

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

ITA No.2058/Bang/2019
Assessment Year : 2014-15

Mr. M.N Belliappa (HUF), #24, Gagan, 1 st B Main Road, Atmananda Colony, R.T Nagar, Bengaluru-560 032.	Vs.	The Income Tax Officer, Ward-6(3)(1), Bengaluru.
PAN - AADHM 7020 D		
APPELLANT		RESPONDENT

Appellant by	:	Shri K.Y Ningoj Rao, C.A
Respondent by	:	Shri R Premi, JCIT

Date of Hearing	:	01-12-2020
Date of Pronouncement	:	19-01-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 20/08/2019 passed by Ld. CIT (A)-6, Mangalore for assessment year 2014-15 on following grounds of appeal:

"1. That the impugned order of the Learned Commissioner of Income Tax (Appeals) 6, Bengaluru, the Respondent is liable to set aside in so far as the same is irregular, incorrect, improper, unlawful and opposed to facts of the case and law. – Rs.13,90,191/-

2. *The Learned Respondent erred in upholding the impugned assessment made by the Assessing Officer with complete disregard to the provisions of Section 56(2)(vii)(b) and of Section 50C of the Income Tax Act, 1961. – Rs.13,90,191/-*
3. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant u/s 56(2)(vii)(b) of the Act with complete disregard to the fact that the said transfer of asset did not fall within the ambit of Section 50C and 56(2)(vii)(b) of the Act. – Rs.13,90,191/-*
4. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the Agreement to Sell dated 20th September, 2011 subsisted between the Appellant HUF and its Kartha and a Coparcener, the Vendor. – Rs.13,90,191/-*
5. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the Agreement to Sell dated 20th September, 2011 subsisted between the Appellant and its Kartha and a Coparcener, the Vendor merely out of her suspicion, surmise and conjecture stating that "The date of sale agreement being one day before the notification revising guidance value was issued also raise a question mark over its credibility". – Rs.13,90,191/-*
6. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the fact that the Vendor and the Purchaser are the same and the said transfer is a transfer of asset between the relatives as contemplated under the Second Proviso to Section 56(2) of the Act. – Rs.13,90,191/-*
7. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the fact that the Vendor and the Purchaser are the same and the said transfer is a transfer of asset between the relatives as contemplated under the Second Proviso to Section 56(2) of the Act. – Rs.13,90,191/-*
8. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the fact that the Vendor and the Purchaser are the same and the said transfer is a transfer of asset between the relatives as contemplated under the Second Proviso to Section 56(2) of the Act. – Rs.13,90,191/-*
– Rs.13,90,191/-
9. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the fact that the Vendor and the Purchaser are the same and to the well-established principle of law that one cannot make profit of oneself. – Rs.13,90,191/-*
10. *The Respondent erred in upholding the impugned assessment of Rs.44,99,000/- as income of the Appellant with complete disregard to the Guidance Value fixed by the Central Valuation Committee of Karnataka by*

its notification dated 17.4.2007 bearing No. CVC/BUD/5/2006-07 in force as up to 25.9.2011. – Rs.13,90,191/-

11. The Respondent erred in upholding the -2ugned assessment of Rs.44,99,000/- as -come of the Appellant with complete disregard to the decision of the Supreme in the case of SANJEEVLAL v. CIT 365 ITR 389 (SC). – Rs.13,90,191/-

12. That the Respondent Officer erred in levying a sum of Rs.4,48,866/- as the interest u/s 234B of the Income Tax Act, 1961 with total disregard to the facts and circumstances of the case and to the fact that the Appellant is not liable to the same. Rs.4,48,866/-

13. That the Respondent Officer erred in levying a sum of Rs.5,640/- as the interest u/s 234C of the Income Tax Act, 1961 with total disregard to the facts and circumstances of the case and to the fact that the Appellant is not liable to the same. Rs.5,460/-

14. That the Respondent Officer erred in levying a sum of Rs.3,744/- as the interest u/s 234D of the Income Tax Act, 1961 with total disregard to the facts and circumstances of the case and to the fact that the Appellant is not liable to the same.” Rs.3,744/-

Brief facts of the case are as under:

2. Assessee is an HUF and filed its return of income on 18/07/2014 declaring total income of Rs.17,45,460/-. The case was selected for scrutiny and notice under section 143(2) and 142(1) of the Act was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed relevant details as called for.

3. Ld.AO noted that assessee during relevant financial year had purchased a site at measuring 315 0 ft.² at 5th Main Road Jayamala Extension Bangalore from Sri.M.N.Belliappa along with 3 more persons for sum of Rs.53,16,000/- and M/s.Gagan Constructions and Apartments. Assessee in his individual capacity, held GPA of the 3 individuals who had jointly sold the property to assessee. Ld.AO noted that the value of site as per the ITS details was Rs.97,95,360/- and one half registration fee was charged by the sub registrar amounting to Rs.98,150/-. Ld.AO

was of the opinion that the fair market value of the site was therefore Rs.98,15,000/-.

4. Ld.AO called upon assessee to explain the difference in the value. Assessee submitted that he had entered into sale agreement and paid sum of Rs.11,00,000/- on 20/09/2011 and agree to purchase the property for guideline value fixed by the authority at the time of entering into sale deed agreement. It was submitted that, HUF advanced sum of Rs.42,32,117/- to Sh.M.N.Belliappa individual as proprietor of M/s.Gagan Constructions and Apartments, and that, balance of Rs.10,83,283/- was transferred that the time of registration. It was submitted that agreement to sell was dated 20/09/2011. Ld.AO observed that assessee paid sum of Rs.98,15,000/- for the property and treated the difference of Rs.44,99,000/- as undisclosed income in the hands.

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

Ld. CIT (A) observed as under:

"5.2.1 Grounds of appeal nos. 2 to 4 are all related to the merits of the case and are hence taken up together. The appellant had erred into an sale agreement on 20/09/2011 with three vendors who had earlier entered into a joint development agreement with M/s Gagan Construction and Apartments, the proprietary concern of the Kartha. Vide the agreement to sell, the appellant HUF agreed to purchase one flat no.001 in the building being constructed pursuant to the JDA. The sale deed was subsequently registered on 26/07/2013. In the Statement of Facts, the appellant has submitted that while registering the sale deed the appellant was made to pay a stamp duty on value of Rs. 98,50,000/- by his advocate and also by the Sub Registrar, even though the agreed sale consideration Rs. 53,16,000/- represented the proper and adequate fair market value. The appellant has contended that as per the proviso to Section 56(2)(vii)(b) the value of the property should be taken as on the date of the agreement to sale i.e. 20/09/2011. Per the appellant's

submissions, as per the notification of the Government of Karnataka dated 17/04/2007 which was valid till 25/09/2011, the value of the property as per the land and building method would be Rs. 43,16,370/- whereas the consolidated value of the apartment would be Rs. 57,18,240/-, hence the value taken in the agreement to sell i.e. Rs. 53,16,000/- was the fair market value. The AO however has relied the stamp duty value as given in the sale deed dated 26/07/2013 which shows a value of Rs. 98,12,500/-.

5.2.2 The copy of the sale agreement as well as the registered sale deed have been perused. Section 56(2)(vii)(b) as amended w.e.f. 01/04/2014 is reproduced below:

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or person or persons on or after the 1st day of October, 2009 (but before the] day of April, 2017),

(a) Any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of/lie aggregate value u/ such sum:

(1,) Any immovable property:

(i) Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such proper:

(ii) For a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp ditty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property:

In the present case, the provisions of section 50C reproduced below are-Also relevant:

Special provision for full value of consideration in certain cases.

Soc. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land t building or both, is less than the value adopted or assessed for assessable) by any authority of a State government (hereafter in this section referred to as the stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted

or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.

The sale agreement dated 20/09/2011 does not appear have been registered and no stamp duty value is mentioned thereon. Therefore, the value of Rs. 53,16,000/- mentioned in sale agreement does not constitute the stamp duty value as on that date. Hence the appellant's contention that its case is covered by the proviso to Section 56(2) (vii) (b) is not acceptable.

5.2.3 Further, an examination of the ledger account of M/s Gagan Construction and Apartments (the proprietary concern of the Kartha) in the books of the appellant as seen from the assessment records shows that between the date of the sale agreement and the registration of the sale deed, there have been fund transfers amounting to Rs. 94.59 lakhs from the appellant HUF to M/s Gagan Construction and Apartments. Therefore, the value shown in the sale agreement is much less than the actual amount transferred to the developers M/s Gagan Constructions. It is also pertinent that the Kartha, Shri M.N. Belliappa held the GPA for the original vendors of the site. The kartha has signed the sale agreement and the sale deed in three capacities i.e. GPA holder of the vendors, proprietor of the developers M/s Gagan Construction and Apartments and also as the purchaser. The date of sale agreement being one day before the notification revising guidance value was issued also raise a question mark over its credibility The sale deed, as noted by the AO, was based on oral sale agreement between the appellant and the original vendors for acquiring the share of land on mutually agreed terms and conditions for a consideration of Rs. 53,16,000/-

It is mentioned in the sale deed that an advance of Rs. 40,00,000/- was transferred by the appellant to the developers i.e. M/s Gagan Construction and Apartments and the vendors have also confirmed the receipt of the the receipt of the same. However the dates of fund transfer of Rs. 40,00,000 are not mentioned in the sale deed.

5.2.4 It is apparent from the foregoing discussion that the sale agreement not being a registered document was drawn up without reference to the market value of the property whereas the registered sale deed actually reflects the fair market value of the property. In the case of Bagri Impex P. Ltd. vs ACIT , Circle-9, Kolkata /20131 31 taxmarLn.com 39, the Honble Calcutta High Court had held as follows:

The intention of the Parliament is that where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State

Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income-tax Act. The amendment made in the year 2009 may have made the things simpler, but the intention of the Legislature

was very from the beginning that the value for the purpose of income tax shall be the same as the value Lot stamp duty.

Therefore the AO's action in bringing to tax the difference between the amount mentioned in the sale deed and fair market value adopted by the stamp duty authority at the time of registration is justified. The addition made on, this account is upheld. These grounds of appeal are therefore dismissed."

6. Aggrieved by order of Ld.CIT(A) assessee is in appeal before us.

7. Ld.AR submitted that, all issues raised are in respect of addition of Rs.44,99,000/- as income chargeable to tax under section 56 (2)(vii) of the Act.

8. Ld.AR submitted that assessee pursuant to the agreement of sale dated 20/09/2011 agreed to purchase a residential flat in the residential complex being built at No.39 (Old No.116/D) located at 5th Main Road Jayaahal Extension, Municipal ward No.92, Bangalore on the 1st floor with a built up area of 21 60 ft.² together with undivided share in the land measuring 1063.34 ft.² (out of total area of 3150 ft.² of land) for a total consideration of Rs.53,16,000/- from M/s.Gagan constructions.

9. Ld.AR submitted that assessee paid the sale consideration on following manner:

- Rs.11,00,000/- on the date of agreement to sell dated 20/09/2011;
- balance Rs.42,16,000/- was paid before the date of sale deed on 26/07/2013;

10. Ld.AR submitted that, the vendor being M/s.Gagan Constructions and Apartments was the proprietary concern of assessee in his individual capacity. It was submitted by Ld.AR that assessee paid Rs.5,49,500/- towards stamp duty @5.6% of Rs. 98,12,500/-and registration fee of Rs.98,150/-. He thus submitted that, Ld.AO made addition in the hands of assessee on presumption that, the guidance value as on the date of registration was higher than the agreement value because of which the difference was added in the hands of assessee.

11. Ld.AR submitted that there were 2 notifications that were issued by the Central valuation committee being:

- Notification dated 17/04/2007 bearing No. CVC/BUD/5/2006-07 w.e.f. 19/04/2007; and
- Notification dated 21/09/2011 bearing No. CVC-192010-11 w.e.f. 26 sector No. 2011

12. He submitted that as per the notifications the guidance value of the said property was purchased by assessee was as per the guidance value applicable at relevant time.:

Per Notification dated	Site in BBMP Per Sq. Ft	Construction Rate Per Sq. Ft. For First Floor	Composite Rate for Apartments Per Sq. Ft.
17.04.2007 wef 19.4.2007	3,000/-	520/-	2,640/-
21.09.2011 wef 26.9.2011	4,200/-	850/-	3,860/-

13. It was submitted that the sale agreement was entered on 20/09/2011 and the guidance value as on the date prescribed by

the Central valuation committee that prevailed during the relevant period was Notification No.CVC/BOD/5/2006-07 dated 17/04/2007. It has been submitted that the value as per the said notification was Rs.57,18,240/-on a composite bases.

14. Ld.AR submitted that assessing officer made addition in the hands of assessee under section 56(2)(vii) of the Act, as deemed income. He submitted that Ld.CIT(A) also invoked provisions of section 50C.

15. It has been submitted that, transaction does not fall within the provisions of section 56(2)(vii) of the Act, as assessee in capacity of HUF is the recipient of the property. Ld.AR referred to *Clause (e) to 3rd Proviso to section 56(2)(vii)(b)*, to submit that, the definition of 'relative', in case of an HUF, is any member thereof. Ld.AR thus argued that, as per the definition of related as inserted by finance act 2012 with retrospective effect from 01/10/2009, where any an HUF receives in any previous year any money or property from any relative, the provisions shall not apply.

It was also submitted that 50C is applicable in case of the seller, whereas, assessee in present case is the purchaser.

16. He thus prayed for the addition to be deleted on both these counts.

17. On the contrary Ld.Sr.DR placed reliance on orders passed by authorities below.

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

Authorities below rejected contentions of assessee for the reason that, the document of sale was not registered and no stamp duty value was mentioned thereon. It is submitted that even though the agreement has not been registered, the value was agreed between the parties was received as mentioned above. Ld.AO made disallowance under section 50 C of the act in the hands of assessee.

19. Applicability of Section 56(2)(vii)(b) of the Act, as amended by Finance Act, 2012 and applicable to AY 2014-15 in question. On a perusal of pre-amended provisions of Section 56(2)(vii)(b)(ii) of the Act, we gather that where an individual or HUF receives from any person any immovable property for a consideration, which is less than stamp duty value of such property that exceeds Rs.50,000/-and the stamp duty value of such property exceeds the consideration paid, the provisions of pre-amended Section 56(2)(vii)(b) of the Act would apply. In present facts, there is a consideration paid by assessee HUF, to the vendor(individual member of HUF) in respect of the subject property that is less than the stamp duty valuation.

It has been contended by the Ld.AR that, the transaction is exempt from tax as the transferor and transferee are “*relative*” as defined in *Clause (e)(ii) to 3rd proviso to section 56(2)(vii)* of the Act.

20. By Finance Act, 2012, the definition of “*relative*” also include any sum or property received by a Hindu undivided family from its members. This contention of the Ld.AR that HUF can receive property without attracting tax liability from its members.

deserves to be upheld. Admittedly the transferor and the transferee in the present facts of the case is the Karta, his individual capacity and the HUF itself. Therefore, the argument that, property received by HUF from its members, is not chargeable to tax.

20. We note that CIT(A) relied on provisions of section 50C to consider the value adopted by stamp duty authority on the date of agreement. This provision is applicable in case of recipient of sale consideration. Present case, assessee is the purchaser. We therefore reject applicability of Section 50 C to present facts.

The Revenue is therefore debarred to hold the transaction under section 56(2)(vii)(b) as taxable. We thus delete the addition sustained by Ld.CIT(A).

Accordingly, grounds raised by assessee stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 19th January, 2021

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 19th January, 2021.
/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	-1-2021		Sr.PS
3.	Draft proposed & placed before the second member	-1-2021		JM/AM
4.	Draft discussed approved by Second Member.	-1-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-1-2021		Sr.PS/PS
6.	Kept for pronouncement on	-1-2021		Sr.PS
7.	Date of uploading the order on Website	-1-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-1-2021		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