

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1093/Bang/2018
Assessment Year : 2014-15

Shri Jagjeeth Singh Sethi, No. 35, 2 nd Floor, 5 th Cross, Ashram Colony, 60 Ft Road, RMV 2 nd Stage, Bangalore – 560 094. PAN: AKJPS7814F	Vs.	The Income-tax Officer, Ward – 3 (1) (4), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S. Ramasubramanian, CA
Revenue by	:	Shri R.N. Siddappaji, Addl. CIT (DR)

Date of hearing	:	26.08.2019
Date of Pronouncement	:	13.09.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-3, Bangalore dated 07.02.2018 for Assessment Year 2014-15.

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

“1. That the order passed by the learned Commissioner of Income-Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in considering the cost of acquisition as Rs. 5,00,794/- as per the registered sale deed even though the actual consideration paid was Rs. 12,29,982/-.

3. That the learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the consideration mentioned in the registered deed is only the guidance value and not the total consideration paid.

4. That the findings given by the learned Commissioner of Income Tax (Appeals) in paragraph 4.4 is completely perverse and mere surmises and conjectures.

Each of the above grounds is without prejudice to one another and the appellant seeks leave of the Hon'ble Income Tax Appellate Tribunal to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.”

3. It was submitted by Id. AR of assessee that in the present case, while computing the long term capital gain of the assessee, the cost of the acquisition of the property was considered by the AO as Rs. 5,00,794/- as against the claim of the assessee that the cost of acquisition of the property is Rs. 12,29,982/-. He submitted that this amount of Rs. 5,00,794/- was worked out by the AO on this basis that as per the purchase deed, the amount of sale consideration paid is of Rs. 4,61,250/- and the AO added Registration Fees of Rs. 4,950/- which includes Scanning fee of Rs. 300/- and in addition to that, Stamp Duty of Rs. 34,594/- was also added. But the actual amount paid by the assessee is much more. In this regard, he drawn our attention to page no. 13 of the paper book which is a certificate issued by Telecom Employees' Co-operative Housing Society Ltd. in which it is certified that they have received an amount of Rs. 11,53,125/- towards sale consideration of Site No. 287 measuring total area of Rs. 4612.50 sq. feet from the assessee on 01.05.2005. But the registration of sale deed was executed as per the Government guidance value which was prevailing at that time. He placed reliance on the Tribunal order rendered in the case of Shri S. Tejraj Ranka Vs. ACIT in ITA No. 82/Bang/2014 dated 26.08.2015, copy available on pages 39 to 49 of the paper book and on another Tribunal order rendered in the case of Shri Ashok Kumar Wahi [HUF] Vs. ITO in ITA No. 719/Bang/2018 dated 01.06.2018, copy available on pages 50 to 56 of the paper book. He drawn our attention to para 15 of the Tribunal order rendered in the case of Shri S. Tejraj Ranka Vs. ACIT (supra) and pointed out that in this para, it is noted by the Tribunal that as per the registered sale deed dated 25.06.2008, value noted is Rs. 22.05 Lakhs which is towards undivided share of land and flat together with two covered car parks. Thereafter he drawn our attention to para 16 of the same Tribunal order and pointed out that in this para, the

Tribunal has noted about a document dated 18.06.2008 by the developer which refers to a sum of Rs. 52,60,292/- as the total cost of the property paid by the assessee. He also noted that this letter refers to the basic cost of the property as Rs. 22.05 Lakhs and car parks have been valued at Rs. 3 Lakhs and Tribunal has further observed that to this extent, there is no contradiction between the registered sale deed and this letter of the builder and thereafter the Tribunal observed that the other charges mentioned in this letter cannot be regarded as immovable property to be included in the registered sale deed as value of property because these are provided by the builder in his capacity as developer and building contractor for the assessee and based on these facts, it was held by the Tribunal that there can be no adverse inference drawn against the assessee and in that case, it was held by the Tribunal that deduction is allowable to assessee u/s. 54F as claimed by the assessee of Rs. 54,70,887/-. At this juncture, the bench observed that in the present case, there is no such detail made available regarding nature of difference in these two amounts of Rs. 5,00,794/- and Rs. 12,29,982/- and hence, the matter has to be restored back to the file of the AO for fresh decision after giving finding on this aspect. The Id. AR of assessee had no objection to restoring the matter back to the file of AO but Id. DR of revenue submitted that page no. 13 of the paper book was not made available before the AO and it was made available only before the Id. CIT(A). Regarding one more letter dated 17.07.2019 now submitted before us, he submitted that this is a new evidence and it should not be admitted.

4. We have considered the rival submissions and we find that even if we do not admit this letter dated 17.07.2019, we feel it proper to restore the matter back to the file of AO for fresh decision after examining the nature of this difference between the amount of cost of acquisition as per the purchase deed and as per the certificate issued by Telecom Employees' Co-operative Housing Society Ltd. dated 17.01.2017 available on page no. 13 of the paper book. We order accordingly. We set aside the order of Id. CIT(A) and restore the matter back to the file of AO for fresh decision with the direction that the assessee should explain with documentary evidence about the nature of difference between these two amounts i.e. Rs. 11,53,125/- as per this letter

dated 17.01.2017 and Rs. 5,00,794/- as computed by the AO as per para 3.1 of the assessment order. If it is found that extra amount paid by the assessee over and above the amount paid as per purchase deed is on account of acquisition of the same property only, then total consideration paid by the assessee should be considered for the purpose of computing indexed cost of acquisition because if the assessee has violated the law regarding payment of stamp duty, by understating the purchase consideration in the purchase deed, then suitable action can be taken by the relevant authorities for violation of stamp duty law but for that reason alone, in income tax proceedings, cost of acquisition cannot be reduced if assessee is able to establish that actual cost of acquisition of the property in question is Rs. 12,29,982/- as claimed by the assessee. We order accordingly.

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/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 13th September, 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.