

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

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

ITA No.2644/Bang/2018
Assessment Year : 2013-14

Shri Manjunath Mysore Cheluve Urs, No.14, 18 th Cross, Victoria Layout, Bengaluru.	V s.	The Income-tax Officer, Ward-7(2)(3), Bengaluru.
PAN - AAQPM 2083 D		
APPELLANT		RESPONDENT

Assessee by	:	Shri Ashok A Kulkarni, Advocate,
Revenue by	:	Shri Kannan Narayanan, JCIT(DR)

Date of Hearing	:	15-07-2021
Date of Pronouncement	:	30-09-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

The present appeal has been filed by assessee against order dated 23/07/2018 passed by the Ld. CIT (A)-7, Bangalore for assessment year 2013-14 on following grounds of appeal:

- “1. The order of the Hon'ble Commissioner of Income Tax (Appeals)-7 is opposed to law and facts of the case.*
- 2. The Hon'ble Commissioner of Income Tax (Appeals)-7 erred in computing capital gains at Rs.1,77,17,119/- by adopting the sale consideration of the property at Rs. 1 1,55,000/-.*

3. *Having regarded to the Sale Agreement, Memorandum of Settlement and the consequential court order the Commissioner of Income Tax (Appeals)-7 ought to have held that the provisions of Section 50C of the I.T. Act are not applicable.*

4. *Alternatively and without prejudice the Hon'ble Commissioner of Income Tax (Appeals)-7 ought to have held that appellant's case falls under the proviso to Section 50C of the I.T. Act.*

5. *The Hon'ble Commissioner of Income Tax (Appeals)-7 ought to have held that under the facts and in the circumstances of the case, adoption of Rs.11,50,00,000/- as sale consideration of the subject property is not correct.*

6. *The Hon'ble Commissioner of Income Tax (Appeals)-7 ought to have held that the computation of deduction u/s 54 is not in accordance with law.*

7. *The Hon'ble Commissioner of Income Tax (Appeals)-7 ought to have allowed expenditure of Rs.30 lakhs incurred on refurbishing the house while computing deduction u/s 54 of the Act.*

8. *The appellant craves for leave to add to, delete from or amend the grounds of appeal.”*

Brief facts of the case are as under:

2.1 The assessee filed its return of income on 30/10/2013 declaring total income of Rs.13,34,870/-. The case was selected for scrutiny for the verifying the capital gain consideration and the deduction claimed by assessee under section 54. Notice under section 143(2) and 142(1) were receipt issued. In response to statutory notices, representative of assessee appeared before the Ld.AO and filed requisite details as called for.

2.2 The Ld.AO observed that during the year under consideration assessee sold residential property jointly with his family members and the resultant capital gains was invested in purchase of residential house. Assessee claimed deduction under section 54 on this investment. Ld. AO noted that the sale consideration shown in computation of income was Rs.7 crores however it was ascertained from the office of sub registrar that the value adopted by the stamp authorities for purpose of stamp duty was at Rs.11,55,00,000/-. The Ld.AO noted that sub registrar collected the stamp duty on the guidance value to the sale consideration mentioned in the sale deed was Rs.7 crore.

2.3 The Ld.AO noted that assessee has claimed exemption of Rs.2,66,52,615/-under section 54 for having invested in the residential house that was purchased on 03/06/2013. Ld.AO noted that assessee had paced consideration of Rs.2,20,00,000/- only. Ld.AO thus disallowed a sum of Rs.46,52,615/-under section 54 as the same was claimed in excess. Ld.AO called upon assessee as to why the provisions of section 50C of the act should not be invoked in the present facts. In response assessee submitted as under:

“In response Mr.K.M Narasimhamurthy CA duly authorized by the assessee appeared an submitted assessee's reply. The submission of the assessee is reproduced here as under :

a. During the financial year relevant to the assessment year 2013-14, I, along with family members have sold residential house situated at No.10 New No.1, 1 Cross, Main, RMV Extension, Sadashivanagar, Bangalore-560080.

b. The said property is co-owned / jointly owned by Mrs. M.C. Chandra prabha @ M.C. Chandraprabha Urs, Sri. M.C.Manjunath Urs and Mrs. Anupama Urs.

c. Mrs. M.C.Chandraprabha Urs executed an agreement to sell the above mentioned property dated 08/09-01-2004 in favour of Mrs. Prabha S Mallikarjun agreeing to sell the above mentioned property for an agreed consideration of rs.335,55,5551- and received an advance of Rs.85,55,555/- (copy of the agreement dated 08/09-01-2004 is enclosed herewith for your kind perusal)

d. Subsequently, the buyer of the property. Mrs. Prabha S Mallikarjuna has filed a petition before the court (OS No. 15079/2005) for specific performance. (Copy of the court order and copy Memorandum of settlement I compromise is enclosed herewith for your kind perusal)

e. As it was jointly owned property and agreement was entered into by Mrs. Chandraprabha Urs alone, Mr. Manjunath Urs and Mr. Ajay Urs (Deceased), sons of Mrs. Chandraprabha Urs have filed a petition before the city civil and session court against Mrs. Chandraprabha Urs, KSFC and Mrs. Prabha S Mallikarjuna.

f. Through the Hon'ble Court's Instruction dated 25th August, 2012, the parties agreed for compromise and finally the price of the property is fixed at Rs.7,00,00,000/-. The parties submitted a Memorandum of Settlement / Compromise to the Hon'ble Court. Accordingly, the sale deed of the said property executed by the parties, Mrs.Chandraprabha Urs, Mr. Manjunath Urs and Mrs. Anupama Urs for a consideration of Rs.7,00,00,000/- (Rupees Seven Crores only).

g. Considering the fact that, there was an agreement entered into sell the property to the same buyer in the year 2004 itself and due to litigation amongst the parties the registration of the property has been done during the FY 2012-13. Therefore, I submit that, the provision of section 500 is not applicable for the above mentioned transaction.

h. The Hon'ble Allahabad High Court in Commissioner of Income-Tax-11, Agra Vs Shimbhu Mehra (2016) 65 taxmann.com 142 (Allahabad) has held that, 'Where agreement to sale was entered in 2001 and part consideration was received and later sale deed was executed in April 2003, transfer of property could be said to have taken place in 2001

i. In view of the above submissions and as per decisions of various courts, I kindly request your goodself to consider Rs.7.00 crores as the full value of consideration received and not to consider the value

adopted for Registration (11.50 crores) for the purpose of computation of capital gains.

2.4 The Ld.AO after considering the submissions of assessee accepted the valuation determined by the stamp duty authority for purpose of paying stamp duty and registration of the deed. The Ld.AO concluded that the provisions of section 50C are applicable and adopted Rs.11,55,00,000/- as full value of consideration for purpose of section 48 to compute the long term capital gains. The Ld. AO computed the long term capital gain at Rs.8,23,39,648/-and assessee's share being 50% of the long-term capital gain to be Rs 4,11,69,734/-.

2.5 In respect of aid deduct deduction claimed under section 54, Ld.AO was of the opinion that assessee has claimed in excess of Rs.32,00,000/- after granting benefit of the stamp duty paid towards the registration of the said agreement. The Ld.AO denied the claim as assessee failed to furnish the supporting proof of having incurred the expenses towards improvement of the property purchased.

2.6 Aggrieved by the order of Ld.AO assessee preferred appeal before the Ld. CIT (A).

2.7 The Ld. CIT (A) observed as under:

"The submission of the appellant has been considered. As per the submission of the - appellant the property in question at 1 cross. 8h main. RMV Extn., Sadashivanagar, Bangalore was purchased by the grandfather and the father of the appellant out of the family income and savings and all the family members were the co-owners in the said property. Thus, the co-owners are the mother, brother and sister of the appellant along with him. The appellant claims that there was an agreement for sale of the property by the mother of the appellant on 8/9

Jan 2004 and the price fixed as per the said agreement was Rs 3.35.55,555 and hence, the provisions of section 50C cannot be applied to this transfer. However, this contention of the appellant is not sustainable as the agreement was only by the mother of the appellant and not by all the rightful co-owners. As the mother was not the only owner of the property, the agreement could not be considered as a valid and legally enforceable agreement. This fact has been evidenced soon after NN-hen the appellant and his brother filed civil suit questioning the ownership of their mother and thereby challenging the agreement for sale entered into by the mother on 8/9 Jan 2004. Subsequently, the property was sold by all the co-owners following the settlement of the dispute of ownership between them and the compromise approved by the Court. Therefore, there is no basis for the appellant to argue that section SOC is not applicable as the transfer is on the basis of agreement of sale earlier to the date of sale. The value fixed in the agreement for sale was never adopted as full consideration for sale in the sale deed- Hence, the agreement for sale which was challenged by the appellant himself and proved illegal in the court of law, cannot be taken cognizance of contrary to the argument of the appellant.

6.2 It is undisputed that the value of the property for stamp duty purpose was Rs 11.55 crores as against the value of Rs 7 crores mentioned in the sale deed. Under these facts, the application of section SOC is clearly attracted and the AO was right to invoke the provision. Further, the appellant has accepted the valuation of the property for the purpose of payment of stamp duty. The assessee had also never claimed before Assessing Officer that value adopted by stamp valuation authority was more than FMV of said property. Therefore, there was no reason for the AO not to adopt the value as determined 1r stamp duty purpose as full consideration for the sale of the property.”

2.8 In respect of reduction denied under section 54 by the Ld. AO, the Ld. CIT (A) observed as under:

“7. The other issue raised by the appellant is that the AO has allowed only Rs 2.20 crores as investment in residential house u/s 54 of the Act against the claim of Rs 2,6652,615/- of the assessee. The AO noted that that as per purchase deed dated 03-06-2013, the assessee has purchased the house for a consideration of Rs 2.20 crores only (excluding registration a stamp duty of Rs 14,52.615/-) and hence he disallowed excess claim u/s 54 of Rs 32 lakhs. Though in the ground of appeal it is contended that the appellant had paid Rs 30 lakhs to the contractor by cheque for refurbishing the house pursuant to agreement to construct, no details or evidence were submitted before the AO in

support of this claim in spite of specifically asked by the AO for the same. During the hearing, the AR submitted that the proof of investment/expenditure for renovation in the new house could not be submitted to AO due to misplacement of the documents during shifting. However, nothing was brought on record during the hearing to substantiate the claim of additional investment in the new house.”

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

2.10 The Ld.AR at the outset submitted that assessee do not wish to press Ground No.2-4.

Accordingly, we dismiss these ground is as not pressed.

3. Ground No. 5 is in respect of adopting the sale consideration of subject property to be Rs.11,50,00,000/- by the Ld.AO for purpose of computing capital gains in the hands of assessee.

3.1 The Ld.AR submitted that assessee is a co-owner of the residential property situated at No. 10, 1st cross, 8th main, RMV extension, Sadar Shiv Nagar, Bangalore, 560080. It has been submitted that assessee along with other co-owners sold the said property vide sale deed dated 30/08/2012 for consideration of Rs.7 crores.

3.2 The Ld.AR submitted that the co-owners are the mother, brother and sister of the assessee along with him.

3.3 Admittedly, the Sub Registrar estimated the value of property for the purpose of stamp duty at Rs.11.55 crores and in the assessment proceedings, the Ld.AO proceeded to adopt the guidance value of Rs.11.55 crores to compute long term capital

gains in the hands of assessee by invoking the provisions of section 50C of the Act. He submitted that originally the Agreement for Sale of the property was entered by the mother alone dated 8/09/01/2004 for sale consideration of Rs.3,35,55,555/-. Subsequently, as mother was not the only owner of the property the agreement could not be treated as valid and legally enforceable which is substantiated by the Hon'ble City Civil suit, wherein questioned the ownership of the mother and challenged the Agreement of Sale entered into by the mother dated 8/09/01/2004. The Ld.AR submitted that by the order of court the property was sold by all the co-owners, following the settlement of the dispute of ownership amongst them. For this purpose the co-owners entered into compromise deed and the total sale consideration was fixed at Rs.7 crore as mentioned in the Sale Deed dated 30/8/2012. Explaining the brief facts that culminated into execution of Sale Deed dated 30/08/2012, the Ld.AR submitted as under:

-----space left intentionally -----

<p>08.01.2004</p> <p>Page 16 (PB)</p> <p>@ 20</p>	<p>:</p>	<p>Mrs. M.C. Chandraprabha Urs one of the co-owner of the subject property entered into an agreement with Smt. Prabha S. Mallikarjun to sell the subject property for a sum of Rs.3,35,55,555/- and also received advance of Rs.10,00,000/- by DD 906784 drawn on Indian Bank, Davangere Branch and Rs.55,555/- by cash.</p> <p>It is to be noted that the Vendor Smt. M.C. Chandraprabha Urs has given an undertaking to the purchaser that she will obtain the signatures of her husband and children to the Sale Deed.</p>
<p>07.01.2005</p> <p>Page 42 (PB)</p> <p>@ 47,49</p>	<p>:</p>	<p>The agreement holder Smt. Prabha S. Mallikarjuna filed a suit OS No.15079/2005 before the Pri. City & Civil Judge, Bengaluru, for specific performance seeking direction from the court to execute the sale deed in terms of Agreement to sell dated 08.01.2004.</p> <p>The appellant is the second defendant in the court proceedings.</p>
<p>09.11.2005</p> <p>Pl. see Page 50</p> <p>(PB) Para 3</p>	<p>:</p>	<p>The vendor Smt. M.C. Chandraprabha Urs filed a suit OS No.8787/2005 in the court of the Pri. City Civil and Sessions Judge, Bengaluru for a</p>

		<p>1) Directing Smt. M.C. Chandrabhabha @ Chandrabhabha Urs, Sri. M.C. Manjunath Urs and Smt. Anupama Urs (Defendants in O.S. 15079/2005) to execute and register the sale deed in favour of Smt. Prabha S. Mallikarjuna (Plaintiff in O.S. 15079/2005) in respect of suit schedule property on or before 5-9-2012 by receiving a sum of Rs.6,14,44,445/- (Rupees Six Crores Fourteen Lakhs Forty Four Thousand Four Hundred & Forty Five Only) from her;</p> <p>2) Directing that the suit in O.S. 8787/2005 be dismissed as settled between the parties in terms of this compromise petition;</p> <p>3) ”</p> <p>Parties to the suit agreed to execute the Sale Deed for an agreed consideration of Rs.7 Crores.</p>
<p>25.08.2012</p> <p>Page 48 (PB)</p>	<p>:</p>	<p>Order and decree of the 43rd Additional City Civil Judge, Bengaluru.</p> <p>The order reads as under:</p> <p>“It is ordered and decreed that the suit is decreed in terms of compromise petition filed. Copy of compromise petition is enclosed. Refund of full</p>

		<p><i>court fee to the plaintiff is allowed.</i></p> <p><i>It is further ordered and decreed that the parties are directed to get register the same.”</i></p>
30.08.2012	:	<p>Date of Sale Deed executed by:</p> <ol style="list-style-type: none"> 1. Smt. M.C. Chandrabhabha Urs By PA holders. 2. Shri M.C. Manjunath Urs 3. Smt. Anupama Urs <p><u>the Sellers,</u></p> <p>in favour of</p> <p>Smt. Prabha S. Mallikarjun</p> <p><u>the Buyer.</u></p> <p>The Sale Deed was executed for a sale consideration of Rs.7 Crores.</p> <p>This included the advance paid of Rs.85,55,555/- and the balance of Rs.6,14,44,445/- paid by DD as described in the Sale Deed.</p>
30.08.2012	:	<p>Date of registration of the Sale Deed of the subject property.</p> <p>The Sub-Registrar, Malleswaram, Bengaluru, collected the Stamp Duty on the guidance value of Rs.11,55,00,000/- though the sale consideration mentioned in the Sale Deed was Rs.7,00,00,000/- only.</p>

3.4 The Ld.AR thus vehemently submitted that, provisions of section 50C cannot be applied in such circumstances.

3.5 It is submitted by the Ld.AR that, proportionate sale consideration as per the registered sale deed is to be considered for the purpose of computing LTCG in the hands of assessee, and that assessee did not receive anything over and above what has been agreed to have been received in the Sale Deed dated 30/08/2012.

3. In support of its submission the Ld.AR relied on following decisions:

1. *Dharmasibhai Soni [2016] 161 ITD 627 (Ahmedabad Tribunal)*
2. *Chalasanani Naga Ratna Kumari (ITA No. 639/Vizag/2013)*
3. *Raul G Patel vs DCIT by order dated 26/09/2018 (Ahmedabad Tribunal)*
4. *Kishore Hira Bhandari vs ITO by order dated 06/06/2019 (Mumbai tribunal)*

3.6 The Ld.AR submitted that the value that was agreed before the Hon'ble City Civil Court is the actual value received by assessee along with other co-owners and there is no iota of evidence regarding receipt of any amount over and above what has been agreed in the Sale Deed dated 30/08/2012.

3.7 The Ld.Sr.DR on the contrary, placed reliance on observations of authorities below.

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

3.9 Admittedly, agreement entered into by mother alone for sale of subject property dated 08/01/2004 is not doubted by the courts in any of the proceedings before the Hon'ble City Civil Court. We have perused the court decree dated 25/08/2012 in OS No. 15079/2005 and OS No. 8787/2005 wherein Rs.7 crore has been agreed to be the sale consideration of the subject property by all the co-owners. On perusal of the sale deed dated 30/08/2012, we note that, the preceding incidents narrated by the Ld.AR reproduced hereinabove has been mentioned therein. It is also not disputed that the sale deed dated 30/08/2012 is executed by all the co-owners as per the directions decreed by the Hon'ble City Civil Court dated 25/08/2012.

3.10 The Ld.AO treated stamp valuation as value of subject property sold holding that section 50C is deeming provision which is mandatory in nature ignoring the fact, that the sale consideration was approved by the Hon'ble City Civil Court.

3.11 It is observed that the market value of the property for stamp duty purpose was determined by the concerned authority at Rs.11.55 Crore and accordingly the stamp duty thereon was duly paid, while registering the Sale Deed. The value adopted for the purpose of payment of stamp duty is not disputed by the assessee. The Ld.AO has not brought on record that the property under sale was not was under various encumbrances and the assessee was having absolute marketable title of the said property. No material is brought on record by Ld.AO that the assessee received much more consideration than shown in the

Sale Deed. In our view applicability of the provisions of section 50C cannot be invoked in the facts as that of the assessee before us.

4. The Hon'ble High Courts while considering the question of law with regard to the addition on account of difference between the circle rate and the sale price of immovable property, declared by the assessee, held that that, the express provision of Section 50C enabling the revenue to treat the value considered for purposes of computing stamp duty, ipso facto, cannot be a legitimate ground for concluding that there was undervaluation, of such immovable property. If Parliamentary intention was to enable such a finding, a provision akin to Section 50C would have been included in the statute book, to assess income on the basis of a similar fiction in the case of the assessee in similar circumstances. No doubt, the declaration of a higher cost for acquisition for stamp duty could be the starting point for an inquiry in that regard, however that alone cannot be the basis for invoking the provisions of section 50 C of the act without there being conclusive evidence of an undervaluation. The compulsion for higher value is the mandate of the Stamp Act, and provisions which levy stamp duty at pre-determined or notified dates.

4.1 In the present case, the revenue did not rely on any objective fact or circumstances. There is no iota of evidence of assessee and the co-owners have received any amount over and above what is agreed in the sale deed dated 30/08/2012. Whereas sufficient evidence are placed on record to establish that

the amount of Rs.7 crores in the sale consideration received by assessee along with the co-owners are as per the approval sought from Hon'ble City Civil court in a suit filed by assessee.

4.2 Admittedly, there was a litigation that was pending in respect of the sale of the property by mother alone, disregarding the other co-owners in which there was a decree that was passed in terms of compromise petition between all the co-owners wherein the total consideration was agreed to be Rs.7crores.

4.3 We also note that the Ld.AO has not verified the value of the property as on the date of agreement to sell entered into by mother alone with the purchaser in the year 2004. Neither that the Ld.AO referred the matter to the DVO as per the provisions of section 50C(2). It is an undisputed fact that the property under sale for consideration was subjected to litigation by the assessee along with other co-owners against the mother pursuant to agreement to sell dated 08/01/2004. The guidance value of the property as on the date of execution of sale deed dated 30/08/2012 changed. However the parties to the agreement were the same and because there was a litigation that was pending in respect of the sale of property, sale deed could not be entered. It was only when the decree was passed by Hon'ble City Civil Court on 25/08/2012 the sale deed was entered with the same purchaser with all co-owners. Under such circumstances, adoption of stamp valuation by the Ld. AO, by applying the provisions of section 50C was not justified.

4.4 Therefore, we direct the Ld.AO to work out capital gain on the basis of proportionate consideration shown by the assessee.

Accordingly ground no.5 raised by assessee stands allowed.

Ground No. 6-7:

5. Ld.AR submitted that authorities below have disallowed Rs.32 lacks incurred for refurbishing the house for purpose of computing deduction under section 54 of the Act.

5.1 The Ld. senior DR submitted that assessee had not filed any details in respect of the expenditure incurred and therefore the amount has been correctly denied.

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

5.3 It has been submitted by the Ld.AR that evidences are available in respect of the payments made to the architect which has been filed in paper book at pages 68 to 82. As these documents are not verified by the authorities below, we remand this issue back to the Ld.AO. The Ld. AO shall verify all the details filed by assessee and consider the claim in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly these grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed as indicated hereinabove.

Order pronounced in the open court on 30th Sept, 2021

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th Sept, 2021.

/Vms/

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	-9-2021		Sr.PS
3.	Draft proposed & placed before the second member	-9-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-9-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-9-2021		Sr.PS/PS
6.	Kept for pronouncement on	-9-2021		Sr.PS
7.	Date of uploading the order on Website	-9-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-9-2021		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