

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.674/Bang/2022 : Asst.Year 2017-2018

Smt.Ganigara Rekha Venugopal 344 Ganigara Beedi 6 th Ward Devanahalli Town Devanahalli – 562 110. Karnataka PAN : AEWPV4890F.	v.	The Assistant Commissioner of Income-tax, Central Circle 6(3)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.C.Ramesh, CA
Respondent by : Sri.K.R.Narayana, Addl.CIT-DR

Date of Hearing : 05.09.2022	Date of Pronouncement : 05.09.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A);s order 08.06.2022. The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

“The appellant objects to the Assessment order on the following grounds in so far as it is prejudicial to the appellant as it is opposed to law and circumstances of the case :-

1. *The AO was not correct in restricting the cost of site sold to Rs.22,33,252 from Rs.49,79,511 as claimed u/s 57 under income from other sources.*

2. *The AO and the CIT(A) have not appreciated the facts that the appellant has sold developed sites and claimed development cost, which is spent by developer (purchaser) as cost of site sold.*

3. *The AO and the CIT(A) have not appreciated facts that the appellant has received developed site areas of 41,947 sq.ft. in exchange of undeveloped land area of 87120 sq.ft. from the Developer. Hence, the developed cost of site is to be considered u/s 57 as it is attributable to sale of developed sites.*

4. *The AO and CIT(A) have not appreciated the facts that the appellant has entered into agreement of sale dt. 05.08.2015, where the purchaser (developer) has agreed to pay Rs.315.95 per sq.ft. of saleable site areas at the time of registration of sale deeds in respect of sites formed.*

5. *The appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal.*

Wherefore on the above grounds and on such other grounds the appellant prays that appellate authority to set aside the assessment order and may pass such order as the appellate authority deems fit.”

3. The brief facts of the case are as follows:

The assessee an individual had filed the return of income for the assessment year 2017-2018 on 31.03.2018 declaring total income of Rs.46,49,450. The assessment was selected for “limited scrutiny” to examine the claim of deduction u/s 57 of the I.T.Act. During the course of assessment proceedings, it was noticed that the assessee had declared Rs.45,30,070 as sales proceeds of land under the head “income from other sources”. The total sale proceeds received during the relevant assessment year was Rs.95,09,551 (including non-refundable deposit). The assessee had claimed deduction of total expenditure of Rs.49,79,481. It was noticed that the assessee had purchased the above said land in the year 2010 for a total purchase cost of Rs.72,23,275 (purchased two acres of agricultural land and

converted it into non-agricultural land). The above land was developed into sites by a joint development agreement with one M/s.Merusri Real Estate Developers Private Limited. During the course of assessment proceedings, the assessee submitted that she was entitled only to 41,947.19 sq.ft. of developed land in exchange of 87,120 sq.ft. (two acres of land). The assessee further submitted that 26,933.61 sq.ft. sites were sold for a total sales proceeds of Rs.95,09,551. It was submitted that the cost per sq.ft. of the developed land worked out to Rs.172.71 (i.e. Rs.72,23,725 / 41.947.19). Therefore, it was claimed that the cost of 26,933.61 sq.ft. of land sold during the relevant assessment year should be taken as Rs.46,38,348.

4. The Assessing Officer, however, completed the assessment by taking the cost of land sold at Rs.82.91 per sq.ft. i.e., Rs.72,23,723 / 87,120. The A.O. also did not grant other incidental expenses amounting to Rs.3,41,133. Consequently, the expenditure claimed by the assessee u/s 57 of the I.T.Act amounting to Rs.49,79,481 was reduced to RS.22,33,252 by the A.O. The relevant finding of the A.O. in this regard reads as follows:-

“From a perusal of the above submissions, it was noted that the assessee had purchased 2 acres of agricultural land at Southegoudanahalli, Devanahalli on 28.12.2010 for Rs.71,14,780. This land was subsequently converted for non-agricultural purposes on 27.07.2012 and the total value of the converted land was Rs.72,23,725. The assessee then stated that she entered into a Sale Agreement with Merusri.

After a perusal of the assessee's submissions, the following discrepancy was noted which was conveyed vide notice dated 29.10.2019, which is as reproduced below:

"Sub: Income Tax scrutiny proceedings for Asst.Year 2017-18 – Calling for information u/s 142(1) of Income Tax Act, 1961 – Reg.

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3. The total cost of acquisition of your 2 acres of erstwhile agricultural land is Rs.72,23,725 (as stated by you previously). Therefore, the total cost to you would be Rs.72,23,725 / 87,120 (2 acres is equal to 87.120 sq.ft.) which is equal to Rs.82.91. Therefore, the cost of sites works out to 26,933.61 sq.ft. @Rs.82.91 which is Rs.22,33,252.89. Objections, if any, may be filed before 01.11.2019 else this will be taken as your Total cost."

The assessee has filed no response for the above from which it is evident that the assessee has no explanations to offer. Therefore, the deduction u/s 57 is reduced to Rs.22,33,252 for A.Y. 17-18."

5. Aggrieved, the assessee filed an appeal before the first appellate authority. The CIT(A) dismissed the appeal of the assessee. The CIT(A) held that the assessee has not discharged the onus to substantiate her claim with the required documents / evidences. The relevant finding of the CIT(A) reads as follows:-

"14. Moreover, the onus was on the appellant to substantiate her claim with required documents. The appellant neither during assessment proceedings nor at the appellate proceedings felt the need to produce the documents / agreements to substantiate her claim. The appellant submitted only 2 page explanation to corroborate her claim without submitting any documents. On 01.06.2022 once again, the appellant has been given further opportunity to produce relevant documents to support her claim. However, in his reply dated 02.06.2022, the appellant submitted Form 26AS, Return, purchase agreement of 2 acre land only. The appellant has not submitted document regarding the development land agreement with M/s. Sri Meru Real Estate Developers Pvt. Ltd.

to substantiate her claim that the value of developed land should be 172.21 sq.ft. not 82.91 sq.ft. as taken by the AO. The appellant once again could not substantiate her claim regarding the value of developed land taken by the AO. The AO has already acknowledged the reply dated 08.07.2019 filed by the assessee in para 4 of the assessment order.

15. In the facts and circumstances, it is inferred, that the appellant do not possess any valid document or agreement to corroborate his claim. The contention of the appellant seems to be without any reasonable basis. Therefore, in the given situation, there is no need to interfere with the order of the AO. Hence, the addition made by the AO is held justified and Ground of appeal No.1 is dismissed.”

6. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR has filed a paper book comprising of 136 pages inter alia enclosing therein the acknowledgement of return filed, the computation of income, the agreement with M/s.Merusri Real Estate Developers Pvt. Ltd., approved plan issued by BIAAPA, purchase deed dated 28.12.2010, samples of the copies of the sale deeds concluded during the relevant assessment year, submissions made before the AO and the CIT(A), etc. The learned AR reiterated submissions made before the Income Tax Authorities.

7. The learned DR, on the other hand, submitted that the assessee has not been able to substantiate her claim with documentary proof and agreement entered with the developer. Therefore, it was submitted that the Tribunal ought not interfere with the orders of the authorities below.

8. We have heard rival submissions and perused the material on record. Admittedly, the land which was developed into sites and sold during the relevant assessment year was purchased in the year 2010 for a total consideration of Rs.72,23,725. The land which was purchased was an agricultural land extending to 2 acres (87,120 sq.ft.). It is claimed by the assessee that it had developed the said land and received only 41,947.19 sq.ft. as saleable area as per the approved plan of BIAAPA . Therefore, the cost per square feet, according to the assessee, comes to Rs.172.21 per sq.ft. (i.e. $72,23,725 / 41,947.19$ sq.ft.). The A.O., however, adopted the cost to be at Rs.82.91 per sq.ft.(i.e. $72,23,725 / 81,120$). The A.O. also has not granted expenses of Rs.3,41,133, which according to the assessee, is attributable to sale of developed sites.

9. To the proposal issued by the A.O., the assessee did not respond, consequently, the claim of deduction u/s 57 of the I.T.Act was reduced by the A.O. to Rs.22,33,252 instead of Rs.49,79,511 claimed by the assessee. Even before the first appellate authority, the assessee has not been able to prove that it was in respect of only saleable area of 41,947.19 sq.ft. Consequently, the CIT(A) confirmed the views taken by the A.O. Before us, the assessee had produced approval plan issued by BIAAPA, wherein it is mentioned that the total saleable area is only 50.68%. It is not clear whether this approved plan issued by the BIAAPA was before the lower authorities. The assessee has to necessarily prove that she

was only in receipt of total saleable area of 41,947 sq.ft. in exchange of undeveloped land of 87,120 sq.ft. This exercise needs to be done by the assessee before the A.O. Accordingly, the entire issue is restored to the files of the A.O. The assessee shall also produce the necessary evidence to prove that a sum of Rs.3,41,133 are expenses attributable to the sale of developed sites. The assessee shall cooperate with the Revenue and shall not seek unnecessary adjournment in the matter. The A.O. shall afford a reasonable opportunity of hearing to the assessee before a decision is taken in the matter. It is ordered accordingly.

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

Order pronounced on this 05th day of September, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 05th September, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore