

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

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

ITA No.615/Bang/2019
Assessment year : 2015-16

M/s Shashikala Korvadi Ramachandra, No.1285/51, 32 nd F Cross, 26 th Main, 4 th Block, Jayanagar, Bengaluru-560 041. PAN – AGLPR 6627 D	Vs.	The Income-tax Officer, Ward-7(2)(1), Bengaluru.
Appellant		Respondent

Assessee by	:	Shri H Guruswamy, ITP
Revenue by	:	Shri Sankarganesh K, JCIT(DR)

Date of hearing	:	05.01.2022
Date of Pronouncement	:	21.01.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of
CIT(A)-7 dated 8/1/2019.

2. The assessee raised following grounds :-

*“1. The impugned Appellate order dated: 08-01-2019
passed the Ld. CIT(A), Bangalore-7 is opposed to law,
facts and circumstances of the case.*

2. *The Ld. CIT(A) has erred in directing the AO to adopt the deemed consideration at Rs. 1,34,94,000/- based on inferred percentage of Stamp Duty being 1% as against the guidance value adopted by the AO at Rs. 1,15,43,400/- without issue Enhancement Notice required u/s. 25(2) of the Act.*
 3. *The Ld.CIT(A) erred in arriving at the deemed consideration Rs.1,34,94,000/- on presumption that the Stamp Duty paid at 1% without appreciating the fact that the stamp duty id for registration of the JDA agreement was at the rate of 2%.*
 4. *The Ld. CIT(A) has erred in not appreciating the fact that the tamp Duty paid for the registration of the JDA was at the rate of 2% according to which the deemed consideration amounts to Rs. 67,47,000/- as against presumed consideration of Rs. 1,34,94,000/- determined by the CIT(A) based on the assumed rate of Stamp Duty at 1%.*
 5. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.”*
3. The assessee has also raised following additional grounds:-
- “1. *The Ld. CIT(A) has arbitrarily erred in refusing to admit the evidence produced in support of deduction admissible u/s. 54 of the Act without appreciating the fact that the AO has not provided adequate opportunity to the Appellant to produce the relevant documents to prove the existence of Residential house.*
 2. *The Ld. CIT(A) has erred in holding that the deduction in respect of cost of acquisition of land amounting to Rs.83,149/- without providing the deduction in respect of cost of construction of the building consisting of Ground and First Floor measuring 1500 sq.ft each floor, constructed in the year 1996-97”*

4. The assessee filed petition for admission of additional grounds stating that this additional grounds emanated from the fresh facts which are already on record and it did not involve any investigation of facts otherwise on the record of the department and as such the additional grounds may be admitted for the advancement of substantial justice.

5. We have heard both the parties and perused the materials on record. Regarding admission of additional grounds, in our opinion, the issue raised by the assessee does not require any investigation of fresh facts, which are otherwise on record of the department being so by placing reliance on the judgment of Hon'ble Supreme Court in the case of NTPC Ltd., Vs. CIT 229 ITR 383, we admit the additional grounds for adjudication.

6. Coming to the main grounds of appeal, the contention of the Id.AR is that the assessee had purchased on 06-03-1981, the land measuring 8 Guntas (8712 sq.ft) situated in Sy. No. 139, (New Municipal No. 314/312/317/139), Billekalli Village, Begur Hobli, Bangalore South Taluk, Bangalore. The assessee after purchase of the land had constructed a residential building consisting of Ground and First Floor measuring 2850 sq.ft in the year 1996-97 at a cost of Rs. 9,86,889/- on the total land measuring 95 X 92.

7. The assessee had entered into a Joint Development Agreement dtd: 23-04-2014 with M/s. NSR Projects, a Registered Partnership Firm having its office at No. 24, (Old No. 1/1) 1st Cross, 3rd Phase, 5th Block, Krishnaiaha Layout, BSK 3rd Stage, Bangalore - 560089 represented by its partner Sri. N.S. Sridhar for

development by way of construction of residential flats and as per the aforesaid JDA the land measuring 53% was agreed to be transferred in favour of the developer in lieu of 47% of built-up area measuring 15233 sq.ft consisting of 11 Residential flats out of 24 flats proposed to be constructed. The assessee submitted that the return of income for the A.Y 2015-16 was e-filed on 04-01-2017 declaring income of Rs. 7,59,000/-. The said return was selected for a limited scrutiny to examine the correctness of the deduction claimed u/s. 54 from the Capital Gains arising on account of transfer of 53% of the land in favour of the developer.

8. The AO has completed a scrutiny Assessment on 28-12-2017 determining the total income at Rs. 1,22,64,170/- inclusive of admitted income of Rs. 7,59,000/-. The AO has made an addition of Rs. 1,15,05,170/- being the Long Term Capital Gains relating to the transfer of 53% of the undivided portion of land in favour of the developer as per para 3.8 of the Assessment Order which is reproduced as under:-

“53% value of land transferred on account of JDA”

(4617/- sq.ft X Rs. 2500/- per Sq.ft)
Rs.1,15,42,500/-

Less: Cost of Acquisition of land of 53%
of the cost (70,430/-)

Rs. 37,330/-

Long Term capital Gains Rs. 1,15,05,170/-

9. The AO while computing the Capital Gains has not considered the cost of acquisition of the Building constructed in the year 1996-97 measuring 2850 sq.ft consisting of Ground and First

Floor on the total land measuring 95 X 92 at a cost of Rs. 9,86,889/-. Accordingly the AO has denied the deduction claimed by the Appellant u/s. 54 of the Act solely on the ground that the existence of the residential building was not found mentioned in the JDA dtd: 23-04-2014 and what was mentioned was only Land bearing Sy. No. 139 (New Municipal No. 314/312/317/139), Billekalli Village, Begur Hobli, Bangalore South Taluk, Bangalore and further held that the assessee has not produced the building demolition certificate issued by the Competent Authorities. In this view of the matter the AO has rejected the assessee's claim for exemption admissible u/s. 54 of the Act.

Computation of Cost of Consideration of 53% of the Land:-

10. The AO in para 3.8 of the Assessment Order has determined the consideration attributable to the transfer of 53% of Undivided portion of land at Rs. 1,15,42,500/- on the basis of the guidance value at the rate of 2500/- per Sq.ft and out of which deduction was allowed to the cost of acquisition of land at Rs. 37,330/- and arrived at the Long Term Capital Gains at Rs. 1,15,05,170/-.

11. The CIT(A) has computed the consideration of 53% of undivided portion of land at Rs. 1,34,94,000/- on the basis of the Stamp Duty paid at the rate of 1% of the Guidance Value/Fair Market Value and accordingly directed the AO to adopt the full value of consideration at Rs. 1,34,94,000/- in place of Rs. 1,15,42,500/- adopted by the AO. The assessee submitted that the strategy adopted by the Ld. CIT(A) on the basis of Stamp Duty is not disputed. However it is submitted that the Stamp Duty paid by the

Appellant was at the rate of 2% as against 1% adopted by the Ld. CIT(A).

12. The assessee in this regard placed reliance on the Karnataka Stamp (Amendment) Act 2014 dtd: 28-02-2014 applicable with effect from 01-03-2014 wherein the Stamp Duty payable on Joint Development Agreement and its consequent Power of Attorney for Joint Development was reduced from 5% to 2% as mentioned in para 4 of the Statement of Objects and Reasons to the Amended Act.

13. According to the amended provision of the Stamp Duty Act the Stamp Duty payable on construction or development of Immovable property including a mutli-unit or Mutli-storied house or building or apartment or flat or portion of it was liable at the rate of Rs. 2/- for every Rs. 100/- (2%) as per internal page 3 of the Amended Stamp Duty Act dtd: 28-02-2014 effective from 01-03-2014. In view of the Amended Stamp Duty Act the Stamp Duty of Rs. 1,34,940/- paid, was at the rate of 2% of the Guidance Value. Therefore the Guidance Value on the basis of the Stamp Duty at the rate of 2% works out to Rs. 67,47,000/- as against Rs. 1,34,94,000/- determined by the CIT(A). Therefore, the assessee submitted that the Consideration of transfer of 53% of the undivided portion of land requires to be adopted at Rs. 67,47,000/- as per the Karnataka Stamp (Amendment) Act 2014 as against Rs.1,34,94,000/- determined by the Ld. CIT(A) on the basis of 1% of the Stamp Duty of Rs.1,34,940/-.

14. The CIT(A) has held that the Additional Evidence under Rule 46A for adjudication of the issue relating to the existence of the Residential Building which was later demolished in view of JDA dtd: 23-04-2014. The CIT(A) has held in para 5.2 of the order that the additional evidence produced for the first time was not acceptable since the admission of additional evidence under Rule 46A cannot be claimed as a matter of right without establishing the reasonable cause as how the Appellant was prevented from producing the relevant evidence before the AO. In this regard the assessee submits that the AO has issued the first Notice of hearing u/s. 143(2) dtd: 16-09-2017 posting the case on 05-10-2017 and the said Notice was complied with as mentioned in para 3 of the Assessment Order and thereafter the Scrutiny Assessment u/s. 143(3) of the Act was completed on 28-12-2017. Thus the Assessment was completed within Two Months 23 Days from the date of issue of First Notice. The assessee submits that the AO has not provided the sufficient opportunity for gathering and furnishing the relevant documents in support of the claim for deduction u/s. 54 of the Act in respect of the residential building which was constructed in the year 1996-97. Therefore the assessee could not produce all the documents in support of the existence of the residential building on the land which was a subject matter of JDA dtd: 23-04-2014.

15. The assessee submitted that she was prevented from sufficient cause since the AO has not provided adequate opportunity for production of relevant details in support of the existence of the building for claim the deduction u/s. 54 of the Act.

However, the CIT(A) has not appreciated the submissions of the assessee and arbitrarily held that the additional evidence was not admissible under Rule 46A of the IT Rules and thus the additional evidence produced before the CIT(A) was rejected as mentioned in para 5.2 of the order.

16. The assessee submitted that she was prevented by sufficient cause since the AO has not provided adequate opportunity and therefore the order of the CIT(A) in refusing to admit the additional evidence may please be set-aside and orders be passed directing the authorities below to consider the evidence in accordance with law relating to the existence of the residential building on the land which was subject matter of JDA.

17. The Id.DR submitted that the stamp duty paid by the assessee was Rs.1,34,940/-, which is 1% of the guidance value of the property, therefore the value of the property transferred was Rs.1,34,94,000/- being so, the CIT(A) considered the value of property transferred at Rs.1,34,94,000/- and there is no infirmity in the order of the CIT(A).

18. We have heard both the parties and perused the materials on record. In the present case, the AO determined the value of transfer at Rs.1,15,42,500/-. The Id.AR stated that value of the property was transferred only Rs.67,47,000/- being 53% undivided portion of land, which was transferred by the assessee and the stamp duty value would be Rs.2 for every 100 rupees which is as per market stamp duty Act i.e Karnataka Stamp Duty (Amendment) Karnataka Act No.2014, clause (f) reads as under:-

<p><i>“If relating to construction or development of immovable property, including a a multi unit or multi storied house or building or apartment or flat, or portion of it, executed by and between owner or lessee, as the case may be, and developer, having a stipulation, whether express or implied, that, in consideration of the owner or lessee conveying or transferring or disposing off, in any way, the undivided share or portion of land or immovable property; the developer agrees to convey or transfer or dispose off, in any way, the proportionate or agreed share or portion of the constructed or developed building or immovable property to the owner or issues, as the case may be.</i></p> <p><u>Explanation:</u></p> <p><i>The term "Developer" includes promoter or builder or by whatever name called.”</i></p>	<p><u><i>Two Rupees for every one hundred rupees or part thereof, on the Market</i></u> <i>value of such undivided share or portion of land or immovable property consideration and money advanced, if any; or</i></p> <p><i>On the Market Value of such share or portion of the constructed or developed building or immovable property, consideration and money advanced, if any; Whichever is higher:</i></p> <p><i>Provided that, if the proper stamp duty is paid under clause (ea) of the Article 41 on power of Attorney, executed by and between the same parties and in respect of the same property, then the stamp duty payable on the corresponding agreement under clause (f) of article 5, shall not exceed rupees two hundred.</i></p> <p><u>Explanation:</u></p> <p><i>The term "money advanced" in this Article, means and includes the security deposit whether refundable or adjustable.</i></p>
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20. However, the CIT(A) mentioned that stamp duty value will be 1% of the guidance value without considering the market stamp duty Act of 19 of 2014 and determined the sale consideration at Rs.1,39,94,000/-, which cannot be appreciated. Further, in the present case, the CIT(A) enhanced the asst. by mentioning the value of the property transferred at Rs.1,34,94,000/- as against the value adopted by the AO at Rs.1,15,42,500/-. There is no doubt that the CIT(A) can enhance the asst. subject to the condition that the assessee should be given a reasonable opportunity of showing cause against such enhancement thus if the CIT(A) certified that AO has granted excessive relief in the asst. and taxed in any way computed lesser than what is required he has power to make an order enhancing the asst. while deciding the appeal before him. However, it cannot be said that any asst. is open before him to enhance the asst. without giving a notice of enhancing to the assessee. In other words he has to give mandatory notices to the assessee so as to enhance the asst. and after giving notice he can enhance the asst. without bringing new sources of income not considered by the AO.

21. In the present case, we notice from the record that the CIT(A) enhances the assessment without giving mandatory notice to the assessee to enhance the asst. Accordingly, we are of the opinion that such enhancement beyond the power of the CIT(A) as there was violation of principal of natural justice. On verification, the sales consideration to be determined at Rs.67,47,000/- which is on the basis of S.R.O rate as discussed in para 13 of this order. Accordingly, we allow the ground No.2 to 4 raised by the assessee.

Additional Grounds:**Denial of Deduction u/s. 54 of the Act:-**

22. The Id.AR submitted that assessee has claimed deduction u/s. 54 of the Act out of the Capital Gains arising in lieu of deemed transfer of the undivided portion of 53% of land in favour of the developers. The AO has rejected assessee's claim solely on the ground of non submission of demolition certificate of the building which was constructed in the year 1996-97.

23. Aggrieved, assessee went in appeal before the CIT(A), who rejected the claim for deduction u/s. 54 of the Act by placing reliance on the Schedule of the property described in the JDA wherein it was mentioned as "All that piece and parcel of the undeveloped converted land bearing Sy. No. 139, measuring 8712/- sq.ft situated at Billekalli Village, Begur Hobli, Bangalore South Taluk and accordingly, it was held that there was no indication of any pre-existing residential building on the said land.

24. The assessee submitted following documents, which were also produced before the CIT(A) for the first time under Rule 46A of the IT Rules.

- i. Rental Agreement dtd: 01-12-2004 between the assessee and the Tenant Sri. G.K. Balaji.
- ii. Electricity Bills relating to RR. No. KSP1242 and KSEH4528

- iii. Certificate Dated 02-03-2018 issued by the Chartered Account M/s. Balaji Samudrala and Co in respect of expenditure of Demolition charges.
- iv. BESCO official Memorandum dtd: 22-08-2014 for Permanent Surrender of Power Supply in respect of Power Supply provided vide RR. No. KSP1242 and KSEH4528.
- v. Property Tax paid receipt for the years 2009-10 to 2012-13.

25. The assessee submitted that the CIT(A) was not justified to refuse to admit the above documents for adjudication in support of pre-existing residential building for admissibility of deduction u/s. 54 of the Act out of the Capital Gains arising out of the deemed consideration for deemed transfer of 53% of the undivided portion of the land. The refusal of admission of the above documents resulted in denial of justice admissible in accordance with law for deduction u/s. 54 of the Act.

26. The Id.AR submitted that as per the Rental Agreement, an advance deposit was received from the Tenant amounting to Rs.3,00,000/- vide Cheque bearing No. 216285 dtd: 25-11-2004 drawn on State Bank of Mysore Malleshwaram Branch, Sampige Road, Bangalore. The Electricity Bills and the Electrical Meter Surrender Certificate in respect of meter No. KSP1242 and KSEH4528 establishes the fact of existence of the residential building which was later demolished by the Developer as per Auditor's Certificate dtd: 02-03-2018 wherein it was certified that in the Books of the Developer a sum of Rs. 1,12,500/- was debited towards Building Demolition expenses.

27. The ld.AR submitted that the Ld. CIT(A) has refused to admit the relevant documents merely on technicalities without adjudicating the case on merits supported by documentary evidence and thereby the substantial justice was denied.

28. The ld.DR submitted that the issue may be remitted to the file of AO if the Tribunal is of the opinion that assessee could claim the deduction u/s 54 of the Act.

29. We have heard both the parties and perused the materials on record. In the present case, the assessee placed additional evidences before the CIT(A) for admission and adjudication of issue relating to the claim of deduction u/s 54F of the Act. The CIT(A) outrightly rejected the admission of additional evidenced and observed that the assessee has not shown any reasonable cause for not filing those additional evidences before assessment proceedings. In our opinion, the assessee has explained reasons for not filing the above additional evidence before the AO. The CIT(A) ought to have admitted the additional evidences and decided the issue on merits. In our opinion, there is good and sufficient reason for not filing the above additional evidences before the AO, as certain evidences were not available at that time of assessment. Accordingly, we are inclined to admit the additional evidences for adjudication. The following additional evidences listed below shows that the assessee is having residential house at that residential property before transfer.

“i. Rental Agreement dtd: 01-12-2004 between the Appellant and the Tenant Sri. G.K. Balaji. (Placed at Pages 18 to 19 of Paper Book)

- ii. Electricity Bills relating to RR. No. KSP1242 and K5EH4528 (Placed at Pages 20 to 60 of Paper Book)*
- iii. Certificate Dated 02-03-2018 issued by the Chartered Account M/s. Balaji Samudrala and Co in respect of expenditure of Demolition charges. (Placed at Page 61 of Paper Book)*
- iv. BESCO official Memorandum dtd: 22-08-2014 for Permanent Surrender of Power Supply in respect of Power Supply provided vide RR. No. KSP1242 and KSEH4528. (Placed at Page 62 of Paper Book)*
- v. Property Tax paid receipt for the years 2009-10 to 2012-13. (Placed at Pages 63 to 66 of Paper Book)”*

30. Accordingly, in our opinion, the above evidences and surrounding circumstances suggests that there was existence of residential house on the said landed property and the assessee is entitled for deduction u/s 54 of the Act. Accordingly, we direct AO to grant deduction u/s 54 of the Act. The AO has grant this deduction after affording reasonable opportunity of hearing to the assessee.

31. Additional ground No.2 -

“The Ld. CIT(A) has erred in holding that the deduction in respect of cost of acquisition of land amounting to Rs.83,149/- without providing the deduction in respect of cost of construction of the building consisting of Ground and First Floor measuring 1500 sq.ft each floor, constructed in the year 1996-97.”

32. The assessee submitted that a residential building was constructed on the land in the year 1996-97 measuring 2850 sq.ft consisting of Ground and First Floor on the land measuring 95 X 92 at a cost of Rs.9,86,889/-.

33. With regard to deduction towards cost of construction of the building consisting of ground and first floor measuring 1500 sft. each floor, constructed in the year 1996-97, in our opinion, the same to be granted as cost of acquisition while computing the gain, as we have already held in earlier paras that there was said constructed in the landed property. We direct the AO to give benefit of cost of construction while computing capital gain. Ordered accordingly.

34. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in court on 21st January, 2022

Sd/-

Sd/-

(BEENA PILLAI)

(CHANDRA POOJARI)

Judicial Member

Accountant Member

Bangalore,

Dated, 21st January, 2022

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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