

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.973/Bang/2019
Assessment year: 2015-16

The Income Tax Officer, Ward 1, No.271/1, 1343, Yeshoda Complex, 1 st Floor, B.R. Road, Chikkaballapur – 562 101.	Vs.	Smt. K. Shantamma, Chokkahalli Village, Agalagurki Post, Nandi Hobli, Chikkaballapur – 562 101. PAN: FELPS 6181A
APPELLANT		RESPONDENT

Appellant by	:	Shri Kannan Narayanan, Jt.CIT(DR), ITAT, Bengaluru.
Respondent by	:	None

Date of hearing	:	23.08.2021
Date of Pronouncement	:	23.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order of the CIT(Appeals), Bengaluru-6, Bengaluru for the assessment year 2015-16 on the following grounds:-

1.	The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2.	On the facts and circumstances of the case, whether the Ld CIT(A) is justified in admitting new evidences without giving the Assessing Officer any opportunities for his comments on the same as per Rule 46A?

3.	On the facts and circumstances of the case, whether the Ld CIT(A) is justified in ignoring the facts that the land in question had lost the character of agricultural land in view of the fact that the assessee had already taken action to convert the land usage by paying conversion fees long ago.
4.	On the facts and circumstances of the case, whether the Ld CIT(A) is justified in adopting the consideration of land at Rs. 150/- per sq. ft. instead of Rs. 500/- per sq. ft. as guideline rate provided by the Sub-Registrar, Chikkaballapur.
5.	For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
6.	The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

2. None appeared for the assessee at the time of hearing. It is noted that the assessee vide letter dated 22.8.2021 sought adjournment stating that it is gathering relevant details to file Paperbook in the case. However, it is noticed from the records that the Department has filed the appeal on 6.5.2019 and notice to assessee has been issued on 7.5.2019 for hearing of the case, but the assessee is seeking adjournments on one reason or the other without filing the requisite details. Hence, we reject the adjournment petition and proceed to dispose of the case after hearing the ld. DR.

3. The facts of the case in brief are that a survey u/s 133A was conducted in the case of the assessee on 16/09/2016. During the course of the survey, a copy of the Joint Development Agreement (JDA) dated 05/02/2015 between the assessee and one Shri H.N. Narendra was found and impounded. As the assessee had not filed her return for A.Y. 2015-16, she agreed to file the same and pay taxes accordingly. Notice u/s 142(1) dated 18/10/2016 was issued. She filed her return of income on 06/11/2016

declaring income from capital gains at Rs.4,30,490/-. The case was selected for compulsory scrutiny.

4. Along with the return of income, the assessee had filed the following computation of her LTCG:-

<u>Long term capital gain</u>			
<u>Immovable property other than residential</u>			
Date of acquisition		05-Apr-82	
Date of transfer		13-Apr-84	
Sale consideration			1,20,16,290
<u>Less: Selling expenses</u>			17,00,000

<u>Acquisition details</u>	Financial Year	Cost	Indexed Cost
Land 25000*1024/109	1982-83	25,000	2,34,862
<u>Improvement details</u>			
Improvement cost 3485727*1024/852	2012-13	34,85,727	41,89,418
IMPROVEMENT COST 280750*1024/939	2013-14	2,80,750	3,06,164
Improvement 600500*1024/1024	2014-15	6,00,600	6,00,600
Conversion cost 150000*1024/199	1991-92	1,50,000	7,71,859
Total		45,16,977	58,67,941
Capital gain			42,13,487
<u>Less: Exemptions</u>		Invested	
	Date	Amount	Exemption
54B : Transfer of agricultural land		37,83,000	37,83,000
Taxable Capital gain			4,30,487

5. The AO vide notice u/s 142(1) dated 02/08/2017 called for the details of expenses claimed on development and supporting evidence for claim of exemption u/s 54B of the Income-tax Act, 1961 [the Act]. Part details were submitted by the assessee. As the complete details were not submitted, the AO issued a show-cause letter to the assessee dated 22/12/2017 in which the following points were highlighted:-

- (i) The JDA dated 05/02/2015 was in the ratio of 60:40 for the assessee and developer respectively and the assessee had executed Power of Attorney in favour of the developer.
- (ii) As per the terms of the JDA the assessee had parted with 40% of 3 acres of land or 52,272 sft and she was to receive 60% of the developed land or 78,408 sft.
- (iii) On entry into the JDA, the assessee received Rs.34,50,000 by way of cash and cheque in the form of a non-refundable deposit.
- (iv) In the working of LTCG, the assessee had shown consideration of Rs.1,20,16,290/-. The AO issued notice u/s 133(6) of the Act dated 24/11/2017 to the Sub-Registrar; Chikkaballapur district who informed him that the prevailing per sft rate at Chokkahalli village during F.Y.- 2014-15 was Rs.500 per sft. Since the assessee had shown sale consideration at the rate of only Rs.153.25, the AO worked out the balance consideration in respect of 78,408 sft. at Rs.2,71,87,710/-.
- (v) The cost of acquisition was adopted by the assessee at Rs.25,000/. The AO noticed that this cost was for 5 acres 25 guntas in Survey no.150 and 3 acres 31 guntas in Survey no. 151 and so the total area was 9 acres 16 guntas or a cost of acquisition of Rs. 0.061 per sft. Hence the cost of acquisition for 40% of the land transferred i.e. 52,272 sft worked out to Rs.3,189/- and indexed cost was Rs 29,959/- as opposed to the indexed cost of acquisition of Rs.2,34,862/- claimed by the assessee.
- (vi) Similarly, the AO allowed the assessee 40% of the development expenditure claimed. Hence out of Rs 58,67,941/- claimed as indexed cost of improvement, the AO allowed Rs.23,47,176/-. The AO accordingly recomputed the LTCG.
- (vii) The AO observed from the valuation report of the new asset submitted in support of the claim for exemption u/s 54B, that Rs.12,10,000/- was towards cost of the land but

since the assessee was unable to provide any supporting document for this expense, the AO treated the new asset as constructed on a site already in possession of the assessee and accordingly restricted the exempt amount to Rs. 25,83,000/- out of Rs.37,83,000/-claimed.

6. In response to the above notice, the AR submitted a letter dated 26/12/2017 stating that with respect to the JDA, the capital gains would arise only when the conversion of the land was completed. As the land was not yet developed till date the consideration received of Rs.34,50,000/- on the date of agreement is shown as advance. Further, it was submitted that the land rate during F.Y. 2014-15 was Rs.162.5/- per sft and not 17.500/- per sft as taken by the AO.

7. On 27/12/2017 the AO issued another letter to the assessee wherein, following the ratio laid down by the Hon'ble Karnataka High Court in *CIT vs. Dr. T.K. Dayalu (Kar.) 60 DTR 403*, the AO held that the capital gains arose to the assessee at the time of handing over of possession to the developer and not at the time of completion of the project. Further, the AO asked the AR to produce documentary evidence in support of the claim of the land rate of Rs.162 5/- per; sft and as the AR was unable to do so, the AO took the rate at Rs.500/- per sft as per the information received from the SRO and proceeded to recompute the capital gains as under:

Sl.No.	Particulars		Amount in Rs.
1.	Total Sale Consideration (78408 x 500)		3,92,04,000
2.	Less: Indexed cost of acquisition	29,959	
3.	Cost of improvement	23,47,176	
4.	Legal charges and Settlement	17,00,000	
			40,77,135
	Balance		3,51,26,865
5.	Exemption u/s 54B		25,83,000
	Balance capital gains		3,25,43,865
6.	Add: non refundable deposit		34,50,000
	NET CAPITAL GAINS FOR TAXATION		3,59,93,865

8. Accordingly, the AO added the difference of Rs.3,55,63 375/- with the returned capital gains of Rs.4,30,490/- to the assessee's income. The CIT(Appeals) confirmed the order of AO. Against this, the assessee is in appeal before the Tribunal.

9. Before the CIT(Appeals) one of the grounds is with regard to sale consideration of the property. The assessee submitted a copy of the valuation and stamp duty schedule report of Chikkaballapur for the period 1.12.2014 to 31.3.2016 which shows the per sft. Rate at RS.150. This is the grama tana site rate adopted by the assessee while computing her capital gains. However, the AO had obtained the valuation and stamp duty schedule report which showed the approved layout site rate @ Rs.500 per sft. in Chokkahalli (National Highway). The AO adopted this rate since the land is close to National Highway. However, according to the assessee, the land had not yet been converted to non-agricultural use, hence for the relevant previous year, it would be appropriate to consider the Gram Tana site rate i.e. Rs.150 per sft instead of approved layout site rate. The assessee also submitted copies of letters from the Gram Panchayat / Village Accountant stating that the land falls with the Panchayat jurisdiction and she is cultivating crops like coconut, sapota etc. on the land. In view of the above, the CIT(Appeals) recomputed the capital gain @ Rs.150 per sft.

10. Before us, now the contention of the Id. DR is that the CIT(Appeals) adopted the value of the property at Rs.150 per sft. on the basis of letters issued by Gram Panchayat / Village Accountant without confronting the same to the AO which is in violation of Rule 46A of the I.T. Rules. Hence, the issue may be remitted back to the AO for his examination of these documents and decision afresh.

11. We have heard the Id. DR and perused the material on record. Admittedly, the CIT(Appeals) adopted the value of the property at Rs.150

per sft. based on the letters issued by Gram Panchayat / Village Accountant which was not confronted to the AO. In our opinion, this is in violation of Rule 46A of the Income-tax Rules. Therefore, it is appropriate to remit the issue back to the AO to consider these documents and decide the issue afresh, after giving opportunity of being heard to the assessee. It is ordered accordingly. As we have remitted back the entire issue to the file of AO, at this stage, we refrain from going into other grounds of appeal.

12. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 23rd day of August, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd August, 2021.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.