

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "A", BANGALORE  
BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.911(Bang)/2017  
(Assessment Year : 2008-09)**

The Hubli Taluka Agricultural Produce  
Co-Operative Marketing Society Ltd..  
A-1, APMC Yard, Amargol,  
Hubli-580 025  
PANNo.AABAT0128L

Appellant

**Vs**

The Addl. Commissioner of Income tax,  
Range-2(2),  
Bangalore

Respondent

**Appellant by : Shri E.S.Kiresur, Advocate  
Revenue by : Shri K.R.Narayanan, JCIT**

**Date of hearing : 22-08-2019**

**Date of pronouncement : 28-08-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal has been filed by assessee against order dated 26/12/16 passed by Ld. CIT (A), Hubli for assessment year 2008-09 on following grounds of appeal:

*"1. The order of the assessment is opposed to law and facts of the case, illegal and void.*

2. The ld. AO erred in assessing the income from capital gains during this assessment year. It is submitted that the transfer of property took place on 18-05-2008. Hence the income from capital gains arose for AY: 2009-10 and shall be assessed in that year only. Therefore, the order of assessment is contrary to the provisions of the Act and liable to be cancelled or set aside in the ends of justice.

3. The ld. AO erred in adopting the fair market value (FMV) of the property as on 01-04-1981 at Rs.1766/- gunta(i.e.Rs.146 sq.yard). It is submitted that the property sold is industrial land. Hence, as per the Registered Valuer's Report, is at Rs.42084/- gunta. Therefore, the valuation of the property adopted by the AO in determining the cost of the property as on 01-04-1981 is arbitrary and bad in law.

4. That the order of assessment is barred by limitation. Therefore, the order of assessment is illegal, void, non-est in law and liable to be cancelled or set aside in the ends of justice”.

**2. Brief facts of the case are as under:**

Assessee is a co-operative society formed by farmers being members, for purposes of marketing of agricultural produce. It

derives its income from business, rent and interest. For year under consideration, assessee filed its return of income on 30/09/08 declaring total loss of Rs.3,27,170/-.

The case was selected for scrutiny and notice under section 143 (2) was issued to assessee. In response to statutory notices, representatives of assessee appeared before Ld. AO and filed various details as called for.

It has been submitted that assessee was carrying on as society and purchased perpetual lease hold rights of land situated at woman's College Road, JC Nagar, Hubli bearing CTL No.2868,2869 and 2870 respectively. Assessee had also purchased a factory building, godowns, office building, residential building garage and other structures and fixtures, plant and machinery spare parts, dead stocks, stock in trade, furniture's and other movables appertaining to factory and all interest in factory and stock in trade goods and effects from M/s Gujarat Ginning and manufacturing Co Ltd.

2. Ld.AO observed that assessee during the year sold certain properties vide sale deed dated 28/03/08. Ld. AO held that income arising out of transfer of property is assessable for assessment year 2008-09 instead of AY: 2008-09 as submitted by assessee.

2.1 Another issue that arose was in respect of the fair market value of the property as on 01/04/81. Ld.AO relied on two instances of properties sold, located nearby the alleged land sold by assessee and computed fair market value at Rs.1.46 per yard, thereby determining capital gains at Rs.1,43,54,300/-

Ld.AO thus made addition in the hands of assessee amounting to Rs.1,40,79,950/-.

3. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld. CIT (A) who upheld addition.

4. Aggrieved by order of Ld. CIT (A), assessee is in appeal before us.

Is Ld.AR submitted that **Ground No.1** is general in nature and therefore do not require any adjudication.

**Ground No. 4** has also been submitted to be not pressed and accordingly this ground is dismissed as not pressed.

**Ground No.2** is in respect of year in which income from transfer of property is to be taxed in the hands of assessee.

5. Ld.AR submitted that due to heavy losses in the past years assessee decided by way of resolution to sell permanent leasehold right in respect of property situated at CTS No. 2870, area 3025yards. Accordingly, attended notification in ‘Sanjevani’ Kannada daily newspaper was made calling upon intending purchaser. Ld.AR submitted that, as per terms and conditions of tender, earnest money deposit amount was fixed at Rs.10 Lacs and successful bidder to take possession of property only after having paid entire tender amount and registration of sale deed. He submitted that, upon completion of calling for tender, proceedings to sell was initiated by finalising the highest bidder to be the purchaser. Consequently, sale deed was executed on 28/03/08 and was kept pending till contingent conditions were complied as under by purchaser, regarding full payment of tender and registration.

Ld.AR submitted that purchasers gave post dated cheques as under to assessee in respect of balance payment.

<i>Sl.No.</i>	<i>Chque No.</i>	<i>Date</i>	<i>Amount</i>	<i>Drawn on</i>
1	306651	10/03/2008EMD	10,00,000.00	SBI, Vidyanagar, Hubli
2	306653	28/03/208	27.50,025.00	SBI, Vidyanagar, Hubli
3	303354	10/4/2008	35,00,000.00	SBI, Vidyanagar, Hubli
4	300055	20/04/2008	35,00,000.00	SBI, Vidyanagar, Hubli
5	296756	30/04/2008	35,00,000.00	SBI, Vidyanagar, Hubli
6	293457	10/5/2008	35,00,000.00	SBI, Vidyanagar, Hubli
		<i>Total</i>	1,77,50,025.00	

6. Ld.AR submitted that entire payment received from purchaser was paid by 10/05/2008 and agreement was registered on 01/04/2008 at sub registrar, Hubli. Ld.AR submitted that possession of said property was handed over to the purchaser vide letter dated 18/05/08 upon settling the full payment. He thus submitted that transfer of property has actually taken place during financial year 01/04/08 to 31/03/09 relevant to assessment year 2009-10.

In support of his contention, Ld.AR placed reliance upon various documents in paper book, which were either not legible nor were in vernacular language.

7. Ld. DR submitted that issue may be set-aside to Ld. CIT (A) for verification as submissions advanced by assessee is not verifiable from documents relied upon.

8. We have perused submissions advanced by both sides in light of records placed before us.

It appears that except for execution of sale deed (that happened in financial year the relevant to assessment year 2008-09), actual transfer took place during assessment year 2009-10. However, dates enunciated by Ld.AR are not verifiable from documents relied upon in paper book, as it is not a translated, certified copy of documents filed by assessee. It has been contended by Ld.AR that registration took place on 01/04/2008 and position was handed over to purchaser on 18/05/08. The possession letter is originally written in vernacular language for which a certified translated copy has not been filed before us. We are therefore unable to authenticate the arguments advanced by Ld. AR having regards to these documents. However we deem it fit and proper to set aside this issue to Ld. CIT (A) who shall verify all these details from the records available. Assessee is directed to file a clear copy of registered sale deed to establish that the registration took place on 01/04/2008. Assessee is also directed to file a certified true copy of possession letter issued to purchaser dated 18/05/08. Assessee shall file bank statements showing the balance payments as per table reproduced herein above, having received during financial year relevant to assessment year 2009-10 as submitted before us. Ld.CIT (A) shall verify all these details as per law. **Accordingly this ground raised by assessee stands allowed for statistical purposes.**

**Ground No.3** is in respect of determination of market value as on 01/04/81.

Ld.AR submitted that assessing officer adopted market value of property at Rs.1.46 per square yard. He submitted that authorities below did not appreciate that property was commercial property and registered valuer valued the property as on 01/04/81 at Rs.38,821/-. Placing reliance upon valuation report placed at page 58-69 of paper book, he submitted that value computed by valuation officer was at Rs.10,52,100/- as against Rs.56,45,700/- by Ld.AO.

He submitted that the instances considered by Ld. AO was in respect of residential property, whereas assessee's commercial property, that too sold by calling tender.

On the contrary, Ld. DR submitted that the valuation report does not suggest nature of property being commercial and has not relied upon any instances by which it could substantiate the market value as on 01/04/81.

9. We have perused submissions advanced by both sides in the light of the records placed before us.

In our considered opinion, issue needs to be verified by Ld. CIT (A) by calling for relevant details to ascertain market value of property as on 01/04/81. It is also observed that in the event Ground No. 3 is decided in favour of assessee, then capital gains computation will not arise for year under consideration, as then it would be academic in nature. Ld.CIT (A) is directed to 1<sup>st</sup> ascertain year in which capital gains arises in the hands of assessee as per law and then to

compute fair market value as on 01/04/81 by referring to a valuation officer.

**Accordingly this ground raised by assessee stands allowed for statistical purposes.**

**In the result appeal filed by assessee stands partly allowed for statistical purposes.**

Order pronounced in the open court on 28-09-2019

Sd/-

**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

Dated: the 28<sup>th</sup> August, 2019.

**\*am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-

**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

By Order

Asstt.Registrar