

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “C” BENCH, BENGALURU**

**Before Shri George George K., Judicial Member
and
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No. 973/Bang/2022 (Assessment Year: 2018-19)		
Ms. Pushpa Rao Pamidi No. 156/1, C/o T. Viswanath & Co Sharada Mansion, 2nd Floor R V Road, V V Puram Bengaluru 560004 PAN – BHHPP1695K	vs	DCIT, Circle - 2(1) Bengaluru
(Appellant)		(Respondent)

Assessee by:	Shri Sathish S., Advocate
Revenue by:	Ms. Neera Malhotra, CIT-DR

Date of hearing:	07.02.2023
Date of pronouncement:	08.02.2023

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the final assessment order dated 28.07.2022 passed under Section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2018-19.

2. There is a delay of four days in filing this appeal before the Tribunal. The assessee has filed a petition for condonation of delay and also an affidavit stating therein the reasons for belated filing of this appeal. On perusal of the reasons stated in the affidavit we find that the delay in filing the appeal cannot be attributed to any latches on the part of the assessee and there is sufficient cause for belated filing of this appeal. Hence, we condone the delay of four days and proceed to dispose of the case on merits.

3. The grounds raised by the assessee read as under: -

“1. The learned Assessing Officer had erred in passing the order as passed by him and the Directions given by the Dispute resolution Panel -2, Bangalore (DRP in short) has erred in giving such directions to the assessing officer. The orders passed being bad in law, and against the principles of natural justice and is required to be quashed in toto.

2.1 In any case and without prejudice, the learned Assessing Officer had erred in adopting the Fair market value for arriving at the cost of construction ignoring the Registered Valuer report which is based on the actual cost incurred by the appellant and the learned DRP has erred in giving directions to adopt Fair market value to arrive at the cost of construction. The action of authorities below being totally erroneous both on facts and law are to be negated and the cost of construction based on the Registered Valuer's report is to be accepted.

2.2 The authorities below have erred in not appreciating the fact that the value adopted by the appellant is based on the actual construction cost and the building is located in posh locality and is called a Villa and the Appellant has indeed maintained the details of the construction. Further, the Fair market value as adopted by the learned assessing officer is the value realizable at a particular time. It does not reflect the cost of construction but the same is depreciated value as the construction cost incurred is much before and hence the value as adopted by the appellant being correct and the same needs to be accepted.

2.4 The District Valuation Officer has erred in not giving the proper opportunity for submission of the documents required which had a lengthy points and the appellant's absence in India and due to her age factor, which hindered her travel to India and thereby the reasonable opportunity was not given and the principles of natural justice has been violated and there by the assessment order passed based on the Fair market value is to be rejected and the value as per Registered valuer's report it to be accepted.”

4. The brief facts of the case are that the assessee, an individual, is a non-resident. For AY 2018-19 return of income was filed on 20.06.2018 declaring total income at Rs.2,64,24,257/-. The assessment was selected for scrutiny and notice under Section 143(2) of the Act was issued on 28.09.2019. During the course of assessment proceedings it was noticed that the assessee had received

consideration of Rs.5,70,0,000/- in respect of sale of immovable property situated in JP Nagar, Bangalore. The assessee had computed the total capital gains in respect of the said property by taking into account the indexed cost of improvement of Rs.1,70,43,520/-. The details of the immovable property sold and the working of the capital gains by the assessee are detailed below: -

Sarakki Residential House at No.117, 3rd Cross, 4th Phase J P Nagar Bangalore-560078, Super Built area, RCC Framed Duplex type villa having an area in Ground Floor 2474 Sq. Ft. and First Floor 1261 Sq. ft. totalling 3735 Sq. Ft. or 347 Sq. Mtrs,

<i>Full value of consideration received / receivable</i>	<i>5,70,00,000</i>
<i>Less Indexed cost of acquisition of land</i>	<i>85,68,000</i>
<i>Less Indexed cost of improvement/construction of villa</i>	<i>1,70,43,520</i>
<i>Total capital gain</i>	<i>3,13,88,480</i>
<i>Less Deduction u/s. 54EC</i>	<i>50,00,000</i>
<i>Taxable capital gain</i>	<i>2,63,88,480</i>

5. The AO, in the draft assessment order, held the cost of improvement claimed by the assessee was much more than the prevailing guidance value rate and also the assessee was unable to furnish any documentary evidence in support of her claim that she had incurred an expenditure of a sum of Rs.1,25,32,000/- on cost of construction (indexed to cost of improvement claimed by the assessee at Rs.1,70,43,520/-). The AO reworked the cost of improvement by adopting prevailing guidance value rate (construction of villa between AY 2009-10 and AY 2012-13) at Rs.65,17,732/-. The details of cost of improvement and the indexed cost of improvement worked out by the AO are as follows: -

Property No.	Area of improvement in sq.ft.	Cost per sq.ft.	Estimated cost of improvement	Indexed cost of improvement
Villa No. 117- Ground Floor	2474	1300	32,16,200	43,74,032
Villa No. 117- First Floor	1261	1250	15,76,250	21,43,700
Total				65,17,732

6. The AO thus worked out the long term capital gain (LTCG) at Rs. 4,19,14,268/- instead of Rs.3,13,88,480/- disclosed in the return of income.

The computation of LTCG by the AO is detailed below: -

Full value of consideration received		5,70,00,000
Less; Indexed cost of acquisition for land (as per assessee's calculation)	85,68,000	
Less: Indexed cost of improvement / construction	65,17,732	
Long term capital gains		4,19,14,268
Less: deduction u/s. 54EC of Act	50,00,000	
Less: declared by the assessee in the return of income	2,63,88,480	
Addition proposed		1,05,25,788

7. Aggrieved by the draft assessment order assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide its directions dated 23.06.2022 confirmed the view taken by the AO in the draft assessment order. The DRP, however, directed the AO to give effect to the fair market value as determined by the DVO on receipt of valuation report. Pursuant to the DRP directions the impugned final assessment order was passed on 28.07.2022. In the final assessment order, the AO again adopted the guidance value rate (i.e. indexed cost of improvement at Rs.65,17,732/-) by observing that the DVO vide his letter dated 22.07.2022 has returned the case to the AO without determining/estimating the value of construction due to lack of cooperation on the part of the assessee.

8. Aggrieved by the final assessment order the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 111 pages enclosing therein the written submission, copies of notices issues by the AO/DRP, bank statements, bills towards expenses, valuation report supporting the cost of construction incurred by the assessee, photographs of the property in the year 2012, sale deed, purchase deed, etc. The learned A.R. submitted that the assessee has incurred a total cost of

Rs.1,25,32,000/- for construction of the villa from the year 2009 to 2012. It was submitted that the cost incurred are born out from the invoices produced and the same is placed on record with regard to the details of payments made to the material supplier, builder/contractor, labour charges, etc. Therefore it was submitted that the cost incurred by the assessee at Rs.1,25,322,000/- may be taken as cost of acquisition of the villa and accordingly the long term capital gains may be computed.

9. The learned D.R., on the other hand, supported the findings of the AO and the DRP. The learned D.R. submitted that there was no cooperation on the part of the assessee and no details were produced before the AO to support the cost of construction claimed by the assessee. Further, the learned D.R. submitted, the assessee has not cooperated with the DVO and hence the DVO was not able to complete the valuation of the impugned property within the specified dated. Therefore it was submitted that the order of the AO and DRP may be confirmed.

10. We have heard the rival contentions and perused the material on record. The assessee has disclosed long term capital gain of Rs.2,63,88,480/- from sale of duplex villa in JP Nagar (constructed area of 3735 sq.ft and land measuring 4205 sq.ft.). The solitary dispute in this appeal is whether the AO is justified in adopting the fair market value (FMV) instead of actual cost of construction claimed by the assessee regarding cost of construction of villa. The Assessing Officer, while framing the impugned assessment order substituted the cost improvement by adopting guidance value of the property during the period of construction at Rs.47,92,450/- (before indexation) as against Rs.1,25,32,000/- (before indexation) claimed by the assessee in the return of income. The AO in the assessment order at page 3, while mentioning the about the cost of improvement/construction had stated that the assessee had only furnished valuation report and no supporting evidences and hence

restricted the claim of cost of construction to the extent of guidance value. However, the assessee before the Tribunal contended that the assessee had submitted before the AO the relevant details such as bank statements, bills pertaining to construction and inward remittance supporting the construction cost, etc. The assessee has furnished the same in the paper book submitted before the Tribunal. The statement showing the cost of construction/improvement of property and the relevant proof submitted during the course of hearing are detailed below: -

- a. Statement of cost of construction
- b. Bills towards the expenses/purchases Copies
- c. The statement showing the payments made with cheque numbers and also dash payments made
- d. Bank statements supporting the payments made
- e. The detailed payment list of the payments made to the material supplier and the builder/contractor and labour charges – as per bank statement with the names of the suppliers. (As found in the bank statement).

11. The AO has also referred the matter to the Valuation Officer vide letter dated 27.09.2021 with DIN ITBA/AST/S/77/2021-22/1035944943(1). It is submitted that the time limit for providing valuation report by the DVO as provided under Section 142A of the Act is six months from the end of the month in which the reference is made by the AO. It is stated that the Valuation Officer had issued notice only in the month of May, 2022 directing the assessee to submit her reply by 01.06.2022. Therefore, it was contended that the DVO was not justified in issuing notice much beyond the period prescribed under Section 142A of the Act.

12. We find that the AO had adopted the guidance value as cost of construction primarily for the reason that the valuation report submitted by

the assessee is not backed by any evidence/proof of expenditure incurred. The assessee, however, submitted that the details called for were duly submitted before the AO and the AO is not justified in stating the assessee has not provided details in support of the cost incurred for construction of the villa. On perusal of the proof submitted as regards to the cost of construction/ improvement of property, we find the assessee has filed before us the statement of cost of construction, certain bills towards expenses/purchases, details of payments made to the builder/contractor, etc. However, we find confirmation of such payments from builder/contractor and the architect are not on record. The paper book submitted before the Tribunal is not certified that the material produced before the Tribunal has been placed before the AO and the DRP. Therefore, there is no clarity whether the evidences that are produced before the Tribunal has been on the record before the AO and the DRP. Hence, in the interest of justice and equity we are of the view that the matter needs fresh examination by the AO. Accordingly the issues raised in this appeal are restored to the file of the AO. The AO is directed to adopt the actual cost of construction in respect of the villa. The assessee shall provide necessary proof such as confirmation from the builder/architect with regard to the payments received from the assessee, the invoice incurred on cost of construction, etc. In the event the assessee is not able to prove the actual cost of construction is Rs. 1,25,32,000/- the AO shall be at liberty to refer the matter to the Valuation Officer to determine the cost of construction of the villa (to rebut the valuation report submitted by the assessee). With the aforesaid directions we restore the matter to the file of the AO. The AO shall afford reasonable opportunity of hearing to the assessee and assessee is directed to cooperate with the AO for an expeditious disposal of the matter. It is ordered accordingly.

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

Dictated and pronounced in the open Court on 8th February, 2023.

Sd/-
(L.P. Sahu)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bengaluru, Dated: 8th February, 2023

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.