

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE
BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2876/BANG/2018
Assessment Year : 2005 - 06

Dayashankar Sanwal Jhunjhunwala, No.2537, 2 nd C Cross, 15 th Main, HAL 2 nd Stage, Indiranagar, Bengaluru-560 029.	Vs.	The Income Tax Officer, Ward-7(2)(3), Bengaluru.
PAN - AAOPJ 1490 P		
APPELLANT		RESPONDENT

Appellant by	:	Shri H.N Khincha, C.A
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of Hearing	:	03-11-2020
Date of Pronouncement	:	27-11-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 17/09/2018 passed by Ld.CIT(A)-7, Bangalore for assessment year 2005-06 on following grounds of appeal:

"The learned assessing officer had erred in passing the order in the manner passed by her and the Commissioner of Income tax (Appeals) has erred in confirming the same. The 7 impugned orders as passed are bad in law and are liable to be quashed.

2.1. In any case and without prejudice, the authorities below have erred in holding that capital gains on sale of property had accrued to the appellant

during the previous year, the year under appeal and actual taxing the capital gain for the year under appeal.

2.2. The transfer of capital asset (transfer of property) never took place in the previous year relevant to Assessment Year 2005-06 and therefore taxing of the capital gains as income for Assessment Year 2005-06 is bad in law and on facts and is to be deleted.

2.3. The assessment of capital gains for the year being wholly erroneous is to be deleted in entirety.

3. In any case the learned Assessing officer had erred in

a) invoking the provisions of section SOC of the Act for the year under Consideration;

b) adopting the sale consideration at Rs. 61,97,000/-;

c) computing the LTCG at Rs. 49,36,674/-; and the learned CIT(A) has erred in confirming the same;

On proper appreciation of facts and circumstances of the case, the provisions of section SOC of the Act are not applicable to the facts of the case. The action of authorities below being (wholly erroneous is to be negated and the assessment of LTCG as done for the year under consideration be deleted.

4. In any case and without prejudice and without conceding, the appellant submits that the adoption of sale consideration and adoption of indexed cost as done is wholly erroneous.

5. The appellant denies liability to pay interest. The interest levied is to be deleted.

6. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or at least the capital gains added to income of the year be deleted and interest levied be also deleted.”

Brief facts of the case are as under:

2. From assessment order, we note that, this is the second round of appeal. In the first round, this *Tribunal* vide order dated 24/06/2016, remanded the addition of Rs.61,97,000/- was restored to the file of Ld.AO for *de novo* assessment after affording due opportunity to assessee in accordance with provisions of law. We note that, original assessment order was passed under section 144 of the Act because of which this *Tribunal*, remanded the issue.

3. In accordance with the directions of this *Tribunal*, Ld.AO issued notice to assessee giving of opportunity of being heard. Assessee in response to the letters/notices issued, intimated that hearing may be postponed to second week of November 2017. Accordingly, Ld.AO fixed hearing on 30/11/2017, however assessee did not appear. Assessee was issued final reminder notice. Vide letter dated 19/12/2017 along with documents relating with assessment was filed before Ld.AO by assessee

4. From the documents filed, Ld.AO noted that, assessee filed its return of income for year under consideration on 24/10/2005, declaring total income of Rs.5,67,317/-. It was noted that, in the computation of income, assessee shown sale consideration of sale of property to be Rs.7,25,000/-and declared capital gain loss of Rs.5,71,962/-from sale of property. Ld.AO in regards to sale of property observed as under:

- Assessee was allotted site No. 362, situated at in Block No. 22, Rajmahal Vilas II stage extension, Bangalore by BDA on 11 for 1991. This was registered by executing a lease come sale agreement on 09/07/1991. Possession of the schedule property was delivered to assessee vide possession certificate dated 28/08/1991.
- Vide memorandum of agreement of transfer and assignment dated 17/03/1993, assessee entered into agreement to transfer and assign the said property to M/s.Shanta Exports Pvt.Ltd represented by its Director Sh.V.Rathnagr, s/o.Sh.V.Venkatasuba Rao, Bangalore for consideration of

Rs.7,25,000/-. Assessee received the said amount in the following manner:

- DD of Rs.25000/- on 06/02/1993
- DD of Rs.7,00,000/- on 08/03/1993
- BDA register the said property on 02/02/2002 in favour of assessee was represented by Sh.V.Rathnakar (with whom assessee entered into transfer and assignment agreement) was holding a general power of attorney dated 30/03/1993 for registration purposes.

5. Subsequently on 04/10/2004 the said property was sold to Sh. Balander Venkata, s/o. Sh.V.Venkatasubba Rao, along with the building constructed thereon. Ld.AO observed that, though assessee received entire sale consideration in 1993, he was unable to prove that he has not received any further sale consideration as on that date registration being 04/10/2004, when the market value of property was Rs.61,97,000/-, and that Sh.V.Rathnakr being the power of attorney holder has not received any consideration on his behalf from the purchaser of the property Sh. Balander Venkata.

6. Ld.AO was of the opinion, that assessee has shown sale proceeds of sale of property, which is much lesser than, guidance value, and accordingly as per provisions of section 50C, long term capital gains was reworked at Rs.49,36,647/- based on the guidance value in the year of sale being

04/10/2004. Ld.AO thus made addition in the hands of assessee amounting to Rs.49,36,647/-.

7. Aggrieved by the addition, assessee preferred appeal before the Ld.CIT(A).

8. Ld.CIT(A) noted that, the memorandum of agreement to transfer and assignment dated 17/03/1993 was between assessee and M/s Shanta Exports Pvt.Ltd company, that was represented by its Director Mr.V.Ratnakar. However, sale deed dated 04/10/2004 was not with M/s Shantha Exports Pvt.Ltd. as purchase. Ld.CIT(A) observed that, the sale deed was executed between assessee and Sh.Balender Venkata, who is an individual. Ld.CIT(A) was of the opinion that, the Memorandum of Agreement of Transfer and Assignment dated 17/03/1993, and final sale registered on 04/10/2004 were with 2 different persons and that Memorandum of Agreement of Transfer and Assignment dated 17/03/1993 has no relevance for the final sale deed registered on 04/10/2004. He thus upheld the view of Ld.AO regarding computing capital gains as per section 50C of the Act as on the date of registration of sale.

9. Assessee also challenged the year of taxability of capital gains, that the transfer of capital asset never took place in the previous year relevant to assessment year under consideration and therefore taxing of capital gains during relevant year under consideration is bad in law. This proposition was rejected by Ld.CIT(A) by observing that, no income was offered

under capital gains for assessment year 1993-94 being the year in which, entire consideration was received by assessee. Ld.CIT(A) also ascertained from the statement of income filed for assessment year 1993-94 that assessee has shown income is under the head business, other income, but there is no income offered under capital gains, and that assessee has declared capital loss during the year under consideration.

10. Aggrieved by the order passed by Ld. CIT (A) assessee is in appeal before us now.

11. Ld.AR submitted that, **Ground No.1** is general in nature and therefore do not require adjudication.

12. Ground No. 2.1-2.3 is in respect of year of taxability of capital gains. It has been submitted that, assessee do not wish to press this ground.

Accordingly these grounds are dismissed as not pressed.

13. Ground No. 3 raised by assessee is in respect of invoking 50C of the Act for year under consideration and computing capital gains by taking guidance value for year under consideration.

14. Ld.AR submitted that, transfer of property actually took place in the year 1993, when entire sale consideration was received by assessee. And in 2004, only registration of the deed took place, to complete the contractual shall obligation. He submitted that, computation of capital gains in the year 2004 by taking guidance value of the property is therefore incorrect. Ld.AR submitted that, assessee before authorities

below submitted that he did not receive any amount more than Rs.7,25,000/- which has also been mentioned in the final sale deed registered during the year 2004.

15. At the outset, Ld.AR submitted that though the proviso to section 50 C has been inserted w.e.f. 01/04/2017, it is to be considered with retrospective effect.

16. Ld.AR also submitted that authorities below failed to note that, Mr.V.Ratnakar, Director of M/s Shantha Exports Pvt.Ltd., and Sh.Balender Venkata, whose name was mentioned in the sale deed that was registered in the year 2004 are brothers. He also submitted that, for the purpose of registration of the sale deed in 2004, Mr.V.Ratnakar, was the General Power of Attorney on behalf of assessee. It has thus been submitted by Ld.AR that, assessee had no role to play as in both the Memorandum of Transfer and Assignment deed, as well as the final sale deed registered the amount of sale consideration issue to be Rs.7,25,000/- having received by assessee. It has been submitted that the process of sale has been completed only during 2004, when the agreement was registered.

17. On the contrary Ld.Sr.DR submitted that, capital gains has not been offered to tax by assessee in the year 1993, which is alleged to be the year of sale. It has been submitted that, assessee declared loss from capital gains during the year under consideration which clearly shows the intention of assessee. She thus supported the orders of authorities below.

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

19. In the present case, at the time of registration in the year 2004, assessee was represented by the original purchase through general power of attorney executed by assessee in 1993. It is also noted that, at the time of registering the sale deed the said property stands transferred in the name of another person who is submitted to be the brother of Director in the company being original purchaser. The recitals in the registered sale agreement placed at page 94-104 mentions details of the sale consideration having received by assessee under Memorandum of Agreement of Transfer and Assignment entered into on 17/03/1993 between assessee and the company.

20. Provisions of section 50 C has been inserted in the form of clarification to the section and accordingly is retrospectively applicable. In our view provisions of section 50 C should be looked into from the date of Memorandum of Agreement of Transfer and Assignment entered into by assessee with M/s Shantha Exports Pvt.Ltd through its Director. Nothing has been placed on record to show why the subsequent sale has been registered in the name of an individual who is alleged to be the brother of the Director of M/s Shantha Exports Pvt Ltd. It also has been recorded by Ld.CIT(A) that assessee did not disclose the capital gains on such amount received in 1993.

Nothing has been brought to record how the loss if any is allowable during the year under consideration.

21. We therefore set aside the issue back to the file of Ld.AO to consider it *de novo* in the light of various evidences filed by assessee. Assessee is directed to establish all relevant links and reply to queries raised by Ld.AO in order to complete the assessment in accordance with law. Needless to say that proper opportunity of being heard shall be granted to assessee.

22. The result grounds raised by assessee stands allowed for statistical purposes.

23. Ground No. 4 raised by assessee is an alternate plea. As we have already remanded the issue for consideration, this issue becomes academic at this stage.

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

Order pronounced in the open court on 27th Nov, 2020

Sd/-
(B.R BASKARAN)
Accountant Member
Bangalore,
Dated, the 27th Nov, 2020.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS