

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1230/Bang/2024
Assessment Year: 2017-18

Rita Goel Godawari Estates Near Budigere Cross Off Old Madras Road Bangalore 560 049 Karnataka PAN NO : ABTPG3483F	Vs.	ACIT Circle-4(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Hema Sharma, A.R.
Respondent by	:	Sri Subramanian S., D.R.

Date of Hearing	:	10.12.2024
Date of Pronouncement	:	11.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of Id. CIT(A) dated 31.5.2024 and relates to assessment year 2017-18 having DIN & Order No.ITBA/NFAC/S/250/2024-25/1065301144(1).

2. Undisputed facts of the case as coming out from the orders of authorities below are that the assessee is an individual, filed her return of income for assessment year 2017-18 declaring an income of Rs.6,67,74,670/-. Thereafter, the case of the assessee was selected for scrutiny. During the course of assessment proceedings, the AO observed that the assessee and her husband have sold one immovable property for a consideration of Rs.28,00,00,000/-

Crores,(**Copy of the sale deed is there at Page Number-28-43**) out of which the assessee has received an amount of Rs 14,00,00,000/- and has declared long term capital gain of Rs.6,45,25,674/- on account of her share in the property. Thereafter, the AO observed that the assessee has claimed cost of improvement to the tune of Rs.4,02,52,472/- as computed by Registered Valuer dated 24.03.2017. The ld. AO referred the matter to the DVO and the ld. DVO determined the cost of acquisition as on 1.4.1992 @ Rs.92,02,400/- and hence, discarded the fair market value disclosed by the assessee. The AO thereafter taxed the difference in the hands of assessee and restricted the claim u/s 54F of the Act.

3. Aggrieved with the order of AO, the assessee file an appeal before the ld. CIT(A) and inter-alia contended that the AO has erred in relying on the report of DVO for making the addition in the hands of the assessee. The ld. CIT(A) dismissed the appeal of the assessee. However, the ld. CIT(A) has held that reference to the DVO was made u/s 55A(b)(ii) of the Act not u/s 50C of the Act.

4. Aggrieved with the order of ld. CIT(A), the assessee has come up in appeal before us and has raised 4 grounds of appeal. However, the ld. Counsel for the assessee at the outset contended that the approach of revenue in disallowing the benefit u/s 54 of the Act to the assessee, altering the cost of acquisition on the basis of DVO report is not tenable in law. Ld Counsel pointed out that the department has accepted the cost of acquisition, which is similar to the figures of assessee, in the assessment of the husband of the assessee and the order of assessment was passed u/s 143(3) of the Act.

5. The ld. D.R. relied upon the order of authorities below.

6. After considering the rival submissions, we are of the view that it is settled position of law that revenue cannot discriminate among two co-owners, and are party to the same transaction. In this case perusal of the assessment order, in the case of husband would show that the revenue has not tinkered with the cost of acquisition as declared by the Husband of the assessee. Copy of the order is placed in paper book **at page nos.107 to 112**. Therefore, we are of the firm opinion that the revenue cannot adopt a different yardstick in the case of present assessee.

6.1. Our view is fortified by the judgement of Hon'ble Punjab & Haryana High Court in the case of Jaswant Roy vs. Commissioner of Wealth Tax reported in 107 ITR 477(P&H). Further, Hon'ble Supreme Court in the case of Union of India Vs. Kaumudini Narayan Dalal 249 ITR 219 (SC) has held that it is not open to the revenue to accept judgement in the case of an assessee and challenge the correctness in the case of other assesseees without just cause.

7. Further, the coordinate bench of the Tribunal recently in the case of DCIT Vs. Ramesh Narayan Reddy (HUF) in ITA No.720/Bang/2024 vide its order dated 30.7.2024 in para 10 has held as under:

*"10. We have considered the rival submissions and the arguments advanced by both sides, we observe that it is settled position of law as propounded by the Hon'ble Supreme Court in the case of Union of India v. Kaumudini Narayan Dalal reported in [2001] 249 ITR 219(SC) that the approach of the Revenue in respect of the assesseees, **who are party to same transaction should be uniform**. It has been held by the Hon'ble Supreme Court that the Revenue cannot adopt the tactics of pick and choose while assessing the citizens of India, otherwise it would be violation of Article 14 of the Constitution of India. Therefore, we are of the view that the ld. CIT(A) is correct in deleting the addition of deemed rental income applying the rule of equality before law. Notwithstanding to this on merits also we observe that, whether deemed rental annual value is assessable in respect of the flats which were not acquired for self-occupation rather kept as investment for sale, we find that Coordinate Bench of the Mumbai ITAT in the case of Sachin R Tendulkar(Supra) has decided the issue in favour of assessee. Further the decision relied upon by the Ld DR in the case of Dimple Enterprise(supra) is a decision rendered in completely different set of facts as in that case the*

unsold flats were kept as stock in trade. However, in the present case neither such facts are there nor the DR has argued that the assessee has been keeping these flats as stock in trade. Therefore, the decision relied upon by the Ld DR is not applicable to the facts of the case at hand.”

6.2 Respectfully following the above verdicts of the Hon'ble apex Court, High Court and Tribunal, we allow the appeal of the assessee.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th Dec, 2024

**Sd/-
(Waseem Ahmed)
Accountant Member**

**Sd/-
(Prakash Chand Yadav)
Judicial Member**

Bangalore,
Dated 11th Dec, 2024.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**