

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

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

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|----------------------------------|
| IT(IT)A No. 51/Bang/2023 |
| Assessment Year : 2013-14 |

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|--|------------|---|
| Smt. Saritha Jain, Flat No. 3, 28/1, Gowri Kunj, Palace Cross Road, Vasanth Nagar, Bengaluru – 560 020. PAN: AEDPJ9216L | Vs. | The Income Tax Officer (International Taxation), Ward – 1(1), Bengaluru. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|---------------------------------|
| Assessee by | : | Shri Hemant Pai, CA |
| Revenue by | : | Shri Nischal .B, Addl. CIT (DR) |

| | | |
|-----------------------|---|------------|
| Date of Hearing | : | 16-08-2023 |
| Date of Pronouncement | : | 09-11-2023 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 07.12.2022 passed by the Ld.CIT(A)-12, Bangalore for A.Y. 2013-14 on following grounds of appeal:

“1. The order passed by the learned Commissioner of Income Tax (Appeals) — 12, Bengaluru ("CIT(A)") under section 25o of the Act insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.

2. *The Appellant denies himself liable to be assessed at Rs. 1,98,89,503/- as against the returned income of Rs. 8,08,010/- on the facts and circumstances of the case.*

3. *The Appellant submits that no long term capital gains are assessable for this year on the facts and circumstances of the case.*

4. *The learned CIT(A) is not justified in upholding the decision of the Assessing Officer in invoking the provisions of section 50C of the Act and bringing a sum of Rs. 1,90,78,000/- as long term capital gains, on the facts and circumstances of the case.*

5. *The learned CIT(A) is not justified in upholding the decision of the Assessing Officer in adopting the date of executing the sale deed instead of considering the guideline value as on the date of entering an agreement to sell entered by the appellant with the buyers and ought not to have applied the guidance value as on the date of execution of the sale deed for the purpose of section 50C of the Act on the facts and circumstances of the case.*

6. *Without prejudice, the authorities below ought to have held that the provisions of the Finance Bill 2016 by insertion of a proviso are applicable and given the relief on the facts and circumstances of the case.*

7. *The authorities below are not justified in not taking note of the impediments in the property by way of acquisition of the property for a layout known as Arkavathi Layout and non-consideration of this vital aspect has led to huge addition under the head long term capital gains which requires to be reduced to the returned income on the facts and circumstances of the case.*

8. *The learned CIT(A) failed to appreciate that the Assessing Officer ought to have referred to the valuation officer in terms of section 50C(2) of the Act and any addition without reference is liable to be deleted on the facts and circumstances of the case.*

9. *The authorities below are not justified in law in disallowing the claim of exemption under section 54 of the Act amounting to Rs. 66,01,550/- under the facts and circumstances of the case without properly appreciating the evidences filed by the appellant in connection to the evidences filed by the appellant in connection to the*

existence of a building on the immovable property transferred by the appellant under the facts and circumstances of the case.

10. The authorities below erred in not appreciating the irrefutable evidence of the registered sale deed, property tax and the electricity payment which fortifies the existence of the building and consequently, the denial of exemption under section 54 of the Act is not in accordance with law on the facts and circumstances of the case.

11. The Appellant denies the liability to pay interest under section 234A and 234B of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer on the facts and circumstances of the case.

12. The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.

13. In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

2. Brief facts of the case are as under:

2.1 The assessee is an individual and a non-resident Indian residing in Germany. She filed her return of income for year under consideration declaring total income of Rs.8,08,010/-. The case was selected for scrutiny and notice u/s. 143(2) was issued to assessee in response to which the representative of assessee appeared from time to time and furnished the details as called for.

2.2 The Ld.AO noted that during the relevant financial year, assessee had sold following immovable properties and had claimed exemption u/s. 54 as under:

“During the previous year relevant to A.Y 2013-14, the assessee has sold the following immovable properties on 9.11.2012.

| Sl.No. | Name of the property | Sale Consideration (Rs.) | Name of the Purchaser |
|--------|--|--------------------------|-----------------------|
| 1 | BBMP Katha No. 863/798/92, situated at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk Measuring 5717.25 sq.ft. | 19,21,550 | Batchu Kamala Babu |
| 2 | BBMP Katha No. 30/1/91, situated at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk Measuring 5717.25 sq.ft. | 50,00,000 | Batchu Anitha Kamal |

In the statement of computation of total income filed alongwith the return, the assessee has computed the long term capital gains from the sale of above two properties as under.

| | | |
|-------|-------------------------|---------------|
| | Sale Consideration | Rs. 69,21,550 |
| Less: | Land – 160000 * 852/426 | Rs. 3,20,000 |
| | | ----- |
| | Capital Gain | Rs. 66,01,550 |
| Less: | Exemption u/s 54 | Rs. 66,01,550 |
| | | ----- |
| | Taxable Capital Gain | Nil |
| | | -----“ |

2.3 The Ld.AO during the assessment proceedings noted that the guidance value of each property was much higher than the sale consideration declared by the assessee. It was thus opined by the Ld.AO that assessee has undervalued the property and has shown less sale consideration which has been tabulated as under:

| Sl.No. | Name of the property | Sale Consideration (Rs.) | Guidance Value (Rs.) |
|--------|--|--------------------------|----------------------|
| 1 | BBMP Katha No. 863/798/92, situated at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk Measuring 5717.25 sq.ft. | 19,21,550 | 97,20,000 |

| | | | |
|---|--|-----------|-----------|
| 2 | <i>BBMP Katha No. 30/1/91, situated at Amruthahalli Village, Yelahanka Hobli, Bangalore North Taluk Measuring 5717.25 sq.ft.</i> | 50,00,000 | 97,20,000 |
| | | | |

2.4 The Ld.AO thus invoked the provisions of section 50C and recomputed the capital gains by adopting the guidance value as under:

5.1. Therefore, the value of the above two properties is adopted at Rs.97,20,000/- each as per the Guidance Value and the capital gains is recomputed accordingly.

| | |
|-------------------------------------|----------------|
| Sale Consideration (two properties) | Rs.1,94,40,000 |
| Less : Indexed cost of acquisition | |
| Cost of acquisition | Rs.1,81,000 |
| 181000 x 852/426 | Rs. 3,62,000 |
| | ----- |
| Long Term Capital Gains | Rs.1,90,78,000 |
| | ----- |

2.5 Further, the Ld.AO also noted that the assessee was in possession of more than one residential house property on the date of transfer of immovable property being land. Hence the Ld.AO further held that the assessee was not eligible to claim exemption u/s. 54F of the act.

2.6 Further on verification of the copies of sale deeds furnished in respect of the above properties, the Ld.AO observed that, there was no mention of any building being situated in the above mentioned properties. The Ld.AR was requested to furnish the building plan, sanction letter, tax paid receipts from the concerned authorities. The Ld.AR furnished copies of electricity bills and photographs of a building but the Ld.AO held that those were inadequate documentary evidence in support of the assessee's claim that there was a residential house on the

property sold. The Ld.AO also noted that, even if the property was to be treated as a residential house, the assessee should have declared at least notional rent from the same; however, the assessee had not offered any rental income to tax in her returns from A.Y. 2010-11 onwards. Hence the Ld.AO held that, what was sold was only land and not a residential house. The assessee's claim of exemption u/s 54 of the IT Act was thus disallowed and the capital gains arising from the sale of the above two properties was recalculated.

Aggrieved by the impugned order, assessee filed appeal before the Ld.CIT(A).

2.7 The Ld.CIT(A) in respect of application of section 50C, upheld the action of the Ld.AO and in respect of the denial of exemption u/s. 54F did not accept the contention of the assessee that the property transferred was a residential property as against the observation of the Ld.AO that it was only a land.

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that **Ground no. 1** is general in nature and therefore do not require any adjudication.

4. Ground nos. 2-8 raised by assessee are challenging the applicability of section 50C to the facts of the case.

4.1 The Ld.AR submitted that assessment has been completed by making an addition of Rs.1,90,78,000/- by invoking the provisions of section 50C of the act by holding that the two immovable properties sold by assessee were below the guidance value.

4.2 The Ld.AR submitted that assessee was in possession of a residential house property situated at Amruthahalli Village, Yelahanka Hobli, Bangalore Taluk, two immovable properties measuring about 5,717.25 Sq.ft. each, which was purchased by the assessee from one Smt. Prema R Shetty vide two registered sale deeds dated 16.01.2002, registered in the office of the sub-registrar, Yelahanka, Bengaluru.

4.3 During the year 2008-09, relevant to A.Y. 2009-10, the assessee entered into an agreement to sell two residential properties of which assessee had received a total sale consideration of Rs.69,21,550/- through banking channels. The Ld.AR submitted the details of the payments received as under:

| <i>Sl.No.</i> | <i>Date of payment received by the appellant</i> | <i>Amount of Consideration received in Rs.</i> |
|-------------------------------------|--|--|
| <i>i.</i> | <i>20/11/2008</i> | <i>3,00,765/-</i> |
| <i>ii.</i> | <i>26/11/2008</i> | <i>9,50,000/-</i> |
| <i>iii.</i> | <i>24/09/2009</i> | <i>2,00,000/</i> |
| <i>iv.</i> | <i>11/11/2009</i> | <i>1,00,000/-</i> |
| <i>v.</i> | <i>14/11/2009</i> | <i>2,26,000/-</i> |
| <i>vi.</i> | <i>20/03/2010</i> | <i>1,44,785/-</i> |
| <i>vii.</i> | <i>12/09/2008</i> | <i>50,00,000/-</i> |
| <i>Total Consideration received</i> | | <i>69,21,550/-</i> |

4.4 The Ld.AR submitted that due to various administrative purposes and also due to the fact that the survey number 863/798/92 was under the acquisition by BDA for formation of layout and consequently the assessee was not in a position to negotiate for a higher price and further the assessee was not in a

position to register the said property in the name of the agreement holders.

4.5 He submitted that the assessee received total sale consideration before the year 2010 being the last instalment of the sale consideration, the said property could not have registered in favour of the buyers.

4.6 The Ld.AR submitted that assessee had entered into an agreement with the said two buyers of the immovable property to the purchasers and also received a total sale consideration of Rs.69,21,550/-. The assessee was thus under an obligation to register the said two immovable properties as the specific performance was casted upon the assessee to do so. The assessee was thus under a legal obligation to register the said property for the sale price which was agreed upon by the assessee as on the date of entering into an agreement with the two buyers of the property.

4.7 It is submitted that the said immovable property was registered by a registered sale deed dated 09.11.2012 for a total consideration of Rs.69,21,550/- consideration paid to the assessee earlier as per the terms of the agreement entered between the buyers and assessee. The assessee declared the sale consideration received by her amounting to Rs.69,21,550/- which was received much earlier to the date of registration of the two properties.

4.8 The Ld.AR further submitted that there is nothing available on record with the authorities below to come to the conclusion that assessee has received anything over and above the agreed sale consideration received as per the registered sale deeds. He

submitted that the registration of the agreement was only shifted in the year 2012 that fall within the financial year relevant to Assessment Year under consideration and that the entire sale proceeds against the sale of both the residential properties was received by the assessee in the financial year relevant to Assessment Year 2009-10.

4.9 The Ld.AR submitted that the rigours of section 50C are not applicable as the sale deed executed during FY 2008-09 and that the provisions of section 50C that was applicable for the Assessment Year 2009-10 did not cover the transactions which are not registered with stamp duty authority and was executed only by way of an agreement to sale or a power of attorney. He submitted that section 50C was amended by Finance No. 2 Bill, 2009 to include such kind of transactions wherein the properties were sold in any other manner other than a registered sale deed. He also referred to Circular No. 5/2020 of CBDT wherein this intention has been clearly brought out and that this amendment was applicable only w.e.f. 01.10.2009.

4.10 In support of this contention, the Ld.AR relied on the following decisions.

- *Satya Dev Sharma reported in (2017) 86 taxmann.com 150 (Rajasthan)*
- *Ramesh Verma vs. DCIT, Yamuna Nagar reported in (2017) 78 taxmann.com 320 (Chandigarh – Trib.)*
- *Krishna Enterprises vs. ACIT, Mumbai reported in (2017) 88 taxmann.com 849 (Mumbai-Trib.)*

On the contrary, the Ld.DR relied on the observations of the Ld.CIT(A)/AO in support of the applicability of section 50C to the facts of the case.

4.11 Admittedly, there is no dispute that assessee had received the sale consideration during the FY relevant to Assessment Year 2009-10. The agreement placed at page 30 dated 09.11.2012 categorically records the dates of the payments that were received during the Assessment Year 2009-10. There is no dispute that the transfer of the assets took place in the year 2008 in terms of section 2(47) of the act. It was only the formality of registering the sale deed that took place in the relevant Assessment Year under consideration.

4.12 For the purposes of section 50C, the consideration received or accruing as a result of transfer of a capital asset must be less than the guidance value. In the present facts of the case, the entire consideration was received by assessee in the FY 2008-09 and FY 2009-10. To be precise, 90% of the total consideration has been received by the assessee during FY 2008-09 and only Rs.1,44,785/- was received during FY 2009-10. The Ld.AO has not verified the guidance value during the FYs when the sale consideration was received by the assessee was higher than the rate adopted by the assessee. It was by virtue of the date of sale deed that was registered during the relevant year under consideration that the capital gains has been offered to tax for A.Y. 2013-14. The Ld.AO is adopting the guidance value that is applicable to the property already sold to the purchasers during A.Ys. 2009-10 and 2010-11 by applying the provisions of section 50C. Taking stamp value as on the date of the agreement as full value of consideration has been inserted by Finance Act, 2016, which is effective from A.Y. 2017-18 that reads as under:

“50C(1).....

- a) *Where the date of agreement fixing the amount of consideration and the date of registration for the transfer of the capital assets are not the same, the value adopted or assessed or assessable by stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.*
- b) *It is provided further that the first proviso shall apply only in a case where the amount of consideration, or part thereof has been received by way of an account payee cheque or account payee bank draft or use of electronic clearing system through such electronic mode as may be prescribed; effective from A.Y. 2020-21, on or before the date of the agreement got transferred.”*

4.13 It is very clear from the reading of the above proposition that the action of the Ld.AO in the present facts of the case is not applicable for the relevant Assessment Year under consideration. Accordingly, we do not agree with the Ld.CIT(A) in upholding the action of the Ld.AO in applying the provisions of section 50C to the present facts of the case.

4.14 The Ld.AR however has submitted that the capital gain is not taxable in the impugned assessment year 2013-14 which we do not agree as the final transfer took place upon the agreement being registered in the year 2013-14 and the capital gains has to be offered to tax for the year under consideration.

Accordingly, Ground nos. 2,4 to 8 stands allowed and Ground no. 3 raised by assessee stands dismissed.

5. Ground nos. 9-10 are in respect of denial of exemption u/s. 54 of the act.

5.1 The Ld.AR submitted that the authorities below denied the exemption u/s. 54 by holding that in the sale deed there is no mention of built up area in the deeds and hence what is sold is

only the land. The Ld.AR submitted that this observation of the Ld.AO is incorrect. He referred to the schedule to sale deed that reads as under:

“All that piece and parcel of the immovable residential property bearing BBMP khatha No. 30/1/91 situated at Amruthahalli Village, YelahankaHobli, Bangalore North Taluk, measuring East to West: 57'-17' feet and North to South: 100'-0' feet, totally measuring 5717.25 Square feet, and bounded on....”

5.2 The Ld.AR submitted that assessee at the time of assessment had produced BESCOM bills and photograph of the building though it was subsequently demolished. He submitted that in para 9.4 of the assessment order, the Ld.AO has categorically denied the existence of the building though details were furnished in support of assessee's claim.

5.3 The Ld.DR on the contrary submitted that the BESCOM bills that are placed in the paper book at pages 58-67 referred to “# 92 Amruthahalli”.

Though assessee's name is appearing, it is not very clear if it pertains to the property that is transferred and subject matter of consideration.

We have perused the submissions advanced by both sides in the light of records placed before us.

5.4 The assessee had actually invested Rs. 95 Lakhs in new residential house of which the possession was handed to the assessee on 18.05.2013 which has not been disputed by the Ld.AO. The assessee had claimed exemption u/s. 54 to the extent of Rs.66,01,550/- which was the sale proceeds received by assessee from the transfer of assets by virtue of sale deed dated 09.11.2012. The denial of exemption is only on the ground that

the sale deed dated 09.11.2012 does not mention a residential building and hence what was sold is only land as per the view of the Ld.AO.

On perusal of the sale deed dated 09.11.2012, the assessee transferred residential property and exemption is available to the assessee u/s. 54 of the act. The assessee produced BESCO Bill, Katha, tax paid receipt, photos of the structure before the Ld.AO. The Ld.AO without carrying out further enquiry out rightly rejected the same. Failure of the Ld.AO to carry out necessary verification cannot be attributable to assessee after 10 years. Now it is further impractical to remand due the lapse of time. In the interest of justice, the claim of the assessee u/s. 54 needs to be granted.

Accordingly, this ground raised by the assessee stands allowed.

6. Ground no. 11 is consequential in nature and therefore do not require separate adjudication.

7. Ground nos. 12-13 are general in nature.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 09th November, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th November, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore