

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

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

ITA No.1250/Bang/2019
Assessment Year: 2015-16

Shri Gangahanumaiah Lakshminarayana No.28, Lakshmipura Post Dassanpura Hobli Bylakonenahally Bengaluru 562 123 PAN NO : ADYPL0326R	Vs.	ITO Ward-6(2)(5) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri N.P.S. Sundar, A.R.
Respondent by	:	Smt. Priyadarshini Baseganni, D.R.

Date of Hearing	:	14.09.2022
Date of Pronouncement	:	15.09.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 28.3.2019 for the assessment year 2015-16. The assessee has raised following grounds of appeal:-

1. *“The learned Assessing Officer had erred in passing the order in the manner passed by him and the Learned CIT (A) has erred in confirming the same. The order passed is bad in law and liable to be quashed.*
2. *In any case the learned Assessing officer had erred in making the addition on account of capital gains in the hands of the appellant which is beyond*

the scope of limited scrutiny that too without seeking prior approvals make the entire assessment proceedings bad in law and therefore the impugned order is liable to be quashed.

3. *Without prejudice, the Assessing Officer had erred in holding that the appellant had transferred a capital asset and earned some long term capital gain, thereby liable for taxation u/s 45 of the Act and the learned CIT(A) has erred in confirming the same. On the facts and circumstances of the case and the law applicable, the appellant never owned the capital asset and therefore the question of transferring the capital asset and liability to be assessed u/s 45 of the Act does not arise at all. The conclusion drawn by the authorities below being wholly erroneous both on facts and law is to be rejected.*
4. *The learned Assessing officer had erred in computing the long term capital gain on sale of land at Rs.49,86,132/- and taxing the same under the head Capital Gains. The learned CIT(A) instead of deleting the addition made has erred in confirming the same. The action of authorities below being totally erroneous both on facts and law are to be negated and the addition made under the head long term capital gain is to be deleted.*
5. *In any case, the learned CIT(A) has erred in holding that:*
 - i) *the appellant acquired easementary rights in the said property*
 - ii) *such rights were relinquished by way of a release deed*
 - iii) *the amount received from the father of the appellant is in lieu of transfer of such rights.*
 - iv) *relinquishment of easementary rights amounts to transfer in terms of section 2(47) of the Act*
 - v) *the appellant is liable to be assessed under the head Capital Gains*
 - vi) *the appellant is not eligible for deduction u/s 54B/54F of the Act.*

The conclusions drawn are contrary to both facts and law applicable are to be disregarded and the addition as made/confirmed is to be deleted.

6. *In any case, the authorities below have erred in not appreciating the fact that*
 - i) *the appellant never owned the said property nor acquired any interest/rights therein*

Page 3 of 26

ii) the said property was acquired and sold solely by the father of the appellant

iii) the amounts received from the father of the appellant was not on account of transfer of appellant's share of property

iv) in any case, The registered relinquishment deed was executed by the appellant as well as his brothers before the sale of the property, in to formally declaration any preexisting right, but for protecting the interest of the buyer.

on proper. appreciation of facts and the law applicable, no sum is assessable under the head capital gains in the hands of the appellant and same is to be accepted.

7. *The appellant is also not liable to pay interest U/s. 234B and 234D of the Act. The interest having been levied erroneously is to be deleted.*
 8. *In view of the above and on other grounds to he adduced at the time of hearing, it is requested that the impugned order be quashed or atleast the Long term capital gain as assessed in the hands of the appellant be deleted and interest levied be also deleted.”*
2. The assessee has also raised additional grounds of appeal along with petitions as follows:-

1. *“The Appellant in the above memorandum of appeal above, has raised several grounds of appeal wherein ground no. 2 reads as under:*

“In any case, the learned Assessing officer had erred in making the addition on account of capital gains in, the hands of the appellant which is beyond the scope of limited scrutiny that too without seeking prior approvals make the entire assessment proceedings bad in law and therefore the impugned order is liable to be quashed”

2. *This legal ground has not been raised before the first appellate authority and taken for the first time before the honourable Tribunal as additional ground.*
3. *The additional ground of appeal pertains to the legal issue of scope of limited Scrutiny and assumption of jurisdiction of the Assessing officer to consider the issues not covered by limited scrutiny without seeking prior approvals from higher authorities. It is submitted that all the facts relating to this additional ground of appeal are available on record.*
4. *In the facts and circumstances of the case and in the interest of justice, the appellant requests that the additional ground of appeal hereby enclosed, which*

Page 4 of 26

goes to the very root of the matter, may please be admitted and adjudicated at the time of hearing.

5. *The prayer may kindly be acceded to."*

3. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional ground for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

4. Facts of the case are that for assessment year 2015-16 the assessee had filed his return of income on 01.10.2015 declaring total income of Rs. 2,65,678/-. The assessee's case was selected for limited scrutiny under CASS for the purpose of verification of cash deposits in savings bank account. As per the AIR information, the assessee had deposited sum of Rs. 54,42,660/- in his bank accounts. In response to the AO's query regarding the source of the cash deposits, the assessee submitted that the cash deposits *inter alia*, comprised a sum of Rs. 50,12,500/- received from his father out of sale consideration of Rs. 2,40,50,000/- received by the latter from sale of land. On being asked by the AO why he had not declared the amount of Rs.50,12,500/- in his return, the assessee stated that the land was agricultural land and hence exempt from taxation. The AO observed that neither the assessee nor his father had declared agricultural income for the preceding two years. Further, the land had been sold as residential plots, as evident from the registered sale deeds submitted and the land had lost its agricultural character. The AO also held that the said land fell

within the BBMP limits and the area specified u/s 2(14)(iii)(b) of the Income-tax Act,1961 ['the Act' for short].

4.1 The AO recorded the statement of the assessee u/s 131 of the Act on 08/11/2017, in which the assessee *inter alia* stated that he had received Rs.50,12,500/- as his share of the sale proceeds of Rs.2,40,50,000/- from the sale of sites pursuant to the agreement to sell dated 28/01/2014. The assessee purchased 3 sites using the above sale proceeds received by him. Two of the plots were purchased on 07/03/2015 and one plot on 03/12/2014 and the assessee had not constructed any house on date. The AO obtained the guidance value of the property sold as on 01/04/1981 which was Rs.5,000/- per acre and accordingly worked out the cost of acquisition and consequent capital gains at Rs.49,86,132/- as below:

Total Sale Consideration received		Rs. 2,40,50,000/-
Less indexed cost of acquisition (applying cost inflation index of 1981)		
2.06 Acres x Rs. 5000 per Acre	10,300x1024/100	Rs. 1,05,472/-
Taxable capital gains		Rs. 2,39,44,528/-
Less paid to 4 sisters for release deed		Rs. 40,00,000/-
Balance divided among three brothers and father		Rs. 1,99,44,528/-
Assessee's Share in the above sale consideration:		Rs. 1,99,44,528/-
		Rs. 49,86,132/-

4.2 As the assessee had not constructed one residential house within the time stipulated u/s 54F, the AO held the assessee could not claim any exemption on the capital gains. Accordingly. the AO added the sum of Rs.49,86,132/- to the assessee's income.

5. The Ld. CIT(A) observed that the claim of assessee that there cannot be any capita gain arising on transfer of property bearing No.29/6B measuring 2 acres & 6 guntas excluding 2 guntas Kharab, remaining 1 acre 34 guntas situated at Bylakonenahally, Dassanpura Hobli, Bengaluru North Taluk have no merit on the reason that agreement to sale dated 28.1.2014 with T. Raju states as follows:-

“Whereas, the land bearing sy.No.29/6B, measuring 2-06 (Two Acres Six Guntas), excluding 0-2 (Two Guntas) Kharab, remaining 1-34 (One acre Thirty Four Guntas) situated at Bylakonenahalli Village, Dasanapura Hobli, Bangalore North Taluk is our Self acquired property, which was acquired through Release Deed executed by Smt. Jayamma, Mangamma, Varalakshmi, Saroja and Anusuya. The said Release Deed was registered in the office of the Sub-Registrar, Dasanapura in Book-1, Reg. No. DSP-1,09355/2013-14, stored in C.D.No. DSPD181, 'dated 20/01/2014. Ever since we are in peaceful possession and enjoyment of the said property.”

6. Further, there is a relinquishment deed executed by the assessee and his brothers in favour of their father which states as follows:-

“The relinquishment deed dated 14/10/2014 executed by the appellant and his brothers in favour of their father states as follows:

Whereas, we the have relinquished all the right, title interest over the schedule property and registered this Relinquishment Deed in your name.

Whereas, hereinafter you are entitled to enjoy the schedule property along with all the rights of water, water sources, trees arid all other easementary rights available thereon along with your legal heirs. Hereinafter you are entitled to pay the revenue, taxes to the concerned authorities.

Page 7 of 26

Whereas, hereinafter, we have no right, title, interest over the schedule property, we have transferred all our rights to you.

Whereas, hereinafter, we, nor our legal heirs, have no interest, title, rights over the schedule property”.

7. According to Ld. CIT(A), a combined reading of both the agreement to sell and the relinquishment deed indicates that the assessee enjoyed possession of the land that was eventually sold by the assessee's father. The assessee, through the relinquishment deed, had relinquished his rights over the property. By doing so, he had transferred his rights in the property to his father. As such, the payment received by the assessee was in consideration of extinguishing his rights in the property and hence that constituted his capital gains. It is appropriate here to look at the relevant provisions of the Act regarding transfer of a capital asset.

8. Further, the argument of the Ld. A.R. before Ld. CIT(A) was that the land subject to transfer was an agricultural land. This claim of the assessee was also rejected by the Ld. CIT(A) by observing that from a reading of the above provisions, it is clear that in the present case there was extinguishment of the assessee's rights in the property by way of the relinquishment deed dated 14/10/2014. Hence there was a transfer as defined u/s 2(47) of the Act. Thus, the consideration received by the assessee as his share of the sale proceeds from the sale of the property was the consideration in relation to the above transfer and accordingly, the assessee had earned capital gains on his share of the property. The relinquishment deed was executed just two days before the first sale of plots by the assessee's father on 16/10/2014 and the remaining plots were sold during the month of October 2014. Vide the relinquishment deed the assessee had

Page 8 of 26

transferred inter alia easementary rights over the property. Ld. CIT(A) further observed that in a recent decision of the Bangalore Bench of Tribunal in the case of *Oikos Apartments (P.) Ltd. vs ITO Ward (5)(1)(2) Bangalore [2018] 95 taxmann.com 44*, the Tribunal has extensively discussed the scope of transfer u/s 2(47) of the Act and held that the transfer of easementary rights constitutes a 'transfer' under the Act and accordingly capital gains arises on the same.

9. Thus, he observed that in the present case, assessee has transferred easementary rights along with other rights, title, interest in the property to his father. The share of the consideration i.e. father had given to him was in lieu of his ownership rights in the property. It is immaterial whether financial deed were executed by his father. The facts remained that the assessee got share on sale proceeds on the transfer of capital asset. Accordingly, he upheld the order of the AO. Against this assessee is in appeal before us by way of above main grounds as well as additional grounds.

10. At the outset, the Ld. A.R. submitted that with regard to additional grounds the case was selected for limited scrutiny for examination of cash deposit into the savings bank account. The jurisdiction of the AO was limited with regard to verification of the credits in the bank account i.e. source of the cash deposits and genuineness of the same. If the AO wanted to examine any other issue, he ought to have exercised his power to convert the limited scrutiny into complete scrutiny after prior approval from Principal CIT under intimation to the assessee. Since there is no approval has been obtained from the competent authority, the assessment so framed is without jurisdiction and is bad in law. He submitted

Page 9 of 26

that the Assessing Officers are bound by the directions issued by the CBDT from time to time. Board's Circular F No 225/402/2018/ITA II dated 28.11.2018 stipulates that the Assessing Officer cannot travel beyond the issues on which the case was selected. In the instant case, the Assessing Officer was mandated to verify the cash deposits in the bank accounts during the year and as to whether they were bona fide business transactions. After hearing the assessee, the A.O accepted the contention of the assessee that such credits were received from his father Sri Gangahanumaiah. The A.O was not empowered by Law to expand the scope of Limited Scrutiny by taxing income under the head Capital Gains without recording the reasons for such action and without obtaining the prior approval of the Pr CIT/CIT in writing. The assessment order is without jurisdiction, wholly inadequate on this count and requires to be quashed.

10.1 Ld. A.R. submitted that the CBDT circular/Instruction No. 20/2015 dated 29.12.2015 has clearly laid down the procedure to be followed in case if the AO wishes to expand the scrutiny from the 'Limited Scrutiny' to 'Complete Scrutiny' which is given in para 3, which reads as under:

"a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

Page 10 of 26

d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. Five lakhs (for metro charges, the monetary limit shall be Rs. Ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about merits of the issues(s) necessitating 'Complete Scrutiny' in that particular case, Such cases shall be monitored by the Range head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For this present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad)."

10.2 Ld. A.R. submitted that from a bare reading of the aforesaid instruction of the CBDT issued u/s. 119 of the Act, it is clear that the AO while issuing questionnaire u/s. 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific issues for which case has been picked up for scrutiny and it has been made very clear that the scope of enquiry shall be restricted to the 'Limited Scrutiny' issue. It has been further clarified by the CBDT that if the AO comes to know that there is potential escapement of income requiring substantial verification on any other issues, then the case should be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned and, thereafter, the approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about the merits of the issues necessitating 'Complete Scrutiny' in that particular case. Further, it is also stated that such cases shall be monitored by the Range Head concerned. The Ld. A.R. submitted that

Page 11 of 26

the AO has not taken the approval of Pr. CIT/CIT and that there is no whisper of the approval granted by the Pr. CIT/CIT in writing allowing the AO to expand the scope of assessment from 'Limited Scrutiny' to 'Complete Scrutiny'. Therefore, the action of the AO to make the addition on account of capital gain as arising out of asset not belonging to the assessee is bad in law.

10.3 For this proposition, the assessee relied on the orders of the Tribunal, Jaipur Bench in the case of Late Smt. Gurbachan Kaur Vs. DCIT, ITA No. 692/JP/2019 (AY: 201415) order dated 05.12.2019; Mumbai Bench decision in M/s. Nitin Killawala Vs. ITO, ITA No. 1611/M/2013 (AY: 2008-09) order dated 16.09.2015; Chandigarh Bench decision in Shri Vijay Kumar Vs. ITO, ITA No. 434/Chd/2019 (AY: 2014-15) order dated 12.09.2019. In Ropar Properties & Builders Vs ITO, ITA 982/CHD/2019, A.Y 2015.16, ITAT Chandigarh held that "Limited Scrutiny cannot be converted to complete scrutiny without following CBDT Circular/Instruction No 20/2015 dated 29.12.2015".

10.4 On the same issue the ITAT Guwahati in ITA 395/Gau/2019, Prabir Das vs ITO, A.Y 2016.17 dated 26.6.2020 held that "Action of AO is held to be without jurisdiction and therefore bad in law".

10.5 In Ravi Prakash Khandelwal vs DCIT, the ITAT Lucknow in ITA 665/Lkw/2017, A.Y 2014.15 on 8.11.2019, it was held that "Approval of Pr CIT is mandatory to convert limited scrutiny to a complete scrutiny."

10.6 Ld. A.R. submitted that in the instant case the issue under limited scrutiny was that of cash deposits. The A.O could have made additions u/s 68A of the Act in case he felt that the cash deposits were unexplained or if the explanation provided by the assessee did not satisfy the A.O. The fact that the A.O has not invoked sec 68A of the Act proves that the A.O found the

Page 12 of 26

explanation of the assessee regarding the cash deposits satisfactory. Having satisfied himself about the genuineness of the deposits, the A.O should have accepted the Return of Income without effecting any additions. If the A.O felt that there was under reporting of business income, he should have approached the Pr CIT seeking written approval to convert the limited scrutiny to complete scrutiny. Since no such approval has been taken prior to the issue of the assessment under intimation to the Appellant, the assessment order is without jurisdiction and should be quashed based on the judicial precedents quoted above. Ld. A.R. invited our attention to the decision of the Kolkata Bench of Tribunal in Tapasi Singh vs ITO (ITA No 491/Kol/2020) dated 15.4.2022, wherein it was held that addition u/s 68 of the Act on the basis of suspicion is invalid if the assessee discharges initial onus of establishing creditworthiness of donors & genuineness of transactions.

10.7 Ld. A.R. further submitted that the issue regarding infirmity in expanding the scope of limited scrutiny into complete scrutiny without obtaining appropriate approval from the authorities concerned was raised in first appeal in a generic manner in Ground 1 as under :

'The learned Assessing Officer has erred in passing the assessment order in the manner passed. The impugned order being bad in law is liable to be quashed.'

10.8 In appeal before the Tribunal it was raised as Ground 2 as under :

'The A. O erred in making the addition on account of capital gains in the hands of the appellant which is beyond the scope of limited scrutiny that too without seeking prior approvals making the entire assessment proceedings bad in law and therefore the impugned order is liable to be quashed'

Page 13 of 26

10.9 Ld. A.R. submitted that notwithstanding the above, the above issue has been raised as additional ground seeking admission and adjudication at the time of hearing. He invited our attention to the decision of the ITAT Delhi Bench in ITA No 1501/Del/2019 dated 21.7.2020 in the case of Smt. Monika Jain Vs ITO (AY 2011.12), wherein it was held that appellate authorities can accept additional claim and requested that the issue may be taken up and adjudicated in appeal as the issue goes to the very root of the assessment.

11. The Ld. D.R. submitted that the AO has selected the case for verification of the cash deposit. While examining the cash deposit into bank account, the assessee took a plea that he has received it from assessee's father to the tune of Rs.59,59,274/- and this represents the share received by him from the sale transaction done by his father and taken a plea that he has received Rs.50,12,500/- on 14.10.2014 out of total sale consideration of Rs.2,00,50,000/- sale proceeds from sale of 2 acres 6 guntas of land situated at survey No.29/b, Dassanpura Hobli, Bylakonenahally village, Bengaluru North Taluk. He drew our attention to the statement of oath recorded u/s 131 of the Act from the assessee on 8.11.2017 and submitted that the issue before AO was to verify the cash deposit and the source of cash deposit. The assessee has explained it as share received from his father out of the sale consideration of above property and it cannot be said that the AO travelled beyond the scope of limited scrutiny by bringing the said land as capital gain in the hands of the assessee.

12. We have heard the rival submissions and perused the materials available on record on additional ground raised by the assessee before us. The main plea of the assessee is that the case

Page 14 of 26

was selected for limited scrutiny vide notice dated 28.7.2016 to examine the cash deposit to bank account. However, the AO has made addition towards share of amount received by assessee from his father at Rs.49,86,132/- out of sale consideration of the property situated at Dassanpura Hobli, Bylakonenahally village, Bengaluru North Taluk. According to Ld. A.R., the AO cannot travel beyond the issue selected for limited scrutiny without approval of the competent authority. For this purpose, he relied on the following judgements & Circulars :-

Judgements:-

1. ITAT F Bench Mumbai in ITA No.7162/Mum/2018 dated 8.7.2022 in the case of V.R. Panvelkar Vs. Deputy Commissioner of Income-tax for the A.Y. 2010-11.
2. Decision of ITAT Lucknow Bench in ITA No.665/Lkw/2017 dated 8.11.2019 in the case of Ravi Prakash Khandelwal Vs. Deputy Commissioner of Income-tax.
3. ITAT Pune Bench dated 4.5.2018 in the case of Suresh Jugraj Mutha Vs. Addl. CIT
4. ITAT Jaipur Bench in ITA No.692/JP/2019 dated 5.12.2019 for the A.Y. 2014-15 in the case of Late Smt. Gurbachan Kaur Vs. Deputy Commissioner of Income-tax.
5. ITAT Mumbai Bench in ITA No.1611/Mum/2013 for the AY 2008-09 in the case of M/s. Nitin Killawala Vs. ITO
6. ITAT Chandigarh Bench in ITA No.434/Chd/2019 for the AY 2014-15 in the case of Shri Vijay Kumar Vs. ITO for the AY 2014-15.
7. ITAT Chandigarh Bench for the AY 2015-16 in ITA No.982/Chd/2019 in the case of Ropar Properties & Builders Vs. ITO.

8. ITAT Ahmedabad Bench order dated 22.2.2021 in the case of Kunjilal Chandrakant Mehta Vs. ITO

Circulars:-

- a) CBDT Circular No.20/2015 dated 29.12.2015 formulating the SOP for handling cases under limited scrutiny, emphasizing that the AO cannot travel beyond the issues for which the case was selected and this was further emphasized in CBDT Instruction No.5/2016 dated 14.7.2016 narrowing down the scope of limited scrutiny.
- b) DGIT Vigilance Circular dated 30.11.2017 confirming that the purpose of limiting the powers of the AO under limited scrutiny was to enforce checks and balances upon powers of an AO to do fishing and roving enquiries. The Circular also noted that in many cases no reasons had been recorded for expanding the scope of limited scrutiny and no approval was taken as stipulated by the Board.
- c) From a bare reading of the aforesaid instruction of the CBDT issued u/s. 119 of the Act, it is clear that the AO while issuing questionnaire u/s. 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific issues for which case has been picked up for scrutiny and it has been made very clear that the scope of enquiry shall be restricted to the 'Limited Scrutiny' issue. It has been further clarified by the CBDT that if the AO comes to know that there is potential escapement of income requiring substantial verification on any other issues, the case should be taken up for 'Complete Scrutiny' with the approval

Page 16 of 26

of the Pr. CIT/CIT concerned and, thereafter, the approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about the merits of the issues necessitating 'Complete Scrutiny' in that particular case. Further, it is also stated that such cases shall be monitored by the Range Head concerned. The Appellant submits that the AO has not taken the approval of Pr. CIT/CIT and that there is no whisper of the approval granted by the Pr. CIT/CIT in writing allowing the AO expand the scope of assessment from 'Limited Scrutiny' to 'Complete Scrutiny'.

13. We have carefully gone through the above judgements and circulars cited by assessee. Admittedly, the case was selected for cash deposit to saving bank. While examining the cash deposit into bank account, it was stated by assessee that the total deposit into bank account was Rs.59,59,274/-. It is explained by assessee that the source of cash deposit was from land received from his father out of sale consideration of the property situated at Dassanpura Hobli, Bylakonenahally village, Bengaluru North Taluk. According to assessee, the issue selected for examination by AO is with regard to cash deposit and the addition made by AO is with regard to capital gain. Both these issues are different, as such AO cannot go out of his jurisdiction. According to Ld. A.R., the assessment order to be quashed. We are afraid about this proposition as contended by the Ld. A.R. Admittedly, the assessee took a plea that cash deposit into bank account was source from the amount received from his father. On going through the document, the AO came to a conclusion that assessee had a share in the said property and it is the transfer of capital asset by relinquishment of the assessee's right over the said property and assessee is liable for capital gain

Page 17 of 26

tax on the relinquishment. It cannot be said that the AO has travelled beyond his jurisdiction while exercising the limited scrutiny. The AO has not taken up any new issue while framing the assessment. He has considered the cash deposits into bank account, which is emanated from the sales consideration received on sale of property at Dassanpura Hobli, Bylakonenahally village, Bengaluru North Taluk. It cannot be said that AO precluded in bringing the said amount into taxation on the simple reason that cash deposit was from the sale of property and assessee received his share on the relinquishment in favour of his father and the same has to be brought into tax. Being so, we do not find any infirmity on this action of the AO. The same is confirmed.

14. All other grounds are relating to taxability of capital gain on receipt of his share of money from his father or on relinquishment. The Ld. A.R. submitted that Para 5 (Page 2) of the assessment order dated 22.12.2017 for A.Y 2015.16 in the case of the assessee is reproduced below :

"As per AIR information, the assessee had deposited cash of Rs 54,42,660 in his savings bank account. The assessee was asked to submit the source for the cash deposits into his savings bank account. In reply the assessee has produced a copy of Agreement to sell dated 28.01.2014 in which Sri Gangahanumaiah: father of the assessee had agreed to sell land at Sy No 29 measuring 2.06 acres to Sri T Raju for a consideration of Rs 2,40,50,000 (emphasis supplied). Consequently Sri Gangahanumaiah father of the assessee has received Rs 2,40,50,000 from Sri T Raiu. The amount of Rs 2,40,50,000 was received by Sri Gangahanumaiah (father of the Appellant....emphasis supplied) in the month of October 2014. Out of Rs 2.40,50,000 Sri Gangahanumaiah has given Rs 40,00,000 to his four daughters (Rs 10 lakhs each) for relinquishment of their rights over the property. The balance was divided into 4 parts and distributed among Sri Gangahanumaiah, father of the assessee, Sri G Lakshminarayana, the assessee and his two younger brothers....."

14.1 Ld. A.R. submitted that from the above narration, it is very clear that the Ld A.O was fully aware that the land which was sold belonged to the assessee's father and not to the assessee. Sri Gangahanumaiah, father of the assessee, distributed the proceeds to

Page 18 of 26

his children out of his free will i.e Rs 10 lakhs each was paid to the daughters and Rs 50,12,500/- was paid to his sons. If the property were to be inherited, then sons and daughters would have had equal share in the property and then the proceeds would be equally distributed as per the Law and decision of the Hon'ble Supreme Court as regards daughters and sons having equal rights under Hindu Law of Succession. In the subsequent paragraphs of the Assessment Order the Assessing Officer has gone on to explain why the land in question was not agricultural land and why it was not exempt from taxation. Nowhere does the Assessment Order mention how and when the assessee was liable for Capital Gains and when, where and how did he get ownership rights in the land sold by Sri Gangahanumaiah. In Para 7 (Page 9) of the Assessment order, the A.O again mentioned that Sri Gangahanumaiah, father of the assessee is himself registering the plots directly to the purchasers for a consideration. This again proves that only Sri Gangahanumaiah was the sole owner of the land in question and had the sole right to sell his self-acquired properties.

14.2 Ld. A.R. submitted that in Para 6 (Page 10), the A.O says "To prove that the above transaction had taken place and the assessee had received a share in the above sale proceeds, a statement on oath was recorded..". (emphasis supplied). While there is no denial that Sri Gangahanumaiah, father of the assessee sold the property in question and gifted the proceeds to his children, a portion to the assessee out of his free will, the A.O should have taken steps to prove that the property in question even remotely belonged to the assessee, the transfer of which gave rise to capital gain. Nowhere in the statement so recorded, there is anything to say that the assessee had rights in the property sold which was then relinquished for a consideration. The assessee has all along maintained that the property sold belonged to his father and that there was no gain taxable in his hands.

14.3 In appeal, the Ld CIT(A) rejected the ground raised by the assessee as never having been owner of the land, by referring to the Agreement to Sell entered on 28.01.2014, wherein it was stated that it is assessee's self-acquired property. The CIT(A) also relied on the relinquishment deed signed by the assessee and his siblings in favour of his father, relinquishing all rights over the property. Ld. A.r. submitted that in Para 5.2.3 Page 7 of the CIT(A) order it is stated as under :

"A combined reading of both the agreement to sell and the relinquishment deed indicates that the appellant enjoyed possession of the land that was eventually sold by the assessee's father (EMPHASIS SUPPLIED). The assessee, through the relinquishment deed, had relinquished his rights over the property. By doing so, he had transferred his rights in the property to his father. As such, the payment received by the assessee was in consideration of extinguishing his rights in the property and hence that constituted his capital gain."

14.4 The Ld. A.R. submitted that the Ld CIT(A) has proceeded to hold that the assessee possessed a right (not on factual basis but indicative basis) there was extinguishment of the assessee's rights in the property by way of the relinquishment deed dated 14.10.2014. Hence there was a transfer as defined u/s 2(47) of the Act. The CIT(A) has concluded that there was a transfer of easementary rights which resulted in the Gain chargeable to tax and has also quoted few cases to support the said contention. This new supposition of the Ld. CIT(A) hitherto untouched by the A.O is a vain attempt to uphold the assessment concluded by the A.O based on unsupported facts. Easement is defined as an interest in land owned by another that entitles its holder to a specific limited use or enjoyment also ; an area of land covered by an easement. There is no evidence to show that such easementary rights were acquired by the assessee or that he was in enjoyment of the property, which right he chose to extinguish according to the Ld. CIT(A).

Page 20 of 26

14.5 The Ld. A.R. further submitted that the order of the Ld CIT(A) is based on presumptions and indications of ownership and but no real ownership. The Ld CIT(A) conveniently ignored the fact that the purchase deeds of the said property solely stood in the name of the assessee's father Gangahanumaiah, though this fact has not been refuted at any stage of the assessment/appeal proceedings. The property under question was purchased on 26.3.1973 & 31.10.1979 by Sri Gangahanumaiah, the assessee's father when the assessee was 4 years old and could not have had contributed to the said purchase by any stretch of imagination. Also, the fact that the proceeds have been distributed among all children unequally also means that the property sold solely belonged to the assessee's father and the distribution was out of free will out of love and compassion and not in extinguishment of any legal necessity or right.

14.6 The Ld. A.R. submitted that the reliance of the Ld. CIT(A) on the Agreement to Sell dated 28.01.2014 is misplaced as such an agreement is not a valid or integral component of sale as per Indian Contracts Act. An agreement to sell can be entered into at any time and rescinded with the consent of the parties. In fact, an agreement to sell can be entered into with any legal person and what constitutes title transfer arises from the registered sale deed alone. In this case, all the Sale deeds have all been executed by the assessee's father Sri Gangahanumaiah directly to the purchasers and not even to Sri T. Raju who is named as the Purchaser in the Agreement to Sell. Hence, the contents of an Agreement to Sell are not proof of transfer of a right under the Transfer of Property Act.

14.7 The Ld. A.R. further submitted that as regards the relinquishment deed signed by all the siblings in favour of their father, it is a well-known standard practice to obtain a relinquishment deed from all possible claimants and also by making children as consenting parties in the sale deed, in order to avoid any

future litigation from the children on the ground that the property was ancestral and that they had some rights in the said property, which was illegally transferred without consent or consideration to them. The Ld CIT(A) has relied on the case of CIT vs Vijay Flexible Containers (186 ITR 693 (Born), wherein it was held that 'right to obtain a conveyance of immovable property falls within the expression 'property of any kind' used in sec 2(14) of the Act. This case is distinguishable on facts. Also, there is no payment of earnest money here in order to obtain such a right, which constitutes its cost of acquisition. Ld. A.R. submitted that Relinquishment deed is only an appendage and has no sanctity of Law as there is no mention of any consideration for relinquishment of the right. Under the Law of Contracts, any contract without consideration is null and void. Relinquishment Deed so signed in favour of the assessee's father has only persuasive value, if at all any civil case should be filed at a later date by legal heirs.

14.8 The Ld. A.R. further submitted that the I.T authorities have not established any nexus between the money distributed by the assessee's father and the self-acquired property sold by the assessee's father and have solely relied on the assessee's statement, which can only be used to verify the creditworthiness or genuineness of the source of credits in the bank account. Under the Hindu Law, the owner of a self-acquired property can transfer his title to any person related or unrelated, according to his wishes, when the seller is alive. No one (including siblings or children) can claim any right in the self-acquired property of a person when he is alive. Even after his death, a self-acquired property can be transferred by way of a will to any person related or unrelated and even here family members cannot claim any right over the said property. Under the Hindu Law, the family members get a right over the self-acquired property upon the death of the owner, only when he dies intestate, i.e without

Page 22 of 26

making any will. In the instant case, the assessee's father owned a Self - Acquired Property and has transferred his rights by way of registered sale deeds during his lifetime. No title vests in the children during the lifetime of the owner of an immovable property under the Law and any person who has ownership of Self Acquired Property is free to sell it to any person whom he desires. He submitted that a plethora of judgments on the subject is on the issue of ancestral or inherited property and its transmission by survivorship or relationship on the death of the owner.

14.9 The Ld. A.R. further submitted that the self-acquired property is the property that is acquired by a person using his own resources and since it is entirely his property, it is upon his wish how he wants to transfer or not transfer it. In CN Arunachala Mudaliar AIR 1953 SC 495, the three member bench held that father of a joint Hindu family governed by Mitakshara Law has full and uncontrolled powers of disposition over his self-acquired property and his male issue could not interfere with these rights in any way. The Hon'ble Supreme Court also ratified the decision of Bombay High Court in Jugmohan Das vs Sir Mangal Das (1886) ITR 10 Bom 528, wherein the Court observed that "there is no doubt that a man can give away his self-acquired property to whomsoever he pleases".

14.10 The Ld. A.R. lastly submitted that the main aspect requiring consideration in this case is as to whether the transfer of property under Transfer of Property Act is rendered invalid in the absence of an Agreement to Sell and Relinquishment Deed. The answer to this question is negative since the assessee's father Sri Gangahanumaiah is competent to sell his self-acquired properties to anyone whom he deems fit for adequate consideration. Hence, the Ld. A.R. stated that the argument raised by the Ld. CIT(A) that the Appellate held easementary rights, which were transferred within the

meaning of Sec 2(14) or Sec 2(47) of the Act is wholly misplaced and ought to be rejected.

15. The Ld. D.R. submitted that the evidence brought on record suggest that the assessee has relinquished the right over the said property and received his share in the sale consideration and AO rightly computed proportionate capital gain in the hands of the assessee and the same has to be brought to taxation.

16. We have heard the rival submissions and perused the materials available on record. The main plea of the assessee's counsel before us is that the said property is not owned by the assessee and the entire property is self-acquired property of his father and if the assessee received any amount on sale of said property, the same cannot be brought to tax in the hands of the present assessee as the assessee is now the owner of the said property. But we find that there is a relinquishment deed dated 14.10.2014 executed by assessee in favour of his father. Earlier to this, there was a sale agreement dated 28.1.2014 wherein assessee's father Shri Gangahanumaiah Lakshminarayana, present assessee and his brothers Shri B.G. Manjunatha and Shri B.G. Hanumantha Raju together entitled to sale agreement for sale of said property measuring 2 acres and 6 guntas situated at 29/b, Dassanpura Hobli, Bylakonenahally village, Bengaluru North Taluk to Shri T. Raju S/o Shri Thibbayya for a consideration of Rs.2,40,50,000/-. Consequent to release deed by assessee in favour of the assessee's father on 14.10.2014, the assessee's father Shri Ganga Hanumaiah executed final sale deed in October, 2014 for a sale consideration of Rs.2,40,50,000/-, said sale consideration was divided among Shri Ganga Hanumaiah and his children namely assessee, assessee's brother B.G. Manjunatha and

Page 24 of 26

Shri B.G. Hanumantha Raju. Now the contention of the Ld. A.R. is that assessee is not the owner of the property and this property is self-acquired property of assessee's father Shri Ganga Hanumaiah. In our opinion, if it is so, what is the necessity of executing the relinquishment deed in favour of the assessee's father Shri Ganga Hanumaiah. Had it been the Ganga Hanumaiah's property (assessee's father) as a whole and absolute owner of the said property, he could have himself very well executed the absolute sale deed in favour of purchaser T. Raju. Further had it been Ganga Hanumaiah was the absolute owner of the said property, what is the necessity of executing the relinquishment deed by the assessee and his brothers in favour of assessee's father on 14.10.2014. In our opinion, the said property cannot be said that self-acquired property of Ganga Hanumaiah as there was a relinquishment deed in favour of Ganga Hanumaiah by his children, it may be of property acquired by Ganga Hanumaiah by the common funds of the family. As such, there was execution of relinquishment deed in favour of Ganga Hanumaiah. AO brought into taxation, the assessee's share of sale consideration into taxation and same is to be confirmed.

17. In the present case, the assessee has transferred his share of right and interest over the property in favour of his father through relinquishment deed dated 14.10.2014, which is after entering into sale agreement on 28.1.2014. As per section 2(47)(i) of the Act, transfer in relation to a capital asset, includes, the sale, exchange or relinquishment of assets. However, section 45 of the Act won't apply in case of any distribution of capital asset on the total or partial partition of Hindu Undivided Family. It is also not a case of assessee that there was distribution of capital asset on total or partial partition of the Hindu Undivided Family. In our opinion,

Page 25 of 26

relinquishment deed dated 14.10.2014, wherein assessee released his right in favour of his father for which assessee received the impugned consideration, which has been taxed by the A.O. Co-owner can be through both inheritance or by purchase. The relinquishment of right over the property by present assessee to his father is a transfer as the assessee not able to establish that he is not having any right over the said property at the time of relinquishment of his right over the property. The relinquishment deed dated 14.10.2014 is not empty formality. Accordingly, the apparent has to be considered as real since the assessee failed to establish otherwise. In these circumstances, we are of the opinion that lower authorities is justified in bringing to tax the capital gain in the hands of the assessee. Accordingly, this ground of assessee is dismissed.

18. The assessee has raised one more ground that Ld. CIT(A) erred in not adjudicating the ground relating to section 54B or 54F of the Act. However, we find that assessee has not disputed this issue before the Ld. CIT(A). Even before us, assessee has not put any argument on this issue. Hence, this ground is dismissed.

19. In the result, the appeal filed by the assessee is dismissed

Order pronounced in the open court on 15th Sept, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Sept, 2022.
VG/SPS

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.**