

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No. 954/Bang/2016
Assessment Year : 2006-07

Shri Kishore Kumar, No. 11, 1 st Cross, BVN Lane, Nagarpet Cross, Chigarpet, Bangalore — 560 002. PAN: AKOPK5734B	Vs.	DCIT Circle – 7 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Pratibha R., Advocate
Revenue by	:	Shri R.N. Siddappaji, Addl. CIT (DR)

Date of hearing	:	02.05.2019
Date of Pronouncement	:	16.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

The present appeal has been filed by the assessee and it is directed against the order of CIT (A) – 5, Bengaluru dated 29.02.2016 for A. Y. 2006 - 07.

2. Although the assessee has raised 7 grounds but the grievance is only one regarding the addition of Rs. 751,226/- as short term capital gains.
3. In course of hearing, learned AR of the assessee submitted a copy of the tribunal order in the own case of the assessee for A. Ys. 2007-08, 2008-09 & 2010-11 in ITA Nos. 517 to 519/Bang/2018 dated 23.03.2018 and it was submitted that this issue in the present year is identical. He pointed out that as per this order of the tribunal, the tribunal followed another tribunal order rendered in the case of one of the co owners and restored the matter back to the AO for fresh decision with the same directions as were given by the tribunal in the case of the co owner. He pointed out that relevant Para 7 of that tribunal order rendered in the case of one of the co owner has been

reproduced by the tribunal in the order passed in the case of the present assessee. He pointed out that the direction was this that the AO should reexamine the claim of expenditure incurred in leveling of the plot or otherwise relevant for the purpose of computation of short term capital gain. He submitted that in the present year also, the matter may be restored to AO with similar directions. Learned DR of the revenue supported the order of lower authorities.

4. We have considered the rival submissions and find that the learned DR of the revenue could not point out any difference in facts in the present year as compared to A. Ys. 2007-08, 2008-09 & 2010-11 for which the tribunal order is made available by the learned AR of the assessee. Hence, we find no reason to take a contrary view in the present year. Hence, on the same line, in the present year also, we set aside the order of CIT (A) and restore the matter back to the AO for fresh decision with the same directions as were given by the tribunal in the case of the present assessee in its order for A. Ys. 2007-08, 2008-09 & 2010-11 and in the case of the co owner. We find that the direction was this that the AO should reexamine the claim of expenditure incurred in leveling of the plot or otherwise relevant for the purpose of computation of short term capital gain. In the present year also, we give the same directions to the AO. The AO pass necessary order as per law as per above discussion after providing reasonable opportunities of being heard to the assessee.
5. 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/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 16th May, 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.