



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.341/CTK/2018
Assessment Year: 2014-15

Harmohan Lenka,Plot No.241, Sashtri Nagar, Unit-04, Bhubaneswar.	Vs.	ITO, Ward 4(3), Bhubaneswar.
PAN/GIR No.AGWPL 8087 E		
(Appellant)	..	(Respondent)

Assessee by : Shri D.K.Sheth, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 16 /07/ 2019
Date of Pronouncement : 05/08/ 2019

ORDER

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-2, Bhubaneswar dated 11.6.2018 for the assessment year 2014-2015.

2. The assessee has raised the following grounds of appeal:

"1. For that on the facts and in the circumstances of the case the order passed by the AO as well as CIT(A) is arbitrary and bad in law.

2. For that the income computed by the AO under head long term capital gains is very much erroneous and excessive in as much as the sale consideration is in correct; disallowance of cost of improvement is in proper, and deduction allowed u/s.54 is also improper.

3. For that the addition as made under head long term capital gains at Rs.38,32,225/- is not justified."

3. Facts in brief are that the assessee is an individual and derives income from long term capital gains. During the assessment year under consideration, the

Assessing Officer noticed that the assessee has sold a homestead land measuring AC 0.607 decimals to Sri Rabindra Kumar Gouda, At- Plot No. EB/30, Stage-V, Laxmisagar, PO- Budheswari, P.S. Laxmisagar, Bhubaneswar for the sale consideration of Rs. 1,44,99,600/- as is evident from the deed of agreement for sale. The Assessing Officer also noticed that the assessee has received the sale consideration of Rs. 67,20,000/- in cash and balance amount of Rs. 77,60,000/- through cheque. Against such sale consideration of land, the assessee has claimed exemption u/s. 54 to the tune of Rs. 71,55,662/- declaring income from LTCG at Rs. 2,41,834/- in his return of income for the year under consideration. The Assessing Officer required the assessee to produce the details of such transaction alongwith the calculation of long-term capital gain as shown in the return of income. In compliance to same, the assessee produced the purchase deeds, agreement for sale deed, bank account copies and part documents in support of exemption claimed u/s.54 of the Act. Out of sale consideration of land at Rs.1,44,99,600/-, the assessee has shown long term capital gain of Rs.2,41,834/- after claiming cost of acquisition and cost of improvement at Rs.36,89,239/- and Rs.30,52,865/-, respectively. Thereafter, the assessee purchased a flat in Bangalore for a consideration of Rs.67,34,387/- and on payment of registration fees of Rs.2,43,750/-. The Assessing Officer worked out the taxable long term capital at Rs.2,46,411.47.

4. Before the CIT(A), the assessee submitted that the land was purchased in the financial year 2005-06 at Rs.19,52,664/-; assessee incurred conversion stock of Rs.16,05,840/-; the assessee entered into an agreement with Ravindra Kumar Gouda to sell the land for a consideration of Rs.1,36,57,500/-; assessee received

only Rs.40,00,000/- as advance in cash in June, 2013; balance amount was not paid to the assessee and, therefore, the agreement for sale was cancelled. In support of cancellation the assessee submitted a notice given to Gouda on 4.3.2013. Thereafter a fresh agreement was executed with Shri Ravindra Kumar Gouda on 11.6.2013 for sale consideration of Rs.1,44,99,600/- and earlier cash received of Rs.40,00,000/- was adjusted and balance amount was required to pay. Since, Sri Gouda could not make the payment the balance amount, the said agreement was cancelled and Rs.40 lakhs was refunded to Shri Gouda. Thereafter, the land was divided into 12 plots and 9 plots were sold to actual users and three plots were sold to a power of attorney for total consideration of Rs.74,47,688/- and the taxable capital gain was computed at Nil. On this, the CIT(A) called a remand report from the Assessing Officer, wherein, the AO has not given any findings. The remand report was forwarded to the assessee for rejoinder and the assessee filed rejoinder.

5. The CIT(A) did not accept the contention of the assessee regarding subdivision of land into 12 plots on the ground that the none of the documents are either notarized or registered with Registrar of property and approval of competent authorities has not been obtained to divide the lands into 12 plots. He observed that on the contrary, the agreement with Shri Gouda was notarized, which stand on much better legal footing as compared to the agreements. He also observed that regarding the cost of improvement, the assessee could not give any evidence excepting receipts of Rs.9,777/- and Rs.8,656/- and, accordingly, confirmed the computation of long-term capital gain at Rs.38,32,225/- by the Assessing Officer.

6. I have heard the rival submissions, carefully gone through the written submissions and other relevant papers submitted by the assessee.

7. Ld A.R. of the assessee submitted that initially agreement for sale was made with Shri Rajendra Kumar Gouda on 21.1.2013 to sell the entire land of A.0.607 for Rs.1,36,57,500/- against which advance of Rs.40 lakhs was received. He submitted that the agreement was valid till 28.2.2013 and since no sale deed could be executed till that date, the agreement was cancelled. Ld A.R. submitted that further a fresh agreement was made with the same person i.e. Shri R.K.Gouda on 11.6.2013 with the sale consideration of Rs.1,44,99,600/- and earlier advance amount of Rs.40 lakhs was adjusted and balance was to be made before execution of sale deed before 30.7.2013. Since the intending buyer could not arrange the fund, the agreement entered into on 11.6.2013 was also cancelled and the advance amount of Rs.40 lakhs was refunded to Shri R.K.Gouda. Ld A.R. submitted that after cancellation of said two agreements, the assessee decided to sell the land by dividing it into small plots to different 12 persons through registered sale deed. Ld A.R. submitted that out of total land of Ac. 0.607, 12 sale deed were executed for A.0.478.30 against sale consideration of Rs.74,47,688/-. Out of which one sale deed was executed on 31.7.2014 for Rs.7,52,700/- pertaining to assessment year 2015-16. Ld A.R. pointed out that as the land was divided into small 12 plots, measuring area of A.0.478.30, then balance area of A.0.128.70 was used for roads and passage. The assessee could not earn or receive any amount as the remaining area of A.0.128.70 was covered for road and passage. Ld A.R. submitted that while filing the return of income, the sale consideration of land was wrongly shown as Rs.1,44,99,600/- although the actual

sale price for both the lands received was Rs.74,47,688. He submitted that the sale deed executed on 31.7.2014 for Rs.7,52,700/- should have been excluded from computation for the year under consideration as same relates to assessment year 2015-16. Ld A.R. submitted that the AO as well as the CIT(A) were not correct and justified in relying on the remand report of the Inspector of Income tax having several mistakes and in disbelieving the expenditure incurred by the assessee on improvement of land. Ld A.R. submitted that the assessee actually incurred expenditure for constructing boundary wall and on improvement of land by way of levelling and filling of sand giving the land a proper shape. Therefore, the cost of improvement and indexation and inflation thereon was wrongly not allowed to the assessee by the authorities below.

8. Ld A.R. drew my attention towards copies of agreements executed on 21.1.2013, and on 11.6.2013 and submitted that since the sale consideration in both the agreements were very high and excessive, therefore, the buyer could not make the payment and deal was not materialized. Ld A.R. submitted that the assessee has returned the entire advance amount of Rs.40 lakhs to Shri R.K.Gouda. Therefore, after termination of said agreements, no inference can be drawn regarding sale consideration on the basis of those agreements. Ld A. R vehemently pointed out that later on the land was sold to 12 purchasers. Therefore, no adverse inference can be drawn against the assessee on the basis of amortized and scrapped sale agreements. Ld A.R. submitted that from the list of purchasers, it is very much clear that all plots have been sold to different persons and copies of sale deed reflects that sale consideration received by the assessee is not less than the stamp valuation. Therefore, the sale of plots cannot be alleged

as doubtful by any stretch of imagination. Ld A.R. submitted that the authorities below have not considered the documentary evidence submitted by the assessee in a right perspective and even the important factum has been ignored while making the addition that out of 12 sale deeds, one sale deed was executed in the subsequent assessment year 2015-16 on 31.7.2014 for sale consideration of Rs.7,52,000/-. Therefore, the orders of lower authorities are not sustainable and same may kindly be dismissed.

9. Ld A.R. submitted that alternatively, if it is found just and proper, the assessee may kindly be allowed to explain its case before the Assessing Officer to meet the ends of justice.

10. Replying to above, Id D.R. strongly supported the orders of lower authorities below and submitted that sale consideration was shown by the assessee himself, therefore, same cannot be negated or ignored. Ld D.R. submitted that the remand report by the Inspector clearly reveals that there was no activities on improvement of land or construction of boundry wall. Therefore, the authorities below were right in dismissing the claim of the assessee on the cost incurred for improvement of land and indexation thereon.

11. Placing rejoinder to above, Id A.R. submitted that the assessee purchased land in the year 2005 and the expenditure was incurred for improvement of land and also for construction of boundary, filling of sand on the land and levelling of the same. Ld A.R. submitted that land was sold in converting the same into 12 plots after lapse of 8-9 years during which, boundary wall was damaged and due to regular rain, the filling of sand and levelling was also vanished. Therefore, the

factum of improvement and construction of boundary wall cannot be disbelieved in the totality of the facts and circumstances of the case. Ld A.R. furnished a chart mentioning the purchase of land and subsequent sale to 12 persons as below:

Purchase of Land -

Sl.No	Date of Purchase	Actual price		Stamp duty		Remarks
		paid	Area	paid		
A.	19.04.2005	Rs. 3,93,550	A.0.322	Rs.1,08,325		Benchmark Value Rs.9,91,120/-
B.	27.07.2005	<u>Rs. 8.77,800</u>	A.0.285	Rs.1,40,558		
		Rs.12,71,350	A.0.607	Rs.2,48,883		

Details of Sales -

Land

Sl.No	Date of Sale	Name of Buyer	Area	Consideration
1.	22.06.2013	Santosini Swain	A.0.054.00	Rs.8,10,000
2.	03.07.2013	Urmila Pradhan	A.0.027.54	Rs.4,15,000
3.	19.08.2013	Deeptimayee Lenka	A.0.048.54	Rs.7,26,600
4.	28.09.2013	Tukuna Sahoo	A.0.042.10	Rs.6.90,000
5.	07.02.2014	Umesh Ch. Rout	A.0.042.00	Rs.7,31,500
6.	31.07.2014	Prasanna Kr. Sahoo	A.0.050.18	Rs.7,52,700
			<u>A.0.264.36</u>	

Area allotted for Roads & passage A.0.57.64 Total Area sold A.0.322

Note : Sl. No.4,5,6 were sold through Power of Attorney holder Sunil Kumar Dwevedi. Power of Attorney was executed on 26.08.2013 and at the time of execution of power of attorney assessee receive a consolidated amount of Rs.20,71,288/-.

Hence the total amount received for Land A amounts to Rs.40,22,888/-

Land -B

Sl.No	Date of Sale	Name of Buyer	Area	Consideration
1.	22.06.2013	Silpirekha Mohanty	A.0.048.44	Rs. 7,26,600
2.	22.06.2013	Bipan Kr. Pattnaik	A.0.048.44	Rs. 7,26,600
3.	03.07.2013	Lipsa Tripathy	A.0.020.54	Rs. 4,15,000
4.	03.07.2013	Prabhat Kr. Satpathy	A.0.027.54	Rs. 4,15,000
5.	03.07.2013	Dusmant Kr. Padhi & Ratikant Padhi	A.0.020.54	Rs. 4,15,000
6.	19.08.2013	Manor anj an Swain	A.0.048.44	Rs. 7,26.600
			<u>A.0.213.94</u>	<u>Rs.34,24,800</u>

Area allotted for Roads & passage A.0.071.06

Total Area sold A.0.285

Total area Sold A.O.607 (Land A + Land B)
Total price received Rs.74,47,688/-(Rs. 40.22.888 +Rs.34,24,800)"

12. On consideration of above, first of all I may point out that on being asked by the Bench, Id D.R. could not controvert the fact that the land was sold after converting into 12 plots and out of 12 plots, sale deed of one plot was executed during the subsequent assessment year 2015-16 on 31.7.2014 whereas the authorities below have ignored this fact and entire sale has considered to be held during the present assessment year 2014-15. Therefore, I have no hesitation to hold that the authorities below proceeded to decide the case and frame assessment and subsequent first appellate order on the basis of incorrect fact. I may also point out that copies of all 12 registered sale deeds placed before the Tribunal in the form of paper book, spread over 171 pages, were also filed before the authorities below. From these sale deeds, I apparently noticed that the sale consideration is not less than the stamp valuation and this fact cannot be ignored merely because the assessee has due to inadvertent mistake, adopted the wrong sale consideration on the basis of scrapped second agreement for sale dated 11.6.2013, which was never materialized the actual transaction of transfer of property.

13. The contention of the revenue authorities is that the land sold to 12 persons are not registered or notoraised with registrar of property and these documents do not mention the stamp duty valuation of the plots and that approval of the competent authorities has not been obtained. On the other hand the agreements with Sri Gouda are notarized.

14. In this context, I may point out that there is difference between agreement of sale and execution of sale deed. If the transfer of property is on a future date and is subjected to further terms and conditions then it is known as an agreement of sale. An agreement of sale can be generally defined as a memorandum of agreement where the terms and conditions of a potential contract of sale are enumerated alongwith the offered consideration and payment details. Whereas a sale deed is formed if it is subject to an immediate transfer of the property. A sale deed is considered as a mandatory registered instrument whereas an agreement of sales differs.

15. In this case, the assessee has only entered into agreement with the purchaser i.e. Shri Gouda with the offered sales consideration and since Shri Gouda could not adhere to the agreement on two occasions, the agreements were cancelled and the advance amount of Rs.40 lakhs was refunded to him by the assessee. Thereafter, the assessee divided the land into small 12 plots and by way of registered sale deed transferred the land to the new persons/purchasers. Hence, earlier agreements to sale cannot be treated as the valid transaction and the amount shown in those transactions also not valid for the purpose of computation of capital gains.

16. As regards the contention of the revenue authorities that the agreements were notoraised and the sale deeds for 12 divided plots were not notorised/registered, on perusal of the sale deeds produced before the Tribunal, it is evident that the sale deeds are executed in the office of Sub-Registrar, Bhubaneswar, Dist: Khurda on different dates, placed on record in the paper book

and hence, it cannot be said they are not registered. However, earlier agreements were for sale and those were not final for sale of property.

17. It is also fact that before selling the land, the seller has to develop the land by way of filling of sand and also levelling the same, then only the land will be in a proper shape to attract the purchasers. Hence, the claim of the assessee that he has incurred expenditure for development of land and also construction of boundary wall cannot be doubted. It is also seen that earlier the agreement for sale was executed twice but the same was not materialised and the advance amount was refunded.

18. Keeping in mind the principles of natural justice, I am of the opinion that the assessee's contentions may require fresh examination by the Assessing Officer. Assessee is free to furnish necessary evidence and rely on case law and the Assessing Officer is directed to examine the sale deeds executed with 12 persons to compute the long term capital gains. With these observations, the orders of the A.O. and Ld. CIT(A) are hereby set aside and entire assessment is restored to the file of A.O. for fresh examination.

19. From the orders of lower authorities, I clearly observe that the assessee has placed a claim u/s.54 of the Act against long term capital gain accrued to him during relevant assessment year. This claim of the assessee was not also allowed by the Assessing Officer and the findings of the Assessing Officer were confirmed by the CIT(A). Since by earlier part of the order, the main issue of long term capital gain is restored to the file of the AO, consequently, the issue of claim of the assessee u/s.54 of the Act against long term capital gain is also restored to the file

of the AO for fresh adjudication without being prejudiced from the earlier assessment and first appellate order. The AO is directed to adjudicate the grievance of the assessee after allowing due and proper opportunity of being heard to the assessee and keeping in view the entire facts and circumstances of the case as per scheme of section 54 of the Act.

20. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced on 05/08/2019.

Sd/-

(Chandra Mohan Garg)
JUDICIALMEMBER

Cuttack; Dated 05/08/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Harmohan Lenka, Plot No.241, Sashtri Nagar, Unit-04, Bhubaneswar
2. The Respondent. ITO, Ward 4(3), Bhubaneswar.
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT- 2, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr. Pvt. Secretary,
ITAT, Cuttack