

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
&
Shri Keshav Dubey, Judicial Member**

ITA No.346/Bang/2024: Asst.Year : 2017-2018

Sri.Kenchegowda Bommalingegowda 13/1, 8 th Main Road SBM Colony, Mathikere Bangalore – 560 054. PAN: AFIPB2639F.	vs.	The Income Tax Officer Ward 3(3)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by: Sri.T.S.Rajan, CA
Respondent by: Sri.Ganesh R.Gale, Standing Counsel

Date of Hearing : 27.05.2024	Date of Pronouncement: 31.07.2024
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ORDER

Per Keshav Dubey, JM :

This appeal at the instance of the assessee is directed against the order of National Faceless Appeal Centre, Delhi /CIT(A) dated 21.12.2023 vide DIN & order No. ITBA/NFAC/S/250/2023-24/1058968004(1) passed u/s.250 of the Income-tax Act, 1961 ("the Act") for Assessment Year (AY) 2017-2018.

2. The assessee has raised the following grounds:-

"1. The impugned order of the assessing officer is opposed to law, weight of evidence probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies itself to be liable to be assessed to a total Income of Rs. 13,93,990/- as against the total income under the normal computation under the facts and circumstances of the case, The learned assessing officer is not justified in law in making an addition of Rs. 11,60,000/- to the income.

3. The learned assessing officer did not have any record before invoking the provisions of Section 147 which is prerequisite condition and consequently the additions made by the learned assessing officer under Section 147 deserves to be deleted under the facts and circumstances of the case as we are herewith not in agreement to the applicability of provisions of Section 50C of Income Tax Act, 1961, due to the reason that the assessee had entered into an oral agreement during the year 2013-14 to sell the property and the same was registered in the year 2016-17. The absolute sale deed contains a clause stating that the seller had made an oral agreement to sell the property to the purchaser for a sale consideration of Rs. 200,000/-

In India, both agreements, whether oral or written are valid and fall under the gambit of the Indian Contracts Act.

In 1991. Delhi High Court held that an oral agreement is valid and enforceable as a contract in the case of Nanak Builders and Investors Pvt, Lid Vs. Vinod Kumar Alag AIR 1991 Delhi 315

The Supreme Court too upheld the validity of oral agreements in Alka Bose Vs Parmatma Devi & Ors. (Civil Appeal Nos. 6197 of 2000)

Although as per law, an oral agreement is valid, but their enforceability comes to question in the event of a dispute. Section 92 of Indian Evidence Act specifically states that in the event of a dispute related to disposition of property, oral agreement evidence shall be entertained by the courts for the purpose of contradicting, adding, varying any term.

Thus, it is clear that although India recognizes the existence of oral agreements, their enforceability is lacking as per law. It is highly recommended that one should convert their agreements to composition of texts. Oral agreements are permissible but they are extremely tricky to prove in a court of law and becomes a he said-she said situation. Therefore, oral agreement is valid in the eyes of law.

4. Therefore, the transaction is outside the purview of Sec 50C (1) which reads as:

Provided that where the date of the 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 assessee 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 for through such other electronic mode as may be prescribed]. on or before the date of the agreement for transfer.

Thus, the consideration received of Rs.2.00,000/- maybe treated as full and final consideration received by the assessee and the Taxable Capital Gain has been computed based on above receipt. Sale Deed has been attached.

5. The appellant craves for leave of this Hon'ble authority, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

6. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

3. At the outset, the learned AR submitted that there is a short delay in filing the appeal before this Tribunal by 8 days. He further submitted that the delay is caused due to the late handing over of the brief to the legal Counsel and accordingly prayed to condone the short delay in filing the appeal, in the interest of justice. He also submitted that the delay is unintentional and no benefit can be attributed to the assessee in filing the appeal belatedly. He thus prayed for condonation of the delay and requested to consider the issues raised by the assessee on merits.

4. On the contrary, the learned Departmental Representative though objected, could not controvert the genuineness in causing the delay.

5. We have perused the details filed by the assessee to justify the delay and we are satisfied that there is no malafide intention on the part of the assessee in filing the appeal belatedly. Respectfully following the ratio laid down by the Hon'ble Supreme Court in case of Collector, Land Acquisition v. Mst. Katiji & Ors. Reported in (1987) 167 ITR 471 (SC), the delay caused in filing the appeal filed before this Tribunal stands condoned and admitted for adjudication.

6. At the time of hearing before us, both the parties fairly conceded that this issue may be remitted to the file of AO, since the order passed by the AO u/s.147 r.w.s. 144 of the Act, as well as the order passed by the CIT(A) are *ex parte*. The learned AR of the assessee vehemently submitted that due to medical emergency for himself as well as for his family, he could not appear before the authorities below and prayed to provide one more opportunity for advancement of substantial cause of justice. Being so, we are of the opinion that since the order passed by the authorities are without affording proper opportunity of being heard to the assessee, we remit the issue in dispute to the file of the AO for fresh consideration. The assessee is directed to co-operate with the proceedings before the Revenue Authorities and to file relevant submissions /documents, which would be essential and required by the Revenue Authorities, for proper adjudication of the case. We clarify that in case of further default, the assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 31st July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore; Dated: 31st July, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst. Registrar
ITAT, Bangalore