

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.1095/Bang/2018
Assessment year: 2007-08

Shri S. Venkatarama Reddy, Avalahalli Selvel Lines, Anjanapura Post, Off Kanakapura Road, Bengaluru – 560 062. <b>PAN: AASPR 0617A</b>	Vs.	The Additional Commissioner of Income Tax, Range 9, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S. Prashanth, CA
Respondent by	:	Shri Manjeet Singh, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.08.2020
Date of Pronouncement	:	12.08.2020

**ORDER**

*Per N.V. Vasudevan, Vice President*

This appeal by the assessee is against the order dated 06.02.2018 of the CIT(Appeals)-3, Bengaluru relating to assessment year 2007-08.

2. The only dispute in this appeal is with regard to correctness of computation of long term capital gain on sale of 4 sites by the assessee during the relevant previous year.

3. The assessee is an individual. During the relevant previous year the assessee sold 4 sites measuring 9600 sq.ft. @ Rs.700/sq.ft for a total consideration of RS.67,20,000. The computation of long term capital gain

on sale of the aforesaid site by the assessee in the return of income was as follows:-

Site No.	Size	Amount (Rs.)	
337	2400 sft		
338	2400 sft		
323	2400 sft		
324	2400 sft		
	<b>9600 sft x 700</b>	6720000	
LESS: Land Cost & Development charges @ 300 per sft x 9600		2880000	3840000

4. The AO, however, adopted the cost of acquisition @ 180 / sft and made the addition of Rs.11,52,000 to the income under the head 'long term capital gain'. The following were the relevant observations of the AO:-

'During the year, the assessee sold 4 sites measuring 9,600 Sq ft @ Rs. 700/- per Sq ft. and realized Rs, 67,20,000/-. Further the assessee deducted land cost and development charges @ Rs,300/- per Sq ft. During the year relevant to the AY 2006-07, the department had accepted the land cost and development charges at Rs. 152/- per Sq ft. This year, on interrogation, the assessee has accepted to adopt the cost of land at Rs. 180/- per Sq ft due to cost inflation. Accordingly, the income from sale of site is worked out as under;

Sale of Site	Rs. 67,20,000/-
Less: Land cost as stated above @ Rs. 180/- per Sq ft for 9,600 Sft	<u>Rs. 17,28 000/-</u>
Profit on sale of land	Rs. 49,92,000/-
Less: Declared as per R/I	<u>Rs. 38,40,000</u>
Difference	<u>Rs.11.52,0000</u>

5. Aggrieved, the assessee filed an appeal before the CIT(Appeals). One on the specific grounds before the CIT(A) was that the AO in adopting the cost of acquisition of the site @ 180/sft. has followed the computation in AY 2006-07 and doing so was erroneous. The CIT(Appeals), however,

confirmed the order of the AO for the reason that in a hearing on 17.12.2009, the AR of the assessee when confronted by the AO with the fact that in AY 2006-07 cost of acquisition for identical property was adopted at Rs.152/sft. Accepted to adopt Rs.180/sft in AY 2007-08.

6. Aggrieved by the aforesaid order of CIT(Appeals), the assessee has filed the present appeal before the Tribunal.

7. Apart from the general grounds, in ground No.5 the assessee has specifically raised a plea that the cost of acquisition of the property at Rs.180/sft. on the basis of agreement by the AR is not valid in law.

8. We have heard the rival submissions. From a perusal of the computation of long term capital gain filed by the assessee in the return of income, it is clear that he has not given the basis on which the cost of Rs.300/sft. has been adopted as cost of acquisition. From the submissions made before the Tribunal, it appears that the sites that were sold were properties belonging to a HUF and were acquired prior to 1.4.1981. The assessee is entitled to adopt fair market value as on 1.4.1981 as cost of acquisition for the purpose of computing the long term capital gain. Under section 48 of the Act, the capital gain is computed by reducing from the full value of consideration received or accruing as a result of transfer of capital asset, the following two sums viz., (i) expenditure incurred fully and exclusively in connection with such transfer; & (ii) cost of acquisition and cost of any improvement thereto. Section 49 describes the cost with reference to different modes of acquisition of property. Besides, the assessee is also entitled to benefit of indexation towards cost of acquisition and cost of improvement. When a methodology is prescribed under the Act for computing the capital gain, then the capital gain has to be computed in that manner. Neither the assessee nor the AO have given any basis for the computation of capital gain with reference to provisions of sections 48 & 49

of the Act relating to cost of acquisition & improvement and indexed cost of acquisition & improvement. We are therefore of the view that it would be just and appropriate to set aside the order of CIT(Appeals) on the issue of determination of cost of acquisition and cost of improvement and remand the issue to the AO for fresh consideration. The assessee is directed to furnish the computation of long term capital gain in the set aside proceedings before the AO and the AO is directed to compute the long term capital gain on the basis of such computation in accordance with the law and after affording the assessee opportunity of being heard.

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

Pronounced in the open court on this 12<sup>th</sup> day of August, 2020.

Sd/-  
( B R BASKARAN )  
ACCOUNTANT MEMBER

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 12<sup>th</sup> August, 2020.

*/Desai S Murthy/*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.