

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA No. 904/Bang/2024</b>
<b>Assessment Year : 2015-16</b>

Shri Ranganath Ashok Meharwade, 1 <sup>st</sup> Main, 1 <sup>st</sup> Cross, Meharwade Compound, Deshpande Nagar, Hubballi – 580 020. Karnataka. <b>PAN: ASNPM4183H</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2(1), Hubballi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ashok Kulkarni, Advocate
Revenue by	:	Smt. Neha Sahay, JCIT-DR

Date of Hearing	:	28-08-2024
Date of Pronouncement	:	13-11-2024

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 20/02/2024 in respect of A.Y. 2015-16.

**2.** The brief facts of the case are that the assessee filed their return of income on 29/03/2017 declaring a total income of Rs.1,72,800/-. Thereafter, the AO based on the information received by him that the assessee had sold an immovable property on 03/02/2015 for a sale consideration of Rs. 22 Lakhs as against the market value for stamp duty purpose at Rs. 54,20,000/-. Therefore the AO relied on section 50C of the Act and proposed to treat the market value as the sale consideration for the

purpose of arriving the capital gains. The AO also issued notices u/s. 143(2) and 142(1), for which the assessee had not filed any reply to the notices. Thereafter the AO issued a show cause notice proposing to make an assessment u/s. 144 of the Act. The AO proposed to treat the value of Rs. 54,20,000/- being the value adopted by the stamp duty authorities as income from long term capital gains. Even for this show cause notice, the assessee had not filed their reply and therefore the AO had treated the market value as sale consideration as per section 50C of the Act as the income from long term capital gains. As against the said proceedings, the assessee filed an appeal before the Ld.CIT(A) and contended that the land in dispute is owned by Shri Satyanarayan P. Raibagi, Hubli and therefore the assessee is not liable to pay any tax under the capital gains. The assessee also submitted that the value adopted by the AO is not correct when there is an earlier agreement with the present purchasers in respect of the very same property, made by the said Shri Satyanarayan P. Raibagi and therefore the value prevailed at the time of making the agreement should be taken as the value for the purpose of deciding the market value of the property, which is admittedly below the value shown by the assessee.

**3.** The assessee further contended that the calculation of the long term capital gain without allowing the indexed cost of the purchase value of the land the indexed cost of amount spent on the development of the land and other expenses involved in respect of the property is also not in accordance with the provisions of the Act. The Ld.CIT(A) considered the various grounds and also the written submission filed by the assessee and decided that owner of the lands as per the documents are the assessee and therefore the assessment made on the assessee is correct.

**4.** The Ld.CIT(A) in respect of the second ground that the AO had erred in not allowing deduction for the cost of land and other charges of development of land while calculating the correct taxable gains, had accepted the case of the assessee and remitted the same to the AO to ascertain the purchase consideration of the property and thereafter

calculate the cost of indexation of acquisition and compute the capital gains accordingly. The Ld.CIT(A) had not accepted the other grounds of appeal and therefore the assessee is in appeal before this Tribunal with the following grounds:

*“1. The order of the Hon'ble National Faceless Appeal Centre (NFAC), Delhi, is opposed to law and facts of the case.*

*2. The initiation of assessment proceedings u/s 147 /148 of the Act are bad in law.*

*3. The Hon'ble NFAC ought to have held that the impugned assessment order is passed in violation of the principles of natural justice.*

*4. The Hon'ble NFAC ought to have held that no part of capital gains is taxable in the hands of the Appellant.*

*5. The Hon'ble NFAC ought to have held that the Appellant is not the owner of the subject land, therefore, capital gains are not taxable in the hands of the Appellant.*

*6. Alternatively and without prejudice the Hon'ble NFAC ought to have held that the guidance value / stamp duty value adopted by the assessing officer is erroneous and not in accordance with the provisions of the Act.*

*7. Alternatively and without prejudice the Hon'ble NFAC ought to have allowed indexed cost of amount spent on the development of the subject land.*

*8. Alternatively and without prejudice the computation of capital gains is not in accordance with law.*

*9. The Appellant craves for leave to add to, delete from or amend the grounds of appeal.”*

**5.** While the matter is taken up for hearing, the Ld.AR submitted that there is a delay of 20 days in filing the appeal before this Tribunal and to that effect filed an affidavit and explanation that the delay has been occurred because of the authorised representative who was not well and thereafter the assessee collected the papers from the previous AR and handed it over to the new AR and thereafter, the appeal was prepared and filed on 10/05/2024, hence there is a delay of 20 days in filing the appeal.

We consider that the delay is only minimal and the reasons are also convincing therefore we are condoning the delay in filing the appeal and proceeded to take the appeal on merits.

**6.** At the time of hearing, the Ld.AR submitted that the disputed property was originally purchased by one Shri Satyanarayan P. Raibagi who is doing the real estate business on 20/07/2010 and thereafter the said Shri Satyanarayan P. Raibagi entered into an agreement on 07.01.2013 with Shri Vivek and Shri Vishal for a total sale consideration of Rs. 22 Lakhs for the sale of 12 gunthas and the said agreement was also registered with the Sub-Registrar, Hubballi.

**7.** The Ld.AR further submitted that at the time of executing the agreement, the owner Shri Satyanarayan P. Raibagi collected the advance of Rs. 10 Lakhs from the prospective buyers. Thereafter, a civil suit was filed, by the owners, challenging the sale of the minors interest in the lands and finally the Civil Court also passed a decree in favour of the plaintiffs. Pursuant to the decree of the Civil Court, the owner Shri Satyanarayan P. Raibagi returned back 71 guntas of the land to the original owners which was purchased by him earlier on 20/07/2010. The Ld.AR further submitted that the property mentioned in the agreement forms part of the 71 guntas of the land given to the original owners pursuant to the Civil Court decree. Later on, on 24/07/2013, the returned lands were actually purchased by the said Raibagi but in the name of the assessee in which the lands mentioned in the sale agreement by Shri Satyanarayan P. Raibagi was also included. Thereafter, the assessee had executed a sale deed on 03/02/2015 in favour of Shri Vivek and Shri Vishal for a sale consideration of Rs. 22 Lakhs which was earlier agreed with Shri Satyanarayan P. Raibagi.

**8.** Therefore the Ld.AR submitted that the present sale is based on the terms of the agreement dated 07/01/2013 and therefore the value adopted by the AO by following section 50C of the Act is not correct and further submitted that the balance sale consideration of Rs. 12 Lakhs was also

received by Shri Satyanarayan P. Raibagi and contended that the lands in dispute are owned by Shri Satyanarayan P. Raibagi and therefore the entire assessment made on the assessee is not correct. The Ld.AR also filed a paper book and enclosed the notices issued and the sale deeds dated 30/07/2010, 07/01/2013, 24/07/2013 and 03/02/2015 along with the financials of Hridhaan Properties (Shri Satyanarayan P. Raibagi Consolidates)

**9.** The Ld.DR submitted that the assessment made by the AO on the assessee is correct since the sale deed had executed by the assessee being the owner of the land and therefore the provision would be applicable on the owner which was correctly done by the AO and prayed to dismiss the appeal.

**10.** We have heard the arguments of both sides and perused the materials available on record.

**11.** Ground nos. 1 and 2 are general in nature and therefore it requires no adjudication.

**12.** Insofar as ground no. 3 is concerned, the assessee alleged that there is a violation of the principles of natural justice, but they had not explained how the order has been passed in violation of the principles of natural justice. We have also perused the assessment order and find that the AO had granted several opportunities to the assessee and therefore this ground of appeal is not sustainable.

**13.** In respect of ground nos. 4 and 5, the assessee contended that he is not owner of the land and therefore no capital gain tax should be levied on him for the transfer of the capital assets.

**14.** We have perused the paper book filed by the assessee in which the sale deeds were enclosed along with the translated copies and in the sale

deed executed by the assessee on 03/02/2015 it has been clearly mentioned that the seller is Shri Ranganath Son of Ashok Meherwade who is the assessee herein and in the sale deed, it was clearly recited that the assessee had purchased the 71 guntas land from the owners by way of registered sale deed dated 27/07/2013 and further it is recited that the assessee had actual physical possession and becomes the absolute owner for 20 plots. Out of the 20 plots, he had sold 8 which falls into its share. Further it was recited in the deed that because of the financial difficulties, the assessee sold the plots which is in his absolute ownership. The above said recitals mentioned in the sale deed clearly establishes the fact that the assessee is the absolute owner of the lands sold in Certificate No. 19/1B+2 and therefore the claim made by the assessee that the said Shri Satyanarayan P. Raibagi is the actual owner of the lands will not hold good. We have also gone through the financials of Hridhaan Properties which is owned by S.P.Rayabagi and these are all the ledger entries and from that we are able to see that there are entries relating to the disputed property. Further, the assessee also not produced any evidence to show that the said Shri Satyanarayan P. Raibagi had and shown the long term capital gains in his return of income. Be that as it may, once it is evident that the owner is the assessee by way of registered sale deeds, then the provision for capital gains would attract on the owner and not on the other party.

**15.** The entire issue was discussed by the Ld.CIT(A) and gave a clear finding that the long term capital gain would arise in the hands of the assessee. We are also in agreement with the view expressed by the Ld.CIT(A) and therefore we have no hesitation to dismiss the ground nos. 4 and 5 of the assessee as not tenable.

**16.** In respect of the alternate ground no. 6 in which the assessee contended that the stamp value adopted by the assessing officer is erroneous, we are of the view that once the sale consideration mentioned in the sale deed differs from the stamp value adopted by the officer, then naturally the AO has to adopt the procedures contemplated u/s. 50C of the

Act which was admittedly done by the AO. The argument made by the assessee that the sale was made in continuation of the purchase agreement executed on 07/01/2013, we afraid to accept those arguments for the reason that the said sale agreement was executed by Shri Satyanarayan P. Raibagi whereas the present sale deed was executed by the assessee and therefore the value at the time of executing the agreement by some other party could not be taken as the correct value for the purpose of arriving the capital gains. If the assessee had entered into a sale agreement, assessee can claim the value based on the market value prevailed during that time. But in this case, there is no connection between the agreement executed by Shri Satyanarayan P. Raibagi and the sale deed executed by the assessee, hence we are not accepting the ground raised by the assessee and therefore dismissing this ground also.

**17.** In respect of the ground nos. 7 and 8, the AO had made the computation of capital gains since the assessee had not furnished any details at the time of assessment whereas the Ld.CIT(A) had remitted the issue to the AO for considering the cost of Indexation of acquisition and thereafter compute the capital gains. The Ld.CIT(A) also directed the assessee to produce the purchase deed before the AO in order to compute the correct capital gains. Since we have already confirmed the above findings of the Ld.CIT(A), we are not giving any fresh directions to the AO to compute the correct capital gains.

**18.** In the result, the appeal filed by the assessee is dismissed.  
Order pronounced in the open court on 13<sup>th</sup> November, 2024.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 13<sup>th</sup> November, 2024.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore