IT Act. Since the AO has ignored the objections of the assessee and failed to refer the valuation of property to the DVO, we are of the opinion that the case should be remitted back to the file of the A.O. to make reference to the DVO to determine the fair market value of the property for the purpose of computation of capital gains.

10. On the similar facts the coordinate bench of ITAT 'A' Bench Chennai in ITA No.2115/Mds/2016 for the assessment year 2005-06

dated 28.10.2016 remitted the matter back to the file of the A.O. for re-adjudication. Similarly Hon'ble coordinate bench of Chennai tribunal in the case of S.D. Vimalchand Jain Vs. ITO, (2016) 45 ITR (Trib) 0628 (Chennai), referred the matter back to the file of the AO for fresh consideration. The coordinate bench of Agra Tribunal in Udha Jain vs. ITO, reported in (2016) 46 CCH 0573 taken the similar view and remitted the matter back to the file of AO. Accordingly, we set aside the order of the Ld. CIT(A) and remit the matter back to the file of the A.O. to re-adjudicate the issue afresh after the reference made to the Valuation officer on merits and as per law. Since we have remitted back the case to the file of Ld. Assessing Officer for fresh consideration, the assessee is at liberty to raise any other grounds before the Ld. Assessing Officer to justify his stand on the issue.

11. In the result, the appeals filed by the revenue are allowed for statistical purposes.

12. The assessee has filed cross objections supporting the order of the CIT(A). Since we have remitted matter back to the file of the A.O., no

separate adjudication is considered necessary in respect of cross objections, accordingly, both the appeals of the revenue and cross objections of the assesseees are allowed for statistical purposes.

The above order was pronounced in the open court on 11th Jul'18.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 11.07.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ACIT, Circle-2(1), Guntur
2. अपीलार्थी / The Appellant – The ACIT, Circle-1(1), Guntur
3. प्रत्यार्थी / The Respondent – Sri Kishore Kumar, Prop: Kishore Jewellery Mart, D.No.5-37-17, 4th Line, Brodipet, Guntur.
4. प्रत्यार्थी / The Respondent – Sri Madanlal Ghevarchand Jain, C/o Kishore Jewellery Mart, D.No.5-37-17, Main Road, 4/1, Brodipet, Guntur
5. प्रत्यार्थी / The Respondent – Sri Amrutlal Jain Hundia, D.No.5-21-174, 1st Floor, 2/9, Brodipet, Guntur
6. आयकर आयुक्त / The Principal CIT, Guntur
7. आयकर आयुक्त (अपील) / The CIT (A)-1, Guntur.
8. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
9. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM