

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2162/Bang/2018
Assessment Year : 2008-09

Smt. Narayanamma, Plot No. G-3, Uttarahalli Circle, Bangalore – 560 061. <b>PAN: ABXPN2559D</b>	vs.	The Income Tax Officer, Ward – 1, Kolar.
APPELLANT		RESPONDENT
Appellant by	:	Shri T. Srinivasa, CA
Respondent by	:	Shri A. Ramesh Kumar, JCIT (DR)
Date of hearing	:	16.01.2019
Date of Pronouncement	:	18.01.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A)-3, Bangalore dated 10.05.2018 for Assessment Year 2008-09.

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

*“1. The impugned order passed by the learned Commissioner of Income Tax (Appeals)- 3, Bengaluru is highly unjust, arbitrary and against the facts and circumstances of the case.*

*2. The Learned Commissioner is not justified to have held that the Learned Assessing Officer had jurisdiction pass the assessment order u/s 144 r.w.s147 dated 19-03-2014 despite the appellant having shifted her permanent place of residence to Bengaluru and having filed her Returns of income under the jurisdictional assessing officer and which was well within the knowledge of the Department.*

*3. The Learned Commissioner of Income Tax ought to have held that based on the facts and circumstances of the case, the learned assessing officer did not have jurisdiction to pass the Assessment order dated: 19-03-2017 and ought to have referred the matter to the jurisdictional assessing officer.*

*4. The Learned Commissioner of Income Tax is not justified in not providing adequate opportunity to the appellate to establish that the land sold was only an agricultural land located beyond 8KMs from the notified municipal limits of Bengaluru district and accordingly was not a capital asset in terms of CBDT notification No: No. 9447 dated:16-1-1994*

*5. The commissioner ought to have been guided by the binding decision of the Hon'ble High Court of Karnataka in the case of CIT vs N. Madhukumar HUF and Sri. Narendra Singh vs. DCIT Sangur (HC-P&H)*

*For the above grounds and such other grounds that may be urged at the time of hearing, with kind permission, the appellant prays that the Hon'ble Tribunal may kindly be pleased to allow the appeal in the interest of justice."*

3. It was submitted by Id. AR of assessee that it is stated by CIT(A) in Para 5.2 of his order that assessee has not brought anything on record to show that the immovable property sold by her would not fall within the scope of section 2(14) and it should not to be treated as a capital asset. He submitted that in fact, the evidences were produced before CIT (A) in this regard that the land sold by the assessee is agricultural land located beyond 8 Kms. from the notified municipal limits of Bengaluru District but the same was not considered by CIT (A) and hence, the matter may be restored back to the file of CIT (A) for fresh decision after considering the same. He submitted a copy of submissions filed before CIT (A). He also submitted that even if it is found that the asset in question is not an agricultural land and therefore, it is a capital asset, then also, the matter should be restored back to the file of CIT(A) with the direction to obtain report from DVO u/s. 50C(2) of IT Act. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. First of all, I reproduce para 5.2 from the order of CIT(A) for ready reference.

*"5.2 The submissions of the appellant have duly been considered. As regards first argument of the appellant, the appellant has not brought anything on record to show that the immovable property sold by her would not fall within the scope of 2(14), for not to be treated as a capital asset. As regards the second argument of the appellant that purchase value of the property should also have been adopted as per guidance rate, the same is also devoid of any merit. There is no provision in law to deem the purchase value of the property while computing capital gains. As regards the last argument, the onus was on the appellant to show that she satisfied the conditions laid in Section 50C (2) of the Act, if she wanted that the matter should have been referred to the valuation officer. This was never the claim of the appellant that the stamp valuation authority had adopted a value of the property which exceeded the fair market value and that the appellant had challenged it before such authority. In view of above, all these arguments of the appellant need to be rejected and an*

*addition made by the AO is upheld. The grounds of appeal 6 to 8 of the appellant are dismissed.”*

5. From the above para reproduced from the order of CIT (A), it is seen that while deciding this issue as to whether the asset in question is agricultural land or not and as a consequence, whether it is a capital asset or not, it is stated by CIT (A) that necessary evidences were not filed before him but before the Tribunal, the assessee has filed copy of submissions filed before CIT (A) in this regard. As per the same, it is seen that although this claim is made therein that the impugned land is an agricultural land situated beyond 8 Kms. from the jurisdiction of a municipality and it does not have a population exceeding 10 thousand but no evidence is enclosed in support of this claim. But I feel that the matter has to go back at least for obtaining report of DVO u/s 50C (2). Hence, I feel that in the interest of justice, this aspect also may be restored back to CIT (A) for a fresh decision. Hence, I set aside the order of CIT (A) and restore both aspects of the matter back to the file of CIT (A) for fresh decision. If the assessee brings any evidence in support of this claim that the impugned land is not a capital asset, then it should be examined and this aspect be decided afresh after providing adequate opportunity of being heard to both sides. If it is found that it is not a capital asset than nothing further remains to be decided but if the assessee fails on this aspect than a report from DVO should be obtained u/s. 50C(2) of IT Act to determine the quantum of capital gain. Remand report from AO may be obtained if required. I order accordingly. The order of CIT (A) is set aside and the matter is restored back to his file for fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides.
6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 18<sup>th</sup> January, 2019.  
/MS/

Copy to:

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.