

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1720/Bang/2016
Assessment year : 2012-13

ACIT, Circle - 5(1)(1), Bengaluru.	Vs.	Shri. Raj Arjun Menda, RMZ Crop, The Millenia, Tower-II, Level 12-14, # 1 & 2, Murphy Road, Ulsoor, Bengaluru – 560 008. PAN : ACJPM 3635 Q
APPELLANT		RESPONDENT
Revenue by	:	Shri. Manjeet Singh, Addl. CIT (DR)(ITAT), Bengaluru
Assessee by	:	Shri. V. Srinivasan, Advocate
Date of hearing	:	29.01.2020
Date of Pronouncement	:	20.02.2020

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the Revenue and the same is directed against the order of learned CIT(A)-1, Bengaluru, dated 07.06.2016, for the Assessment Year 2012-13.

2. In the course of hearing, it was submitted by learned DR of the Revenue that ground No.1 is general and the only issue in dispute is regarding the addition made by the AO in respect of capital gain of Rs.3,33,23,661/-. He further submitted that in para 3.2 of the Assessment Order, the AO has noted that as per the reply received from the Bank, the company M/s. MIPL filed a loan application with the Bank on 08.12.2009 and as per the said loan application for a loan of Rs.220 Crores, the income projected was Rs.409 Crores with a profit margin of Rs.65 Crores but as noted by the AO in para

3.4 of the Assessment Order, the sale price fixed for transfer of shares of MIPL to Ambuja was Rs.84.58 Crores only in stark contrast to the income of Rs.409 Crores projected to the Bank. He pointed out that based on this projection, the AO estimated the total sale consideration of Rs.184.49 Crores out of which the assessee's share of 13.29% was worked out at Rs.24,52,06,912/- and long term capital gain of the assessee was worked out at Rs.3,33,23,661/- on page 10 of the Assessment Order. He submitted that as against this working done by the AO, learned CIT(A) deleted the addition by following the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. George Henderson & Co. Ltd., 66 ITR 622 and of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Wintac Ltd. in ITA No.910/2006 dated 19.09.2013, copy available on pages 16-29 of the Paper Book filed by the assessee. He submitted that learned CIT(A) was not justified in deleting this addition. Learned AR of the assessee supported the order of CIT(A) and these two judgments followed by CIT(A) having been rendered in the case of CIT Vs. George Henderson & Co. Ltd., (supra) and CIT Vs. Wintac Ltd., (supra).

3. We have considered the rival submissions. We find that the addition was made by the AO on the basis of future projection of income submitted by the company to its bankers for availing loan. As per section 48 of the Income Tax Act, 1961, what is relevant is full value of the consideration received or accrued as a result of transfer of capital asset. As per section 50C of the IT Act, 1961, it has been provided that in case of transfer of land / building or both, values adopted or assessed by the stamp valuation authority of the State Government for the purpose of stamp duty may be considered as full value of consideration but in the case of transfer of shares, there is no such provision which authorizes the AO to adopt any other value be it market value. For ready reference, we reproduce para 12 from the order of CIT(A) as under:-

*“12. Respectfully following the decision of the Hon'ble Karnataka High Court and pronouncement made by the Hon'ble Supreme Court in the case of **GEORGE HENDERSON Et CO. LTD.**, the contentions of the appellant are acceptable. No clear evidence of different consideration has been cited by the AO. There is no material to show that the appellant and other transferors have received any consideration in excess of the amounts specified in the sale purchase agreement. In any case, the said profits forecasted by MIPL compare reasonably with the consideration of Rs.66.81 crores received by the appellant and others. The computation made by the AO was not as per section 48 of the Act. Only as per section 50C the full value of consideration received or accruing as a result of transfer of certain capital assets being, land or building or both, shall be the value adopted or assessed by the stamp valuation authority of the State Government for purposes of payment of stamp duty. These provisions however, apply only in relation to a transfer of capital asset being land or building or both and they have no application in so far as transfer of shares. Accordingly, the addition made is hereby deleted.”*

4. In the facts of the present case and in view of this finding of learned CIT(A) that the computation made by the AO is not as per section 48 of the IT Act, 1961 and since, it could not be controverted by the learned DR of the Revenue, we find no reason to interfere in the order of CIT(A).

5. In the result, appeal of the Revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated: 20th February, 2020.

/NS/

Sd/-

(A.K. GARODIA)

Accountant Member

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.