

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2345/Bang/2018
Assessment Year : 2012-13

Shri Vijay Kumar, Prop: M/s. Sigma Bar, “Vijayalaxmi” Aloor Road, Manipal – 576 104. PAN: AEBPK3811J	Vs.	The Income-tax Officer, Ward – 3, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Soumya K, Advocate
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	24.09.2019
Date of Pronouncement	:	11.10.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A), Mangaluru dated 29.06.2018 for Assessment Year 2012-13.

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

“1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax(A) erred in upholding the order of the Assessing Officer.

2. The learned Commissioner (A) erred in upholding the disallowance of Rs.12,14,671 by not considering the fact that the property sold was an agricultural property.

3. The learned Commissioner (A) erred in confirming the order of the AO by not appreciating the fact that the immovable property sold by the appellant was an agricultural property situated beyond the distance of eight KMs from the local limits of the municipality and hence it does not fall within the definition of 'capital asset'.

4. The learned Commissioner (A) grossly erred in confirming the order of the AO by not considering the material evidences submitted by the

appellant to prove that the land was always used for agricultural purposes only.

5. The learned Commissioner (A) erred in passing the order in the manner he did by merely distinguishing the judgment of ACIT vs. M.R.Anandram (HUF) (ITA Nos.1169-1172/Bang/2015) but not considering the other evidences placed by the appellant to prove that the land was used for agricultural purposes only.

6. Without prejudice, the disallowance is excessive, arbitrary and unreasonable and liable to be deleted in toto.

7. The learned Commissioner (A) erred in confirming the interest u/s.234D of the Act.

8. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.”

3. In course of hearing before the Tribunal, it was submitted by Id. AR of assessee that ground nos. 4, 5 and 6 are not pressed and accordingly these three grounds are rejected as not pressed. Thereafter she submitted that the only issue in dispute is regarding this as to whether the land sold in the present case is agricultural land or not. She pointed out that as per the assessment order, it is noted by the AO that three properties were sold by the assessee in the present year. The AO has noted that Property No. 1 is an agricultural property held jointly by the assessee with his wife Smt. Jayalaxmi measuring 1 acre of land sold for a consideration of Rs. 1.90 Lakhs against the market value of Rs. 3.50 Lakhs on 17.11.2011.
4. The second property noted by the AO on the same page of the assessment order is also an agricultural property held jointly by the assessee and his wife measuring 5.5 acres of land sold on 12.09.2011 for a sale consideration of Rs. 4.90 Lakhs against the market value of Rs. 16.50 Lakhs.
5. He further pointed out that it is also noted by the AO on page no. 3 of the assessment order that Property No. 3 was a non-agricultural property (commercial) held jointly by the assessee and his wife measuring 1 acre of land sold on 12.09.2011 for a sale consideration of Rs. 25 Lakhs against the market value of Rs. 25.75 Lakhs. Regarding the third property also, it was the claim of the assessee before the AO that this property was although

converted into non-agricultural property on 21.03.1987 but still the assessee was using it for agricultural purpose only and deriving agricultural income. On the basis of these arguments, this was the claim of the assessee before the AO that all the three properties should be considered as agricultural property and hence, there should not be any capital gain on sale of these properties. But the AO was not satisfied and he held that the third property of one acre land is non-agricultural property and profit on sale of this property is liable to capital gain tax and he computed the long term capital gain regarding sale of this property at Rs. 12,14,671/-. She placed reliance on the Tribunal order rendered in the case of Shri M.R. Seetharam Vs. ACIT in ITA No. 1654/Bang/2012 dated 13.06.2014. She submitted a copy of this Tribunal order and pointed out that as per this Tribunal order, it was held that although the land in question was converted into non-agricultural purposes, cultivation of the land for agricultural purpose till the date of sale was continued unabated and as such, the land should have been treated as agricultural land and thus exempt from capital gains in view of section 2(14) of the IT Act as per para 7.3.10 of this Tribunal order.

6. As against this, the Id. DR of revenue supported the order of Id. CIT(A). He also submitted that the matter may be restored back to the AO for fresh decision after examining this factual claim that even after conversion of the land in question into non-agricultural land, agricultural operations were continued on that portion of that land also because this is the claim of the assessee that all the three lands in question were in a common bigger plot.
7. We have considered the rival submissions. We find that on page no. 9 of his order, it is noted by Id. CIT(A) that this is admitted by assessee that one acre of non-agricultural land was on the roadside with frontage and better access. He has also noted that only the non-agricultural lands will fetch such high rates of Rs. 25 Lakhs per acre and the rate for agricultural land was Rs. 1.05 Lakh per acre in the same survey number. On this aspect, it was submitted by Id. AR of assessee before us that sale was finalized for entire land at same rate but the different amount was apportioned among agricultural and non-agricultural land because of these factors that this one acre land was on the

roadside with frontage and better access but the nature of all the three lands were same i.e. agricultural land although this one land of one acre was converted into non-agricultural purpose but still continued to be used as agricultural land. On pages 51 and 51A of the paper book, the assessee has submitted copy of certificate of distance and copy of RTC to prove main crops cultivated for the Financial Year 2009-10 but these pages are in Kannada language and English translation has not been brought on record and there is no finding of any of the authorities below on this aspect as to whether actually agricultural operation was carried out in this part of land which is one acre which was converted into non-agricultural land. Hence I feel it proper to restore the matter back to the file of Id. CIT(A) for fresh decision after examining this factual aspect as to whether actually agricultural operation was carried out in this piece of land in the relevant period and thereafter to apply the Tribunal order rendered in the case of Shri M.R. Seetharam Vs. ACIT (supra) and decide the issue as per law after providing adequate opportunity of being heard to both sides.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th October, 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.