

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1003/Bang/2019
Assessment year : 2013-14

Sudhir S Karkal #A-9, Anandashram Housing Co-op Society, 10 <sup>th</sup> Main Road, Malleshwaram, Bengaluru-560 003.  PAN – ABAPK 4695 E.	Vs.	The Asst. Commissioner of Income-tax, Circle-2(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellate by	:	Shri R.E Balasubramanyam, C.A
Respondent by	:	Shri R Premi, JCIT (DR)

Date of hearing	:	23.09.2019
Date of Pronouncement	:	27.09.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 27/3/2019 passed by CIT(A)-II, Bengaluru and it relates to asst. year 2013-14.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the rectification order passed by the AO u/s 154 of the Act.

3. The facts relating to the issue are stated in brief:

The original assessment in the hands of assessee was completed u/s 143(3) of the Act on 21/3/2010 by the AO. The assessee had declared long term capital gain arising on account of entering joint development agreement on 18/9/2012 by the assessee with M/s S.L.N.S Construction for development of land and building belonging to the assessee. As per the agreement, the assessee was given cash of Rs.233 lakhs and two flats with two covered car parking in the residential complex to be built by the developer. While working out Long term capital gains, the assessee took sale consideration of land and building at 317 lakhs. The assessee deducted indexed cost of Rs.40.81 lakhs. The assessee also claimed following exemptions –

- a) Cost of construction of 2 flats u/s 54 - 104 lakhs
- b) Deduction u/s 54 for deposit  
in Capital gains account scheme 60 lakhs
- c) Deduction u/s 54EC of the Act - 50 lakhs

The AO had accepted the long term capital gains as computed by the assessee.

4. Subsequently, the AO noticed that from the Joint development agreement that the estimated cost of construction of two flats allotted to the assessee along with the 2 covered car parking was mentioned as 267 lakhs. As stated earlier, the assessee was also paid Rs.233 lakhs over and above the 2 flats. Accordingly the AO took the view that the Sale consideration accrued to the assessee should be taken as Rs.500 lakhs (Rs.233

lakhs + Rs.267 lakhs). The AO also noticed that the assessee had claimed deduction of Rs.60 lakhs u/s 54F. Since the assessee had been allotted two flats, the AO took the view that deduction claimed by the assessee u/s 54F for Rs.60.00 lakhs is not allowable. Accordingly the AO passed a rectification order u/s 154 of the Act and computed long term capital gain by taking the sale consideration as 500 lakhs and also rejecting the claim of 60 lakhs relating to the amount deposited into Capital gain account scheme, apparently on the reasoning that the assessee is not entitled for deduction u/s 54F of the Act.

5. The assessee filed appeal before the Id CIT(A) challenging the rectification order passed by the AO, but could not succeed. Hence, the assessee has filed this appeal before us.

6. We heard the parties and perused the record. The Id AR submitted that the AO has placed reliance on the recital made in the joint development agreement, as per which the estimated cost of construction of the 2 apartments allotted to the assessee in the proposed building and 2 covered car parking was mentioned as 2.67 crore. He submitted that the construction cost of 2 flats measuring around 3400 sft, by no stretch of imagination, shall work out to 2.67 crores as mentioned in the Joint Development Agreement (JDA). He submitted that the amount so mentioned in the JDA may be a mistake and in any case, it cannot override real facts. The Id AR submitted that the AO has examined the claim of Long term capital gain made by the assessee during the course of original assessment proceedings and hence the AO has passed an

impugned rectification order on mere change of opinion. He submitted that the possibility is that the amount of Rs.2.67 crores mentioned in the Joint development agreement may represent expected market value upon completion of construction and the same would also include the proportionate cost of land. Accordingly he submitted that the AO was not justified in adopting the same as sale consideration of land while working out capital gain, as the same is only an expected future value of flats.

7. The ld AR further submitted that the AO is required to consider actual cost of construction of 2 flats allotted to the assessee. He submitted that the assessee has obtained a valuation report from a registered valuer, as per which the cost of construction works out to Rs.68.78 lakhs only. He submitted that the assessee has moved an application under Rule 29 of the Income-tax Rules for admitting the valuation report as additional evidence. Accordingly he submitted that the valuation mentioned in the valuation report was less than value adopted by the assessee for working out the sale consideration of the land and hence there is no mistake in the amount of long term capital gain declared by the assessee.

8. With regard to the rejection of claim of Rs.60.00 lakhs, the ld AR submitted that the assessee has not claimed deduction u/s 54F of the Act as presumed by the AO. The deposit made in the capital gain amounts scheme was also claimed u/s 54 of the Act only. Accordingly he submitted that the AO was not right in law in

rejecting the claim of Rs.60.00 lakhs claimed by the assessee u/s 54 of the Act.

9. The ld DR, on the contrary, submitted that the Joint development agreement entered by the assessee with the builder mentions the cost of construction of the two flats allotted to the assessee as Rs.2.67 crores. She submitted that the agreement entered between the parties has more evidentiary value. Accordingly she submitted that the tax authorities were justified in adopting the same for computing the long term capital gain. In the alternative, the ld DR submitted that the cost of construction of flats could be ascertained from the builder, which could be adopted for computing the sale consideration. Accordingly she submitted that, for the limited purpose of ascertaining the cost of construction of two flats and two covered car parking, the matter may be restored to the file of AO, since the assessee is disputing the value mentioned in the joint development agreement.

10. We heard the rival contentions and perused the record. There is no dispute with regard to the fact that there is a mistake apparent from the record with regard to adoption of sale value of consideration of the land arising on account of entering into joint development agreement. The only dispute is with regard to the value to be adopted in respect of 2 flats and 2 covered car parking allotted to the assessee in the proposed building. It is the contention of the assessee that the value of 2.67 crore mentioned in the joint development agreement was the expected market value of the flat including the value of proportionate land attached to the

flats. There is no dispute between the parties that the cost of construction of the two flats and value of two covered car parking can be taken as part of sale consideration. Hence the dispute boils down to the valuation of two flats and two covered car parking.

11. The assessee has furnished the valuation report obtained from a registered value, while the Id DR submits that the cost of construction incurred by the builder can be adopted for determining the sale consideration of land/building for development. We also find merit in the contentions of the assessee that the cost of construction of two flats along with two covered car parking could not be Rs.267 crores. In our view, the manner of ascertaining the cost of construction should be left to the wisdom of the assessing officer. Accordingly, we are of the view that this issue needs to be examined at the end of the AO. Accordingly we set aside the order passed by the Id CIT(A) on this issue and restore the same to the AO for determining the value of cost of construction.

12. The Ld A.R submitted that the value of two flats and two covered car parking as determined by the AO should be allowed as deduction u/s 54 of the Act, since the same would represent the value of new flats constructed by the assessee for the purposes of sec.54 of the Act. We direct the AO to examine this claim of the assessee also.

13. With regard to the rejection of claim of Rs.60 lakhs claimed by the assessee, we notice from the return of income filed by the assessee the same has been claimed u/s 54 of the Act only.

Accordingly, we restore this issue also the file of AO with the direction to examine this issue afresh by examining the return of income filed by the assessee

14. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

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

Order pronounced in the Open Court on **27<sup>th</sup> September, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 27<sup>th</sup> September, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
8. Dictation note enclosed .....
8. Date on which the file goes to the Bench Clerk .....
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk .....
11. The date on which the file goes to the Assistant Registrar for signature on the order .....
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....