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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 1032/Bang/2022
Assessment Year : 2016-17

Shri Hothur Mohammed Tauseef, Sofia House, Opp: State Bank of Mysore, Infantry Road, Cantonment, Bellary – 583 104. **PAN: ACWPT0308C**	**Vs.**	The Deputy Commissioner of Income Tax, Circle – 1, Bellary.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri B.S. Balachandran, A.R.
Revenue by	:	Shri K. Sankar Ganesh, D.R.

Date of Hearing	:	01-02-2023
Date of Pronouncement	:	21-03-2023

ORDER

PER ANIKESH BANERJEE, JUDICIAL MEMBER

Instant appeal of the assessee was filed against the order of the Ld. Commissioner of Income Tax (A), NFAC, Delhi {in brevity the CIT(A)}, order passed u/s. 250 of the Income Tax Act, 1961 (in brevity the Act) for A.Y. 2016-17 by order dated 29.08.2022.

2. The impugned order was emanated from the order of Ld. DCIT, Circle – 1, Bellary (in brevity the AO), order passed u/s. 143(3) of the Act, order dated 19.12.2018.

3. The assessee has taken the following grounds.

"1. The impugned assessment is passed in haste violating the principles of natural justice and opposed to the facts of the case and material evidences on record and therefore, the same is liable to be vacated as void.

LTCG on sale of flats.
2. The learned AO as well as the learned CIT(A) failed to appreciate:
(i) That the stamp duty value of the property as on the date of sale agreement should be adopted and not on the date of execution of the sale deed as per the Provisos u/s 50C(1) of the Act.
(ii) That the addition of Rs.20,26,000/- made under the head, "Capital Gains", restricting the loss is totally unjustified.

LTCG on sale of land & building by the Firm.
3. The learned AO as well as the CIT(A) ought to have appreciated:
(i) That the land 86 building belonged to the Firm, M/s. Hothur Steels and the capital gains cannot be assessed in the hands of the assessee-individual.
(ii) That the said Firm, M/s. Hothur Steels had filed the return of income for the subject assessment year declaring capital gain on the sale of land 86 building and the capital gain on the sale of same asset cannot be considered in the hands of the assessee.
(iii) That the officers of the Department are duty bound to be realistic 86 correct in their approach and should not take advantage of mistakes, if any, on the part of the assessee.

Cash Deposits.
4. The learned AO as well as the learned CIT(A) erred:
(i) In not appreciating that cash deposits in the bank accounts are made out of disclosed income.
(ii) In not appreciating that the assessee had produced cash-flow statements and no addition could be made without showing how the cash-flow statement was incorrect.

5. The learned AO is not justified in initiating the penalty proceedings u/s 271(1)(c) and 271F of the Act.

6. The learned AO is also not justified in charging interest u/s 234A, 234B and 234C of the Act.

7. The grounds are taken without prejudice to one another and the Appellant craves leave to add or delete or modify or revise any ground at the time of hearing before the Hon'ble ITAT.

For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble ITAT may be pleased to allow the appeal in the interest of the equity and justice."

4. Brief facts of the case are that the assessee was assessed U/s 143(3) of the Act and an addition was made with a total income of the assessee in three heads, which are as follows:-

a. for violation of section 50C amounting to Rs.20,26,000/- related to sale of two flats F1 and F2 at Bangalore.

b. on long term capital gain on sale of industrial land at Halkundi Village, Bellary and was added back amount of Rs.97,77,387/-. **c**. on unexplained cash deposit amounting to Rs. 40 Lakhs

Aggrieved, assessee filed an appeal before the ld. CIT(A). After considering the submission of the assessee, the CIT(A) upheld the order of the AO. Being aggrieved, assessee filed an appeal before us by challenging the order of CIT(A).

5. Ground no. 1 is general in nature.

6. **Ground no. 2 – violation of Section 50C(1).**

6.1 The assessee has sold two flats F1 and F2 in Bangalore. The guidance value was higher than the set forth value and the difference in between the guidance value and the set forth value amount of Rs.20,26,000/-. In argument, the ld. Counsel for the assessee (in short AR) pressed that the assessee has made an agreement dated 31.03.2009 and amount was paid through banking channel. So the guidance value cannot be for A.Y. 2016-17 but can be taken for the year of agreement. In argument, the assessee has filed the paper book and the copy of the agreement in page no. 76.

6.2 The AR further placed that the copy of the agreement was already filed before the AO. The relevant para of the assessment order is para no. 4.2 is extracted as below.

> *"4.2 In view of the above, the assessee was asked to Explain as to why provisions of Section 50C should not be invoked in respect of the flat bearing Flat No.F1 & F2 situated on First Floor of HA Arcade, Koramangala, Bengaluru sold through vide Notice u/s 142(1) dated: 31/10/2018. In compliance to this, the assessee has filed following explanation:*
> *"During the course of hearing it was questioned about the applicability of the provisions of Section 50C on the sale of 2 Residential Flats bearing Nos. Fl, F2 situated at # 67-8-872/3 &, VI Block, 17th E Main, Koramangala, Bengaluru. In this connection, I would like to draw your kind attention to the copies of the Registered Agreements of Sale filled along with my letter dated 09.11.2018. The said two Agreements were executed for a sale consideration of Rs.45 lakhs and Rs. 70 lakhs, respectively.*
>
> *For ready reference Section 50C of the Income-tax Act is reproduced.*
>
> *50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority') for the purpose of payment of stamp duty in respect of such transfer, the value so adopted [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*
>
> *Provided that where the date of agreement fixing the amount of consideration and the date of registration for the transfer of the Capital Asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.*
>
> *Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.*
>
> *Keeping whatever is stated in the two provisos to Section 50C as above, I would like to bring to your kind notice that the entire transactions are to be viewed from that perception. Firstly, value prevailing a per the Stamp Valuation Authority on the date of Agreement is to be considered and secondly, whether the amount as*

per the Agreement was paid through an A/c payee cheque / draft or banking channels.

Since the properties were sold where the agreement date and the date of registration are different, the stamp duty value prevailing on the date of agreement registration are different, the stamp duty value prevailing on the date of agreement forms the value for which the provision of Section 50-C is to be adopted and also I have received the amount by way of account payee cheques only on various dates as mentioned in the Agreements of sale. Hence, by joint reading the above provisos, I believe the stamp duty value on the date of agreement only forms part of the value or the actual consideration. Moreover, the agreement creates a right in persona favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because vendee in whose favour right in persona is created has legitimate right to enforce such specific performance of the agreement if the vendor, for some reason, is not executing the sale deed. Thus, by virtue of 'Agreement to Sell', rights are given to the vendee by the vendor. It is an encumbrance on the property and hence the amount agreed upon on the date of agreement or the stamp duty value, whichever is higher, forms the value for purpose of calculation of capital gains in this regard.

I am enclosing guidance value of the above properties as on the date of agreement, where it is highlighted for your reference. Adopting the same value for the purpose of capital gains will give us a guidance value of Rs.75.51 Lakhs and Rs.80.01 Lakhs, respectively. However, the registered value is '45.00 Lakhs and 70.00 Lakhs, resulting in a deficit of '30.51 lakhs and '10.01 Lakhs, respectively. Since the above difference results in a long term capital gain in accordance with reference to provisions of Section 50-C, irrespective of the fact that I have received lesser amount, I agree to adopt guided value as sale consideration for the purpose of computing capital gains."

6.3 The AR confirmed that no application was filed for valuation of the property through DVO before any of the revenue authorities.

6.4 The departmental representative (in short DR) mentioned that the revenue authorities are not binding to do the valuation without the prayer of the assessee. The DR further argued that the ground of the appeal should be rejected.

6.5 We have considered the submissions of the assessee and perused the documents available in the record. The assessee was eligible to prove that the agreement was completed on 31.03.2009 for both the flats F1 and F2. The payment was also made through cheque. So it is very clear that the guidance value of the property should be on basis of the year of agreement. In assessment, the AO submitted some valuation in his own perspective and also the assessee filed a valuation for their own determination. But none has submitted any registered valuation from the designated authority. During hearing, the AR requested for the proper valuation of the property on basis of the date of agreement. The DR opposed the submission of the AR. But in our considered view, the issue was pressed during the assessment dated 09.11.2018 during compliance of notice u/s 142. Considering the natural justice, the valuation should be done through DVO on basis of the year of agreement and the guidance value should be determined accordingly. We remit back the ground to the AO for completing the valuation through DVO and determine the application of the provision of section 50C as per the Act. Needless to say the assessee should get reasonable opportunity of hearing in set aside proceeding.

Accordingly, Ground no. 2 is partly allowed for statistical purposes.

7. **Ground no. 3 – Addition of LTCG for sale of land and building amounting to Rs.97,77,387/-.**

7.1 Facts of the case are that as per Sale Deed of Land bearing Sy.No.229, 288 & 289 for 18.45 Acres in Halkundi Village, Ballari the assessee and his Partnership Firm M/s Hothur Steels (represented by its both partners Mr. H. Mohammed Asif & Mr. H. Mohammed Tauseef) were the joint and absolute owners of the Industry along with Factory Building, the Land and Scrapped Machinery etc situated at Sy. No. 229, 288 & 289 for 18.45 Acres in Halkundi Village, Ballari and sold to M/s VRKP Sponge & Power Plant LLP, Bangalore for a total Consideration of Rs.9,00,00,000/-. Out of this, the Firm was entitled to receive a sum of Rs.7,70,00,000/- and the assessee has received the balance of Rs.1,30,00,000/-. Vide Para.7 of

the said deed, land in Schedule Property was owned by assessee whereas factory building and shed constructed thereon was owned by M/s Hothur Steels. Further, in Para 8.02 of the Sale Deed, it was clearly mentioned that the assessee is entitled to receive Rs. 1,30,00,000/- towards sale of Land. From this, it is evident that the assessee is the actual owner of Land sold to M/s VRKP Sponge & Power Plant LLP and received a consideration of Rs.1,30,00,000/- in his individual / personal capacity. In view of this, the capital gain, if any arised on sale of land for Rs.1,30,00,000/- should be assessed in the hands of the assessee but not in the hands of his Partnership Firm, M/s Hothur Steels as submitted by the assessee. Accordingly, the assessee explained before the ld. CIT(A) that the land sold was not belonging to him but to M/s Hothur Steels.

7.2 Even in the above explanation, the assessee himself admitted that "The aforesaid sale consideration belongs to two parties Viz., First party being M/s Hothur Steels for an amount of Rs.7.70 Crs and the second party, being assessee, for Rs.1.30 Crs, totaling to Rs.9 Crs. received from M/s VRKP Sponge and Power Plant LLP". This statement also clearly indicated and confirmed that the assessee himself was the owner of Land Sold for Rs.1,30,00,000/- and liable for Capital Gain tax, if any arised thereon. Apart from this, the assessee executed the sale deed and signed the document in his individual capacity also confirmed that ownership of the said land was remained with the assessee but not with the Firm on the date of sale. Even the capital gain arised on sale of said land has been separately computed and declared by the Firm in its ITR filed on 02/11/2017. Taking all these facts into consideration, ld. CIT(A) it is inferred that the capital gain arised on sale of said land should be assessed in the hands of the assessee. In 'view of this, the Long Term Capital Gain in respect of Sale of said Land computed in the Statement of Income of M/s Hothur Steels at Rs. 97,77,387/- is added to the Returned Income of the assessee.

8. Th ld. CIT(A) observed that the property at Village Bellary was sold to M/s VRKP Sponge & Power Plant LLP, Bangalore for a total Consideration of Rs.9,00,00,000/-. Out of this, the Firm was entitled to receive a sum of Rs.7,70,00,000/- and the assessee had received the balance of Rs.1,30,00,000/-. It was also observed by Ld. A.O. from Para 7 of the said deed that Land in Scheduled Property was owned by assessee whereas factory building and shed constructed thereon was owned by M/s Hothur Steels.

8.1 Further, the ld. CIT(A) observed that in Para 8.02 of the Sale Deed, it was clearly mentioned that the assessee was entitled to receive Rs.1,30,00,000/- towards sale of Land. From this, Ld. A.O. opined that the assessee was the actual owner of Land sold to M/s VRKP Sponge & Power Plant LLP and received a consideration of Rs.1,30,00,000/- in his individual / personal capacity. In view of this, the capital gain, if any arising on sale of land for Rs.1,30,00,000/- should have been assessed in the hands of the assessee but not in the hands of his Partnership Firm, M/s Hothur Steels as submitted by the assessee. Accordingly, the ld. A.O. held that the explanation given by the assessee that the land sold was not belonging to him but to M/s Hothur Steels was not correct. Even in the above explanation, the assessee himself admitted that *"The aforesaid sale consideration belongs to, two parties Viz., First party being M/s Hothur Steels for an amount of Rs. 7.70* Crs. *and the second party, being assessee, for Rs. 1.30 Crs., totaling to Rs. 9 Crs. received from M/s VRKP Sponge and Power Plant LLP".*

8.2 In light of the above discussion, the ld. CIT(A) found that the action of Ld.AO in making the impugned addition of Rs. 97,77,387/- is sustainable in the facts of the case and in law. The action of ld AO is, therefore, confirmed and Ground no.3 is, thus, dismissed. However, the ld. CIT(A) directed the ld. AO to give credit of related TDS of Rs. 1,30,000/- u/s 194 IA of the Act in case of the assessee, though not claimed by the assessee and withdraw the same from the firm's case where claimed by

taking appropriate action as per law u/s 154 of the Act etc. while giving effect to this appeal order if the firm is also assessed by the same A.O. or otherwise in new Faceless regime by informing the jurisdictional A.O./ A.O. of A.U. in case of the said firm, as the case may be. The assessee and/ or his Ld. A/R were requested by the ld. CIT(A) to co-operate in such proceedings to determine the correct tax liability in case of both the assessee individual and his 1 Of 3 partnership firms namely HOSUR STEELS and to allow law to take its course and not impede the same. Against this assessee is in appeal before us.

9. In argument, the ld. A.R. pressed that the assessee is a partner of M/s. Hothur Steels. As per the ld. AR, the property of the firm was sold and the transacted amount was credited in two parts in the account of rim the amount of Rs.7,70,00,000/- and the balance amount in the account of assessee amount of Rs.1,30,00,000/-. The TDS was deducted in relation to said payment and credited in assessee's account. The ld. A.R. Argued that amount of Rs.1.3 crores was not related to assessee. But related credit of TDS in the hands of the assessee the ld. A.R. was remained silent.

10. The ld. DR in argument pressed that the amount received in relation to sale of industrial land was related to assessee. The relevant para of the sale deed duly executed by the partnership firm and the assessee himself dated 01.07.2015 was placed in APB pages 88 to 105. The relevant para 7 of the deed is extracted below.

> *"7.00. That the land in Schedule Property is owned by the SECOND VENDOR and the Factory building and Shed were constructed and owned by the FIRST VENDOR. Hence the VENDORS herein jointly decided to sell and the PURCHASER agreed to purchase the Schedule Property for a total sale consideration- of Rs.9,00,00,000=00 (Rupees nine crores only) free from all types of encumbrances and charges. Accordingly the VENDORS entered into an Agreement to Sell dated 18-06-2015 with the PURCHASER herein and the same was registered on 22-06-2015 as Document No.BLY-1-03516-2015-16 of*

Book-I and stored in CD.No.BLYD316, at the Office of the Sub-Registrar, Bellary."

In argument, the ld. DR placed that the land was in the name of the assessee, so the assessee is liable to pay the tax under the head capital gain.

11. We consider that submission of both the parties and perused the documents available in the record. From the argument it is squarely covered that the amount of Rs. 1.3 crores was received by the assessee himself and the TDS was deducted in his favour. In the cogent evidence, sale deed is clearly depicted that the sold property was in the ownership of the assessee. So in any case, assessee cannot avoid the onus to pay the tax in his own hands. In our considered view, we find that there is no infirmity in the order of the revenue authorities. We uphold the order of the AO & the addition is confirmed.

Accordingly, ground no. 3 is dismissed.

12. **Ground no. 4 – Deposit of cash of Rs. 40 Lakhs**

12.1. In the assessment, the AO found that the assessee deposited cash of Rs. 40 Lakhs in bank account. The source was not explained before the AO. So, the addition was made with the total income of assessee. In the appeal, the issue was unexplained by the assessee himself. The issue was agitated the same issue before the bench. The assessee submitted the cash flow statement which includes in APB page nos. 163 to 165. The assessee explained that the cash was withdrawn from the bank which was later deposited. The assessee explained that the cash was deposited from his own source.

12.2 The ld. DR pressed that it is not possible to verify whether the cash was not utilised for other purpose. In absence of the balance sheet, we are

not able to verify the cash flow of the assessee. As per his argument, the ground should be rejected.

12.3 We heard the rival submissions and relied on the documents available on record. The issue for depositing cash from own source, the assessee has submitted the cash flow statement and the bank statement before the bench. The issue was never narrated before the lower authority. We set aside the issue before the AO to adjudicate *denovo* considering the submission of assessee. Needless to say, the assessee should get reasonable opportunity of hearing for submitting his documents.

Accordingly, ground no. 4 is allowed for statistical purposes.

13. Considering the issues mentioned above, Ground no. 1 is general in nature. Ground no. 2 is partly allowed for statistical purposes. Ground no. 3 is dismissed and Ground no. 4 is allowed for statistical purposes. Ground nos. 5 & 6 are consequential in nature. Ground no. 7 is general in nature.

14. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21st March, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(ANIKESH BANERJEE)
Judicial Member

Bangalore,
Dated, the 21st March, 2023.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore