

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

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

ITA No.2307/Bang/2019
Assessment year : 2008-09

Shri Keshava B.A. and Shri Balaji B.A. [L/Rs of Late Shri B R Anantharam], No.23, 4 th Main, Vydinomal, Malleswaram, Bangalore – 560 003. PAN: AUBPA 1007C	Vs.	The Income Tax Officer, Ward 3(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri N K Srinivas Bharath, CA
Respondent by	:	Shri K. Sankaran, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.09.2021
Date of Pronouncement	:	27.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 4.9.2019 of the CIT(Appeals) for the assessment year 2008-09.

2. The assessee has raised the ground that the AO erred in treating Kengeri as part of Greater Bangalore as on the date of sale of land, whereas Kengeri has become part of Greater Bangalore after the date of sale of land.

3. The facts of the case are that as regards the issue of the land being capital asset or not, the AO has relied upon the notification No UDD 92 MNY 2006 as issued by the Government of Karnataka. The AO has submitted that Bruhat Bangalore Mahanagara Palike (BBMP) was constituted vide the above said notification and objections of the public were invited on the same vide draft notification dated 02.11.2006. The AO has submitted that subsequently the Karnataka Government had issued a notification in January, 2007 to merge the area under existing BMP with seven city municipal councils (CMCs), one town municipal council (TMC) and one hundred eleven villages around the city to form a single administrative body. The said process was completed by April, 2007 and the body was named BBMP. For this the AO has relied upon the information available on the official website of BBMP. As per the above referred notification, Kengeri Town Municipal Council was the TMC merged with the other areas to form BBMP. So as per the AO, during the year under consideration the area under Kengeri TMC formed part of BBMP and the same was duly notified by the Govt. of Karnataka. As per AO the provisions of Section 2(14)(iii)(b) of the Act is applicable and since the land sold by the assessee was situated at a distance of 5.5 kms (being less than 8 Kms) from BBMP limits, the same was a capital asset. The argument of the assessee is that no such notification exists and that the same was just a draft notification.

4. In this regard it is important to note that draft notification. dt 02.11.2006 was followed by Notification No. UDD 92 MNY 06 dated 16.1.2007. When this aspect was confronted to the assessee during appellate proceedings, the AR of the assessee accepted that such notification dated 16.01.2007 as issued by the Government did exist. The reference to this notification is there in the various amendment Acts passed by the Government and relied upon by the assessee. The assessee

however argued that amendment to the Karnataka Municipal Corporation Act, 1976 for the constitution of BBMP had been effected in the year 2009 vide amendment Act no. 22/2009. The assessee submitted that it was through amendment that the number of wards was enhanced for a corporation to 200 to facilitate the creation of BBMP. So as per the assessee, the BBMP came into existence in 2009 only.

5. As regards the above argument of the assessee, it is pertinent to look into amending Act 22/2009. The same is reproduced as follows:-

Amending Act 22 of 2009.- It is considered necessary to constitute smaller and compact wards with an average population of 30,000 in the Bruhat Bangalore Mahanagara Palike area to have smooth administration.

Therefore, it is considered necessary to amend the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) to provide for,-

- (i) enhancement of maximum number of wards for a Corporation to 200;
- (ii) nomination of members equal to ten percent of the total number or members in the council, instead of ten members, from among the residents of the city to the Bruhath Bangalore Mahanagara Palike; and
- (iii) substitution of expression "Bangalore City Corporation" or "corporation of city of Bangalore" by "Bruhath Bangalore Mahanagara Palike".

As the matter was urgent, and both the Houses of the Karnataka State Legislature were not in session, the Governor of Karnataka had promulgated the Karnataka Municipal Corporations (Amendment) Ordinance, 2009 (Karnataka Ordinance No.4 of 2009).

This Bill seeks to replace the said Ordinance.

Hence, this Bill.

6. A perusal of the above shows that the purpose of this amendment was to provide enhancement of maximum number of wards for a corporation to 200 and substituting the expression Bangalore city corporation by BBMP etc. in view of newly constituted BBMP. So this amendment is just a consequence to formation of BBMP and not that the BBMP was formed after this amendment. So the argument of the appellant on this issue needs to be rejected.

7. Another argument of the appellant is that BBMP came into existence only when uniform tax policy was framed vide amendment Act 2/009. The object and reasons for amendment Act 2/2009 are reproduced as follows:

Amendment Act 2 of 2009.- The State Government constituted the Bruhath Bangalore Mahanagara Palike on 16-1-2007 by merging of Seven City Municipal Councils and one Town Municipal Council and certain villages with the Bangalore Mahanagara Palike. At the time of merger, Bangalore Mahanagara Palike was collecting property tax on the basis of Annual Rental Value under the optional Self Assessment System. Whereas seven City Municipal Councils and one Town Municipal Council were collecting tax under capital value system under the provisions of the Karnataka Municipalities Act, 1964 and the villages were collecting tax provisions of the Karnataka Municipalities Act, 1964 and the villages were collecting tax under the Karnataka Panchayat Raj Act, 1993. In view of the merger it is felt necessary to bring in a uniform property tax policy in the entire Bruhath Bangalore Mahanagara Palike area.

8. A perusal of the same shows that BBMP had already been constituted on 16.01.2007 and the purpose of the above amendment was to provide a uniform property tax policy in the entire area covered by BBMP as the merged entities were having different policies for collecting such tax. So this cannot be said that BBMP came into existence with effect from 2009 when amendment Act 2/2009 was passed as here again the

amendment Act is consequential act to formation of BBMP. So the argument of the assessee on this issue has to be rejected.

9. During assessment proceedings the AO had issued summons to the Panchayat Development Officer (PDO) and he had recorded his statement under oath. In the statement the PDO had stated that the land of the assessee was situated within 5 Kms from Kengeri municipality. The inspector of the AO had also verified the distance of the land from the nearest municipality to be at 5.5 Kms. From Kengeri TMC. Since Kengeri TMC had already become part of BBMP on 16.01.2007, so such land was situated within a distance of 8 Kms from BBMP. The notification issued by the Central Govt. covers the land situated within a distance of 8 Kms. from the Municipal limits for the purposes of Section 2(14)(iii)(b) of the Act. As such the land sold by the assessee was a capital asset and time AO has rightly computed and taxed LTCG arising out of the same.

10. On the issue of the quantum of LTCG, during appellate proceedings before the CIT(Appeals) the assessee argued that the sale consideration should not have been adopted as per the value adopted by the Sub-Registrar for stamp duty purposes. However, the provisions of section 50C are deeming provisions and the AO is not required to prove the actual receipt of the amount if the value for stamp purposes is more than the value claimed as the actual sale consideration, according to the CIT(Appeals).

11. As against this, the assessee is in appeal before us by the above ground of appeal.

12. In this case, the main grievance of the assessee is that Kengeri was not included as part of Greater Bangalore as on the date of sale of land and it has become part of Greater Bangalore after the date of sale of land and

from the year 2010 only Kengeri became part of Greater Bangalore Corporation and it has become operational. Since the assessee sold the land in 2007 on that date of sale of land it was outside the limits of Municipal Corporation situated within 8 Kms. from Kengeri Municipality and it cannot be termed as capital asset so as to charge capital gain.

13. We have carefully gone through the Notification issued by the Govt. of Karnataka dated 2.11.2006. As per this, the impugned landed property falls within the jurisdiction of Greater Bangalore Municipal Corporation and the argument of the Id. counsel for assessee is not based on any evidence brought on record. As rightly contended by the Id. DR, the provisions of section 2(14)(iii)(d) of the Act is applicable since the land sold by the assessee is situated within 5.5 Kms. from the BBMP Limits and the same is capital asset and liable for tax on capital gain. Being so, we do not find any infirmity in the order of CIT(Appeals) on this issue and the same is confirmed.

14. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 27th day of September, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th 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.