

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 322/Bang/2019
Assessment Year : 2009 – 10

Smt. Kausalya Madangopal, No. 39, Linden Street, Austin Town, Bangalore - 560047 PAN : BHKPM3338N	vs.	ITO, Ward – 7 (2) (3), Bangalore
APPELLANT		RESPONDENT

ITA No. 427/Bang/2016
Assessment Year : 2009 – 10

Shri V. M. Harikrishna, No. 39, Linden Street, Austin Town, Bangalore - 560047 PAN: AALPH0512P	vs.	ITO, Ward – 9 (1), Bangalore
APPELLANT		RESPONDENT
Assessee by	:	Shree H. Guruswamy, ITP
Revenue by	:	Shri M. K. Biju, Addl. CIT DR
Date of Hearing	:	06.01.2020
Date of Pronouncement	:	07.02.2020

ORDER

PER SHRI A.K. GARODIA, AM:

Both these appeals are filed by the two different but connected assesses. These two assesses are mother and son and joint owner of the property, capital gain on the sale of which is in dispute. These appeals are directed against two separate orders of CIT(A) – 7 Bengaluru dated 07.12.2018 in the case of the mother and dated 05.01.2016 in the case of the son. Both appeals were heard

together and are being disposed of by way of this combined order for the sake of convenience.

2. Although several grounds are raised in both these appeals but in course of hearing, learned AR of the assessee advance arguments only regarding Ground No. 3 in ITA No. 322/B/2019 and Ground No. 5 in ITA No. 427/B/2016 as per which, this is the claim of the assessee that Provisions of Section 50C of the Act should be applied by adopting the circle rate on the date of Sale Agreement executed on 07.08.1995 and not on the date of sale deed executed on 30.08.2008 as done by the AO.

3. In course of hearing, reliance was placed on the tribunal order rendered in the case of Bharathi Dev Anandani vs. ACIT in ITA No. 882/Bang/2014 dated 12.02.2016 copy available on pages 91 to 96 of the paper book and our attention was drawn to para 7 of this tribunal order and he pointed out that as per this para, the tribunal followed the tribunal order rendered in the case of Lahiri Promoters vs. ACIT in ITA No. 12/Vizag/2009 dated 22.06.2010 and also followed the judgment of Hon'ble apex court rendered in the case of K. P. Varghese vs. ITO, 131 ITR 597 and the judgment of Hon'ble Madras High Court rendered in the case of K. R. Palani Swamy vs. Union of India, 2008 TMI 30601 dated 05.08.2008 and held that since the process of sale has been initiated from the date of sale agreement, the applicability of the provisions of section 50C should be looked at only on the date of sale agreement. He also placed reliance on a recent tribunal order rendered in the case of M/s Universal Power Transformer Pvt. Ltd. Vs. DCIT in ITA No. 2511/Bang/2018 dated 31.07.2019 and submitted a copy of this tribunal order. He drawn our attention to Para 15 of this tribunal order and pointed out that in this para, the tribunal has followed the same judgment of Hon'ble apex court rendered in the case of K. P. Varghese vs. ITO (Supra) and held that if sale consideration has been received by the seller assessee in full or in part before the date of the sale deed by way of account payee cheque or bank draft, the assessee deserves benefit as per law and for the limited purpose of examining this factual aspect that sale consideration was received in full or in part by way of account payee cheque or bank draft before the date of the sale deed, the matter was restored to AO because no material was available before the tribunl on this factual

aspect. He submitted that in the present case, sale agreement dated 07.08.1995 is available on pages 8 to 18 of the paper book and as per clause 3 of this agreement on page 13 of the paper book, an amount of Rs. 7.03 Lacs was paid by two Cheques No. 100219 dated 08.03.1995 Rs. 5.53 Lacs and Cheque No. 109958 dated 14.07.1995 Rs. 1.50 Lacs. He also submitted that on page 47 of the paper book is the confirmation of the buyer as per which, he paid Rs. 5.53 Lacs by Cheque No. 100219 dated 08.03.1995, Rs. 1.50 Lacs by Cheque No. 109958 dated 14.07.1995, Rs. 4 Lacs by Cheque No. 299653 dated and Rs. 3.50 Lacs by Cheque No. 2996565 dated 19.08.1996. He submitted that since, these evidences are available, the matter need not be remanded to AO and it should be decided here only. Learned DR of the revenue supported the order of CIT (A).

4. We have considered the rival submission. We find that there is no dispute on these facts that Agreement of sale was entered on 12.08.1995 because this fact is noted by CIT (A) also in Para 5.3 of his order dated 05.01.2016 in the case of Shri V. M. Harikrishna. In the same para of his order, this is also noted by CIT (A) that against the agreed sale consideration of Rs. 15 lacs for 1/3rd share, total value Rs. 45 lacs, an amount of Rs. 7.03. Lacs was received as advance and the details of this amount of Rs. 7.03 lacs is available in the said Agreement of sale as noted above. In the light of these facts, when we examine the applicability of these two tribunal orders cited by the learned AR of the assessee having been rendered in the case of Bharathi Dev Anandani vs. ACIT (Supra) and in the case of M/s Universal Power Transformer Pvt. Ltd. Vs. DCIT (Supra), we find that these are squarely applicable and since the evidence about receipt of part sales consideration by way of Account Payee Cheques before the date of sale deed is also available in the present case as discussed above, we do not feel any necessity to remand the matter to AO. Respectfully following these tribunal orders, we hold that the Stamp Duty Value as on the date of sale agreement on 07.08.1995 should be adopted to work out capital gain u/s 50C in both these cases as against the stamp Duty Value as on date of the sale deed as adopted by the AO. This issue is decided in favour of the assessee. Since, no argument

was made regarding any other ground, it is inferred that those grounds are not pressed and rejected accordingly.

5. In the result, both appeals are partly allowed in the terms indicated above.

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

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated, the 07th February, 2020.

/NS/

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

Sd/-

(ARUN KUMAR GARODIA)

Accountant Member

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.