

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.1649/Bang/2018
Assessment year : 2014-15

Shri Shivayogi Ambaraya Tengli, C/o. Patil Kabbur & Associates, Chartered Accountants, No.116/5/1, 3 rd Floor, 11 th Cross, Malleshwaram, Bangalore – 560003. PAN: DLYPS 7578M	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Gulbarga.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sukesh Patil, CA
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	01.09.2021
Date of Pronouncement	:	01.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals), Gulbarga dated 28.02.2018 for the assessment year 2014-15 on the following grounds:-

- “1. The order of Hon'ble CIT (A) is bad in law and without considering the fact of the case.

2. The Hon'ble CIT (A) erred in not making reference to departmental valuation officer in terms of sub-section (2) of the Section 50C of the Income Tax Act, 1961 as promulgated by Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal Vs CIT, ITAT No 221 of 2013.

3. Appellant craves leaves to add, to alter, to amend and to delete any other grounds at the time of hearing.”

2. The facts of the case are that the assessee is an agriculturist. During the financial year 2013-14, the assessee sold 7 plots and offered it for long term capital gain. During the course of assessment, the AO observed that out of 7 plots, value of 4 plots adopted for registration by the State Govt. authorities is more than that of actual sale consideration specified in the sale deed. As such, the AO applied the provisions of section 50C of the Income-tax Act, 1961 [the Act] and made an addition of Rs.1,07,10,003. Against this, the assessee went in appeal before the CIT(Appeals).

3. The CIT(Appeals) placing reliance on the judgment of the Hon'ble High Court of Karnataka in the case of *Gouli Mahadevappa v. ITO, 356 ITR 90 (Karn)* wherein it was held as follows:-

“6. In the instant case, it is to be noticed that the assessee has not availed the opportunity to question the correctness of the registration value fixed by the State Government, if he had done so, then the Assessing Authority would have invoked the power of appointing Valuation Officer for assessing the fair market value. When the registration value is not the disputed question, now, at this stage, it is not permissible for the assessee to contend that the registration value is excessive and disproportionate to the market value of the property. In the absence of contra material, the deemed full value of consideration as stated in Section 50C of the IT Act would come into effect.”

4. Thus, he observed that the assessee has not questioned the correctness of the valued adopted by the Sub-Registrar at the assessment stage and the same cannot be challenged at the appellate stage and he dismissed the appeal of assessee. Against this, the assessee is in appeal before the Tribunal.

5. We have heard both the parties and perused the material on record. As seen from the facts of the case, the assessee is an agriculturist and illiterate and he blindly relied upon the Advocates to whom the work of registration was given. It is stated that the assessee entered into agreement with the buyer two years prior to the execution of sale deed and received the consideration through cheques and DD on the date of agreement. These records could not be produced before the AO due to lack of time. Further it was recorded by the AO in his order that he asked explanation from the assessee as to why capital gain should not be calculated adopting the value of State Govt. as on 1.12.2016, however the assessee has not given any explanation before the AO and the date of hearing of the case was fixed on 28.12.2016. The AO passed the assessment order on 28.12.2016 itself. This shows that the assessee is not given fair opportunity of hearing before the AO and being so, the assessee failed to explore the opportunity of requesting the AO to refer the valuation of the property to the DVO. In such circumstances, in our opinion, it is appropriate to remit the matter back to the Assessing Officer to consider reference to the DVO for determining the fair market value of the properties as on the date of sale. Accordingly the order of the CIT(Appeals) is set aside and the issue in dispute is remitted to the file of Assessing Officer for fresh consideration, after affording assessee reasonable opportunity of being heard. We also direct the assessee to produce necessary evidence to show that assessee entered into sale

agreement two years prior to the execution of sale deed and received the actual sale consideration through Cheques/DD on the said date. This ground of appeal of the assessee is allowed.

6. In the result, the appeal is allowed.

Pronounced in the open court on this 1st day of September, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 1st September, 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.