

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

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| ITA No. 2933/Bang/2018 |
| Assessment Year : 2010-11 |

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| Shri Ashok Kumar Sharma, # 18D, Vega Towers, Tata Aquilla Heights, HMT Main Road, Peenya, Bangalore – 560 094. PAN: AAHPS9746E | Vs. | The Income Tax Officer, Ward – 5 (3) (4), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri B. Veeresh, CA |
| Revenue by | : | Shri Ganesh R Ghale, Standing Counsel for Dept. |

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| Date of hearing | : | 22.10.2019 |
| Date of Pronouncement | : | 15.11.2019 |

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)-5, Bangalore dated 01.05.2018 for Assessment Year 2010-11.

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

“1. The orders of the Assessing Officer and CIT (Appeals) in so far against the appellant are opposed to law, weight of evidence, all probability of justice and order to be bad and liable to be cancelled.

2. The CIT(A) has erred in confirming the long term capital gains computed by the Assessing Officer and levied tax on such long term capital gains without considering the investment made by the appellant for purchase of residential house property at No. 18D, on the 18th Floor in the Building named Vega in Aquila Height Complex, HMT Main Road, Peenya, Bengaluru.

3. The CIT(A) has erred in confirming the action of the Assessing Officer in levy of tax on long term capital gains as the same is against the law as the appellant is eligible to claim deduction u/s. 54F of the Income Tax Act, 1961 and the required details were submitted before

the Assessing Officer before passing the Assessment Order.

4. The CIT(A) has erred in confirming the order of the Assessing Officer even though the Assessing Officer passed assessment order after filing written submissions along with documentary evidences of having invested the entire sale consideration in residential house property.

5. The CIT(A) has erred in not appreciating the fact that the Assessing Officer has passed assessment order without considering written submissions filed by the appellant.

6. The appellant craves leave of the Hon'ble Bench to alter, amend or filing any additional grounds of appeal during the course of hearing of the appeal.

7. In view of the above mentioned grounds of appeal and any additional grounds of appeal, if filed during the course of hearing of the appeal, the Hon'ble Bench is kindly prayed to set aside the orders of the lower authorities or may grant any other relief as deemed fit by the Hon'ble Bench.”

3. It was submitted by Id. AR of assessee that the impugned order of Id. CIT(A) is ex-parte qua the assessee. He also submitted that as per para no. 5 of the order of Id. CIT(A), only one notice was issued by Id. CIT(A) on 13.04.2018 fixing the date of hearing on 20.04.2018. He submitted that this is true that on this date, none could appear before Id. CIT(A) but he submitted that fixing one date of hearing cannot be considered as providing sufficient opportunities of hearing. He submitted that in the interest of justice, the matter may be restored back to the file of Id. CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee. The Id. DR of revenue supported the order of Id. CIT(A).
4. I have considered the rival submissions and in view of the facts noted above it is have seen that only one notice was issued and hence, I feel it proper to set aside the order of Id. CIT(A) and restore the matter back to his file for fresh decision. I order accordingly. The order of Id. CIT(A) is set aside and the matter is restored back to the file of Id. CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.

5. In the result, the appeal filed by the assessee stands 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 15th November, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.