

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.2018(Bang)/2019  
(Assessment years : 2014-15)**

Shri Satish K.C. (Legal heir of late Smt Lingamma)  
25, H M Doddi Main Road,  
Kanakpura,  
Ramnagar District  
Pan No.AKQPL3363F

Appellant

**Vs**

The Income Tax Officer,  
Ward-1(1),  
Ramnagar

Respondent

**Appellant by : Shri Mukesh Jain, CA  
Revenue by : Shri Kumar Ajeet, Addl. CIT**

**Date of hearing : 04-11-2019  
Date of pronouncement : 21-11-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

Present appeal has been filed by assessee, against order dated 31/07/19 passed by Ld. CIT (A)-3, Bengaluru for assessment year 2014-15 on following grounds of appeal:

*"1.The Learned CIT(Appeals)-3,Bengaluru has erred in passing the order in the manner passed by him. The order being bad in law, is not in accordance with the provisions of Income Tax Act, 1961 and is liable to be quashed.*

2.The Learned CIT(Appeals)-3,Bengaluru has erred in appreciating the correct facts of the case and in applying correct law to the facts and circumstances of the case.

3.The Learned CIT(Appeals)-3,Bengaluru has not given assessee a reasonable opportunity of being heard.

4.The Learned CIT(Appeals)-3,Bengaluru instead of appreciating the facts of the case, was fixated on the financial position of the assessee.

5.The Learned CIT (Appeals)-3 Bengaluru has not referred the matter to DVO.

6.The Learned CIT (Appeals)-3 Bengaluru has not adjudicated the grounds raised regarding section 159

7.The Learned CIT(Appeals)-3,Bengaluru has dismissed the appeal by considering the precedent which was not relevant in the given case and dismissed the appeal by ignoring precedent relied by the appellant, which was relevant in the given case.

8.The Appellant reserves the right to submit additional Grounds of Appeal before this Appellate Authority at any time of hearing the case before the passing of the final order.

9.In view of the above and on other grounds to be adduced at time of hearing, It is requested that the impugned order be

i. Quashed.

ii.Any other relief that the authorities deem fit in the facts and circumstances of the case to meet the end of justice.

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

Assessee an individual deriving income from other sources. Ld. AO observed from details filed that assessee had sold certain plot of

land for consideration of Rs.1,64,24,000/- against Rs.19,00,000/- as declared in sale deed. It was also observed that assessee had not filed regular return of income for year under consideration, though she was liable for long term capital gain tax. Ld.AO was of the opinion, that there was escapement of income arising out of sale of properties. On the basis of information of financial transactions, assessment for year under consideration was reopened, and accordingly notices were issued to assessee requesting to submit copy of return of income filed for year under consideration. Ld.AO also called for various details in support of various claims of assessee. On the basis of details filed, Ld.AO observed that assessee claimed cost of conversion and leveling charges amounting to Rs.21,87,699/- during year 1999-2000, intimations were issued to assessee for which there was no compliance.

2.1 Subsequently, assessee's son Sh.Sathish appeared before Ld.AO and informed that assessee expired on 07/04/18 and submitted copy of return of income filed on 07/12/17 by deceased assessee wherein total income was declared amounting to Rs.31,42,800/-. It has been observed by Ld.AO in para-4 of assessment order that information was sought from Canara Bank where deceased assessee held an account in respect of person to whom remaining proceeds of bank account and deposits if any, were given. In response to the information sought by Ld.AO, Canara bank replied that all the proceeds of Rs.2,18,630/- was settled in favour of Sh. Satheesh KC after obtaining letter of authority duly signed by all children of deceased assessee.

Accordingly, notice under section 143 (2) and 142 (1) along with questionnaire was issued to Sh. Satheesh K.C., being, legal heir of Late Lingamma( being deceased assessee).

2.2. The assessment was thereafter, completed by making addition of Rs.1,59,30,722/- as long term capital gains. Ld.AO while computing long term capital gain adopted value as per guidance value, on which stamp duty was paid. Also that since assessee produced proof in respect of Rs. 1,30,645/-being cost of conversion paid to State Government, the same was treated as cost of improvement for purposes of computation of LTCG.

3. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld. CIT (A) who upheld the same. Ld.CIT rejected claim of assessee of referring matter to DVO, as assessee had not exercised his right under law to do so. Insofar as the claim in respect of cost of improvement was concerned, the Ld. CIT(A) recorded that as there was no documentary evidence in respect of amount spent Rs.1.00 lakh per day for 20 days the same was disallowed.

4. Aggrieved by order of Ld.CIT (A) assessee is in appeal before us. Assessee has filed revised grounds of appeal which has been reproduced hereinabove.

**5. Ground No.1:**

Ld.AR submitted that assessee late Lingamma, expired on 07/04/18, copy of death certificate is placed at page 48 of paper book. It has been submitted that assessee was issued notice under section 148 on 18/04/17, 17/07/17, 16/08/17, 05/09/17 prior to her demise and thereafter on 07/12/17 assessee filed her return in response to notice under section 148 which is placed at page 34-47 of paper book.

5.1 Ld.AR argued that order passed by Ld.CIT (A) is bad in law, as no notice was issued to other legal heirs of assessee at the time of assessment proceedings. Placing reliance on decision of *Hon'ble Supreme Court* in case of *Tirtha Lal Dey Vs.Srimati Bhusan Moyee Dasi And Ors.* reported in (1949) FCR 396, in support of his argument that Ld.AO should have issued notice to all the legal heirs of deceased assessee at the time of assessment proceedings.

6. Per contra, Ld.Sr.DR referred to para-4 and 5 of assessment order wherein, bank manager informed Assessing Officer regarding letter of authority duly signed by all children of late assessee in favour of Shri. Satheesh KC in respect of claim of deposits. He further submitted that assessee also did not inform Ld.AO during the assessment proceedings, regarding details of other legal heirs of deceased assessee. He thus submitted that assessment order therefore could not be held bad in law, as deceased assessee was represented by her son Sh. Satheesh K.C without any objection and assessment order has been passed in name of Shri Satheesh K.C, being legal heir of deceased assessee.

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

7.1 We have also perused decision relied upon by Ld.AR of *Hon'ble Supreme Court (supra)*. On a careful perusal of the same, there are certain factual observations that have been recorded by *Hon'ble Supreme Court* which needs to be reiterated. It was a case of partition of HUF property upon demise of Karta leaving behind his wife and sons before *Hon'ble Supreme Court*. Thereafter, eldest son subsequently became Karta of HUF of his father and represented estate of HUF before arbitrator for partition. *Hon'ble Supreme Court*

under such circumstances held that, son being next Karta had existing interest, he was representing family including his mother.

7.2. Ld.AR placed reliance upon page 28 of paper book being notice issued by Ld.Pr.CIT dated 15/07/16 addressed to assessee, her husband and Sivakumar Kom Chikkamudde Gowda . He submitted that revenue was aware about legal heirs. However, notice was issued only in the name of one being Shri. Satheesh K.C.

8. We have perused said notice dated 15/07/16 placed at page 28. For the first time before us, Ld.AR filed details of legal heirs of deceased assessee. Further, it is observed that name of Sri.Satheesh K.C. is not mentioned in said notice, therefore, it is unable to accept submission of Ld.AR that details of all legal heirs of deceased assessee are mentioned in notice dated 15/07/16 placed at page 28 issued by Ld.Pr.CIT.

8.1 It is only in reply placed at page 65 of paper book addressed to this *Tribunal* that order passed by Ld.CIT (A), Bangalore having passed only in the name of Shri. Satheesh K.C has been alleged to be bad in law and at page 67, details of legal heirs have been placed, wherein deceased assessee left behind, husband Mr.Chikkamudde Gowda, Elder Son Mr Sivakumar, daughters Mrs.Sumitra and Mrs.Jyoyhi and youngest Son Mr Satheesh KC himself. Ld.AR has not placed before us, sale agreement which has given rise to alleged capital gain in hands of deceased assessee. Going by notice at page 28 of paper book issued by Pr.CIT intimating information available regarding sale of property which has not been disclosed by deceased assessee, and names to whom notice was addressed, it is observed that even Department was not having complete details of all legal heirs. In fact, when notices were

issued, assessee was alive, as it is a matter of record that assessee demised on 07-04-2018 which was informed by Shri Satheesh,K.C. to Ld.AO during re-assessment proceedings.

8.3 In the facts of present case, it is observed that before Assessing Officer, Shri Satheesh,K.C did not object for non inclusion of other legal heirs, and that he participated in assessment proceedings. Further it is observed that, it is upon his representation before Ld. AO after demise of his mother that notice under section 143(2) and 142(1) was issued in the name of Shri. Satheesh K.C as legal heir of deceased assessee. He did not object to letter of authority signed by legal heirs in his favour, which was submitted before bank and was brought to notice of Ld.AO by bank authorities. Assessee also did not file details of other legal hairs before Ld.AO, or before Ld.CIT (A). It is thus, observed that Ld.AO therefore, acted in bona fides and considered Shri. Satheesh K.C to be representative of deceased assessee acting on behalf of other legal heirs. From paper book, it is observed that department issued notice under section 143(2) and 142(1) dated 26/09/18 calling for various details to Shri. Satheesh K.C in connection to returns filed by deceased assessee. In response to notice issued under section 148 of the Act, at page 55 Shri. Satheesh K.C responded to such notices. Assessee further filed reply to Ld.AO vide letter dated 30/10/18 in vernacular language placed at page 57-48 of paper book. Thereafter, reply has been filed by a chartered accountant dated 23<sup>rd</sup> of July 2019 before Ld.CIT (A), wherein no prayer regarding assessment regard assessment being bad in law due to non-issuance of notice to other legal hairs has been alleged.

8.4 Ld.AR in the paper book filed placed decision of *Hon'ble Bombay High Court* in case of *Chaturbhuj and Others vs Recovery Officer and Anr.* reported in (1993) 199 ITR 739. On perusal of this decision, it is observed that *Hon'ble Bombay High Court* while deciding the case referred to decision of *Hon'ble Supreme Court* in case of *First Addl.ITO vs Mrs Suseela Sadanand*, wherein *Hon'ble Supreme Court* observed as under:

*“The result is that if a person dies executing well appointed more than one executed or dyes interstate leaving behind more than one heir, the income tax officer shall proceed to assess the total income of the deceased against all the executors all the legal representatives, as the case may be.”*

However, *Hon'ble Supreme Court* therein expressed certain exceptions as under:

*“ (1) there may be cases where, though there are several legal representatives, one may represent the whole interest of the deceased and in such a case when there is complete representation of the interest of the deceased before the income tax officer, the assessment made would bind the estate of the deceased.*

*(2) there can be case where, though one legal Representative is served, he appears in the proceedings with the consent, express or implied, of the other legal representatives. In such cases also, the assessment would bind the estate.*

*(3) there can be a category of cases where the income tax officer bona fides and diligently believes one or more persons to be the only legal representative of the deceased and initiates proceedings by serving notices on them and subsequently it is found that besides those served there were other legal representatives also of the deceased. There is no reason, in such cases, by the general rule as involved in the field of civil law and well anyone seated in case of *Daya Ram vs Shyam Sundary, 1954* should not be applied.”*

9. Coming to facts of present case, as narrated hereinabove, clearly depicts that Ld.AO was under bona fides belief of Shri. Satheesh K.C to be illegal heir of deceased assessee which has not been objected by Shri. Satheesh K.C.

9.1 None of the decisions, relied upon by Ld.AR filed in paper book deals with the issue of such peculiar facts as in the case before us. The proposition that Ld.AR trying to impress upon us to redirect Ld.AO to issue notices to remaining legal representatives of assessee and to re-assess escaped income once again is not acceptable for the simple reason that re-assessment of escaped income cannot be made again when one order of assessment is in existence. More so, when the bar of limitation would also come in the way of revenue.

9.2 Further, we are of the view, that present case clearly falls under exemptions carved out by *Hon'ble Supreme Court* relied on by Ld.AR reproduced hereinabove.

Thus, we do not find any force in legal plea advanced by Ld.AR and this ground and ground No. 7 (i) stands dismissed.

**Ground No. 2, 5, 6** are general in nature and therefore do not require any adjudication.

**Ground No. 3** is in respect of fixing value of property as per stamp duty paid as per section 50 C of the Act.

10. Ld.AR submitted that Ld.AO considered sale value of property to be Rs.1,64,24,000/- against Rs.90,00,000/- received by assessee for purpose of computing capital gains. He submitted that Ld.AO invoked provisions of section 50C and considered deemed sale consideration received to be Rs.1,64,24,000/-.

It has been submitted that Assessing Officer did not refer case to DVO and therefore, price so adopted by Ld.AO was not correct.

11. On the contrary, Ld. DR submitted that assessee has never disputed stamp duty value adopted by Assessing Officer during assessment proceedings and therefore, there was no need to refer the case to DVO. He thus supported order passed by authorities below.

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

It has been submitted that actual value received by assessee was Rs.19,00,000/- as against Rs.1,64,24,000/- on which stamp duty was paid. It is difficult to accept position that assessee accepted for the price being fixed by Ld.AO to be the price as considered by Sub Registrar for purposes of stamp duty. In our view, Assessing Officer in all fairness should have referred the case to valuation officer to avoid any miscarriage of Justice. Assuming that assessee was not well instructed in law, Assessing Officer still should have

discharged function as a bounden duty to act fairly by referring the case to DVO.

We accordingly set aside this issue back to Ld.AO and direct Assessing Officer to refer the case to DVO as per law and upon receipt of such valuation from DVO, the assessment shall be made *de-novo* in accordance with the law.

**Accordingly, this ground and ground No. 7 (ii) raised by assessee stands allowed for statistical purposes.**

12. **Ground No. 4** has been raised by assessee in respect of addition of Rs.26,20,329/-.

It has been submitted that this ground is raised in view of addition confirmed by Assessing Officer disallowing cost of improvement claimed by assessee while computing capital gains.

12.1 We have perused submissions and ground raised in light of observations of Ld. CIT (A). We are unable to understand manner in which the ground is raised.

Disallowance made by Ld.AO against cost of improvement was Rs.21,87,699/-, and Ld.CIT(A) observed that assessee had not produced any details regarding cost of improvement which she had claimed towards land leveling and fencing charges paid to labourers and for JCB amounting to Rs. 1 lakh per day for 20 days. Though, this ground does not actually narrates to be the same however, considering the fact that we have set aside this issue to Ld.AO for referring to DVO, Ld.AO is directed to look into the aspect of cost of improvement alleged to be incurred by assessee. In the event, assessee is able to establish by way of some evidence of the cost having incurred to the extent claimed, the same shall be considered as per law.

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

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

Order pronounced in open court on 21-11-2019

Sd/-  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

Dated: 21-11-2019

**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

Asst. Registrar