

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1124/Bang/2022
Assessment Year: 2012-13

Rock & Stones Survey No.66/52 Opp. Jigani Weigh Bridge Jigani Main Road Anekal Taluk Bengaluru 560 106 PAN NO : AAJFR4201R	Vs.	ITO Ward-2(2)(4) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, A.R.
Respondent by	:	Shri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	20.01.2023
Date of Pronouncement	:	23.01.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of the NFAC/CIT(A) dtd 1.11.2022 for the assessment year 2012-13. 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 Commissioner of Income-Tax (Appeals) has erred in confirming the same. The orders passed by authorities below being bad in law, against the principles of natural justice are required to be quashed in toto.*
- 2. In any case and without prejudice, the learned Assessing officer had erred in disallowing, while computing the capital gains,*

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the claim of cost of improvement amounting to Rs. 23,80,0001- holding that the expenditure incurred was in the nature of personal effects and hence same cannot be held as cost of improvement and the learned CIT(A) has erred in confirming the same on the ground that the expenses incurred are personal in nature and it does not give any benefit to the value of the capital asset. The conclusions drawn are wholly erroneous both on facts and law applicable are to be deleted and the disallowance as made is to be deleted.

3. *The appellant had actually incurred the cost of improvement and had rightly claimed the same as deduction while computing the capital gains on sale of property and same is to be allowed to the appellant.*

4. *The authorities below have erred in not properly appreciating the facts of the case and erred in drawing various conclusions. The conclusions drawn are without any basis and merely on surmises and conjectures are to be disregarded.*

5. *The appellant denies the liability to pay interest u/s 234B and 234C of the Act. The interest having been levied erroneously is to be deleted.*

6. *In view of the above and on the grounds to be adduced at the time of hearing, it is requested that the orders as passed be quashed or at least the disallowance of cost of improvement while computing capital gains as made/confirmed be deleted, income as returned by the appellant be acceptance and Interest levied be also deleted.”*

2. For the year the assessee had filed the return of income for assessment year 2012-13. on 21.08.2012 declaring total income of Rs. 14,68,810/-. The only addition made to the income returned is of Rs. 23,80,000/- being deduction claimed in respect of cost of improvement incurred while computing of capital gains for sale of building at Old Survey No.158, Udayamperoor Panchayat, Manakkunnam Village, Triruvankulam Firka, Kanayanoor Taluk, Ernakulam District.

2.1 The disallowance is made by the Assessing Officer on the following grounds :

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1. *The assessee firm claimed cost of improvement towards interior works and other works. The assessee firm not produced the details of improvement made except for producing invoice dated 30.03.2012.
The assessee firm has entered into agreement to sell the above land and building on 14.05.2011.*
3. *The assessee „firm has executed sale deed on 20.07.2011 transferring the property.*
4. *The invoice produced in support of cost of improvement claimed is dated 30.03.2012. On the date of invoice the assessee firm was got the owner of the property.*
5. *The possession of the property was handed over on the date of sale itself*
6. *The payments claimed to he made towards improvements are made in the last week of march 2012, whereas the property was sold on 20.07.2011 itself*

2.3 The assessee had entered into a agreement for sale of property on 14.05.2011. The Last paragraph of the preamble of the agreement reads as under :-

"AND WHEREAS the vendor has agreed to sell the landed property detailed in the schedule here under and the building situated thereon having Door No. XI/441C of Udavamperoor Panchayath along with all the improvements, rights and easements therein and for a further amount of Rs.14.00,000/- (Rupees Fourteen Lakhs only) for the interior work to be completed by the vendor and thus for a total sale consideration of Rs.33,00,00/- (Rupees Thirty Three Lakhs only) and the purchaser has agreed to purchase the same for the said total amount.

2.4 The description of the property in the Schedule of the agreement reads as under:-

“All that part and parcel of 1.62 .4res (4 cents) of property comprised in Old Survey No. 158/27/B-5, Block 19. Resurvey No. 16/10 of Manakkunnam Village as detailed in schedule of the Sale Deed No. 2078/2009 of SRC) Tripunithura and the right of way through the road on the northern side of the property having a width of 2 meters along with the building having door No. XI/441C of Udavamperoor Panchayath and all rights and improvements therein”.

2.5 The sale deed was executed on 20.07.2011. The schedule described in the Sale Deed is as under :-

"Landed property having an extent of 1.62 Ares comprised in old Sy. No, 148/27B-5. Re. Sy. No.16110. in Block No.19 of Manakkunnam Village, 'Kanavannor Taluk along with the Double Stories Residential Building situated thereon bearing Door No. A7/441 C of Udavamperoor Grama Panchavath obtained vide Sale Deed No. 2078/2009 of SRO Tripunithura together with electric. water connections and all rights appurtenance and improvements thereon."

2.6 After the agreement was entered into, the assessee, through a firm called kitchen solutions got the interior work done in respect of property which was sold by assessee during the year. The interior work was completed prior the sale of the said property i.e, before July 2011. However, the final bill was issued by the above firm on 30.03.2012 and the payment was made immediately. The assessee has duly deducted TDS on amount paid on works contract. The following interest is also levied in the order:

Interest u/s 234B - 2,78,280.00

Interest u/s 234C - 9,057.00

3. On appeal, the ld. CIT(A) observed that the AO's observations are that assessee has not incurred any expenditure of a "Capital nature" in making the additions to the capital asset viz: house property. After due consideration, the ld. CIT(A) observed that he was in agreement with the AO's *observations and thereby* proceeded to confirm the disallowance made on this count to the tune of Rs.23,80,000/-. The Assessing Officer has described the expenditure as being 'Personal effects' and having nothing to do with the Cost of improvement. The ld. CIT(A) observed that there is no enduring effect which will enhance the value of the Capital assets.

Aftergoing through the work order. The Id. CIT(A) agreed with the Assessing Officer's observations and accordingly dismissed the ground.

3.1 As regards the alternate ground of allowability of the impugned amount of Rs.23,80,000/- towards 'expenditure incurred wholly and exclusively in connection with such transfer' as envisaged in section 48(1) of the Act, the Id. CIT(A) observed that the assessee has relied on the decision of Bombay High Court in CIT Vs Shakuntala Kantilal [1991] reported in 58 Taxman 106/190 ITR 56 [Born]. The Id. CIT(A) extracted the same as follows.-

11.2 Alternatively, without further prejudice the appellant submits that deduction for interior works has to be allowed as cost of transfer, In computing capital gains Sec 48(i) allows deduction for 'expenditure incurred wholly and exclusively in connection with such transfer' The words 'in connection with such transfer' mean intrinsically related to the transfer [V.A Vasumathi v. CIT [1980] 126 ITR 94 (Ker.)]

In the case of CIT v. Shakuntala Kantilal [1991] 58 Taxman 106/190 ITR 56 (Born.) the Hon'ble High Court has made below interpretation of Sec 48(i):

So far as clause. (7) of section 48 is concerned. the expression used by the Legislature in its wisdom is wider than the expression 'for the transfer' The expression 'in connection with such transfer' is certainly wider than the expression 'for the transfer'. Here again, any amount the payment of which is absolutely necessary to effect the transfer will be an expenditure cover this clause.

3.2 The assessee's alternate claim also was entertained by the Id CIT(A) since he observed that it has not been adequately demonstrated in what way the impugned amount is an expenditure incurred "wholly and exclusively in connection with such transfer". Against this assessee is appeal before this Tribunal.

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4. The Id. A.R. submitted that the total sales consideration disclosed by the assessee in the sale deed dated 20.7.2011 before Sub-Registrar vide document No.9109 dated 16.7.2011 was at Rs.18 lakhs. However, sales consideration for determination of capital gain was at Rs.34.8 lakhs. Thus, the Id. A.R. submitted that the sale value of the impugned assets at Rs.16.80 lakhs has been already included in the sale consideration. As such, the expenditure incurred amounting to Rs.23.80 lakhs has to be considered as cost of improvement and it should be considered as part of capital assets sold by the assessee. Further, the contention of the assessee's counsel is that in case of firm there cannot be any assets of personal effects as firm is not a natural person. She also drew our attention to the sale agreement dated 14.5.2011 with same party i.e. Shyam Kumar T.Y. for a sale consideration of Rs.32 lakhs. She also drew our attention to the copy of invoice dated 30.3.2012 placed at paper book page no.57 and also copy of work order dated 10.4.2011, which shows that these are expenditure incurred by the assessee towards improvement of said property valuing total value of Rs.22,25,700/-. Further, without prejudice to the above arguments, she relied on the judgement of Hon'ble Supreme Court in the case of CIT Vs. H.H. Maharani Usha Devi reported in 231 ITR 793 wherein held that "The asset meant for personal use of the assessee constituted personal effect of the assessee within the meaning of section 2(14) of the Act and therefore, profit arising from the sale thereof not liable to capital gain tax in the relevant assessment year." She also relied on the judgement of Hon'ble Supreme Court in the case of H.H. Maharaja Rana Hemant Singhji Vs. CIT reported in 103 ITR 61, wherein the same proposition has been laid down. Thus, she submitted that the assessee has included the sale consideration for the purpose of computation of capital gain. If the department is not agreeing with granting of deduction towards cost of acquisition by observing that

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it is a personal effect, the sale value received from the sale of the same assets cannot be included in the computation of capital gain and to be excluded from the sale consideration.

5. On the other hand, the Id. D.R. submitted that the cost incurred by assessee which is nothing but improvement of personal property of the assessee, which cannot be considered as a cost of acquisition, so as to deduct from the sale consideration of the sale of property situated at Manakkunnam village, Triruvankulam Firka, Kanayannor Taluk.

6. I heard the rival submissions and perused the materials available on record. Now the first question before me is that whether the impugned property is said to be the personal effects. The issue of personal effects has been examined by the Hon'ble Supreme Court in the case of H.H. Maharaja Rana Hemant Singhji cited (supra), wherein held as under:

6. *"We have given our earnest consideration to the submission of learned counsel for the parties. For a proper decision of the point in question, it is necessary to refer to s. 2(4A) of the Act, the relevant portion whereof runs thus :*

"2(4A) 'Capital asset' means property of any kind held by an assessee, whether or not connected with his business, profession or vocation but does not include....

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;"

7. *The expression "personal use" occurring in cl. (ii) of the above quoted provision is very significant. A close scrutiny of the context in which the expression occurs shows that only those effects can legitimately be said to be personal which pertain to the assessee's person. In other words, an intimate connection between the effects and the person of the assessee must be shown to exist to render them "personal effects".*

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8. *The enumeration of articles like wearing apparel, jewellery, and furniture mentioned by way of illustrations in the above quoted definition of "personal effects" also shows that the legislature intended only those articles to be included in the definition which were intimately and commonly used by the assessee.*

9. *The meaning assigned to the expression "personal effects" in various dictionaries also lends support to this view. In the Unabridged Edition of the Random House Dictionary of the English Language, at p. 1075, the expression is given the following meaning:*

"Personal effects, privately owned articles consisting chiefly of clothing, toilet items, etc., for intimate use by an individual."

In Black's Law Dictionary, Fourth Edition, at p. 1301, the expression is assigned the following meaning :

"Personal effects, articles associated with person, as property having more or less intimate relation to person of possessor."

In Cyclopaedic Law Dictionary, Third Edition, at p. 832, the expression "personal effects" without qualifying words is interpreted to include generally such tangible property as is worn or carried about the person.

In "Words and Phrases" (permanent edition), vol. 32, at p. 277, it is stated that the words "personal effects" when used without qualification, generally include such tangible property as is worn or carried about the person, or to designate articles associated with the person. At another place at the same page, it is stated that the words "personal effects" are used to designate articles associated with person, as property having more or less intimate relation to person of possessor or such tangible property as attends the person."

6.1 If I examine the present case in the light of above proposition laid down by the Hon'ble Supreme Court, the present assessee being a firm such assets cannot be considered as a personal effect in the hands of the firm. However, the assessee has to prove that this asset has been sold in terms of sale agreement or sale deed cited (supra). In this case assessee has produced the sale deed copy dated 20.7.2011 disclosing the sale consideration of property for an amount of Rs.18 lakhs. At the same time, assessee also produced

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the sale agreement dated 14.5.2011 of impugned property disclosing sale consideration of Rs.32 lakhs. However, in page 3 of the said sale agreement, it has been mentioned as follows:

AND WHEREAS the vendor has agreed to sell the landed property detailed in the schedule here under and the building situated thereon having Door No. XI/441C of Udayamperoor Panchayath along with all the improvements, rights and easements therein and for a further amount of Rs. 14,00,000/- (Rupees Fourteen Lakhs Only) for the interior work to be completed by the Vendor and thus for a total sale consideration of Rs. ~~32,00,000/-~~ ^{33,00,000/-} (Rupees ~~Thirty Two Lakhs only~~ ^{Thirty Three lakh only}) and the purchaser has agreed to purchase the same for the said total amount.

NOW THEREFORE THIS AGREEMENT FOR SALE WITNESSETH AS UNDER

The vendor shall sell and the purchaser shall purchase all that piece and parcel of land having an extent of 1.62 Ares(4 cents) comprised in Old Survey No.158/27/B-5, Block 19, Resurvey No.16/10 of Manakkunnam Village and the right of way through the road on the northern side of the property having a width of 2 meters along with the building having door No. XI/441C of Udayamperoor Panchayath more particularly described in the schedule hereunder written for a total sale consideration of Rs. 32,00,000/- (Rupees Thirty Two Lakhs Only)

6.2 As seen from the above, there is a contradiction in mentioning the sale consideration. In one para it was over written that the total sales consideration is Rs.33 lakhs, which includes Rs.14 lakhs towards interior works. Immediately, in another paragraph it was mentioned that total sales consideration is Rs.32 lakhs, which is relating to the scheduled property. The scheduled property mentioned as below:

THE SCHEDULE ABOVE REFERRED TO

District	:	Ernakulam
Sub District	:	Tripunithura
Taluk	:	Kanayannoor
Limit	:	Udayamperoor Panchayath
Village	:	Manakkunnam
Desom	:	Udayamperoor
Tenure	:	Jenmam
Sy.No.	:	158/27/B-5
Block No.	:	19
Re.Sy.No.	:	16/10
Extent	:	1.62 Ares(4 cents)

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DESCRIPTION

All that part and parcel of 1.62 Ares(4 cents) of property comprised in Old Survey No.158/27/B-5, Block 19, Resurvey No.16/10 of Manakkunnam Village as detailed in the schedule of the Sale deed no. 2078/2009 of SRO Tripunithura and the right of way through the road on the northern side of the property having a width of 2 meters along with the building having door No. XI/441C of Udayamperoor Panchayath and all rights and improvements therein .

6.3 Thus, there is no mention of any impugned assets in the scheduled property. However, contrary to this, the assessee produced a work order relating to carrying out of the interior decorations, etc. dated 10.4.2011, which is placed at paper book page nos.54 to 56. Further, assessee produced the invoice dated 30.3.2022 for the said works which was mentioned as interior works and other works at lumpsum Rs.22,25,699.98ps. The above invoice was dated 30.3.2012 which was after the long period of sale deed which was executed on 20.7.2011. As seen from the above dates, it is not possible to hold that the person will carry out the interior works after execution of the sale deed, which is improbable. Even if I consider it as a genuine invoice the assessee has to prove that the said work has been actually carried out by the assessee and the assessee has received the sale consideration towards the said property. The evidence brought on record would not support the case of the assessee that the assessee has actually carried out the interior works and on this regard proper enquiry has not been carried out by the AO/CIT(A). Once the assessee has proved with sufficient evidence that the said interior works has been carried out by the assessee before the date of sale deed and to prove that sale value of the said impugned property has been included in the sale consideration received by the assessee and disclosed to the department, then the assessee's claim could be entertained.

6.4 Now the question before me is whether sale consideration of these properties is actually included in the sale consideration declared by the assessee in the return of income at Rs.34.80 lakhs. The assessee has to prove that the total consideration received by the assessee included Rs.34.8 lakhs as against the sale deed value of Rs.18 lakhs. Once the assessee proves the sale also included the sale value of the impugned assets, then assessee's claim could be entertained on verification by AO.

6.5 In view of the above discussion, I am inclined to remit the entire issue in dispute to the file of AO for re-examination with the direction to assessee to prove that the assessee has carried out the execution of said interior work before the date of sale deed and it has been sold for a consideration and the same has been included in the sale value mentioned in the sale deed and the gain from the transfer of said property offered for taxation, then only the AO shall grant the cost of such interiors as a part of cost of acquisition. Accordingly, the orders of the lower authorities are set aside and remitted to the file of AO for re-examination in the light of the above directions. Ordered accordingly.

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

Order pronounced in the open court on 23rd Jan, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 23rd Jan, 2023.
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.**