

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-A” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 1215/Bang/2016
Assessment year : 2006-07

Smt. Malini Bharath, No. 71, 16 <sup>th</sup> Cross, 6 <sup>th</sup> Main, Malleshwaram, Bangalore – 560 094.  <b>PAN: AEXPB 3788B</b>	Vs.	The Income Tax Officer, Ward – 14(9) / New A.O., Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Anil Kumar, CA
Respondent by	:	Shri M.K. Biju, JCIT

Date of hearing	:	22.05.2017
Date of Pronouncement	:	31.05.2017

**ORDER**

*Per Vijay Pal Rao, Judicial Member*

This appeal by the assessee is directed against the order dated 21.03.2016 of CIT(A) for the assessment year 2006-07. The assessee has raised the following grounds.

*“1.The order of the Commissioner of Income Tax (A) so far as is against the appellant is against law, facts of the case and weight of evidence.*

*2.The learned Appellate Officer has erred in confirming with the AO that consideration be taken as Rs. 81,13,000/- for computing the Capital Gain.*

*3. The learned Appellate Officer has erred in ignoring the submission, the order now passed by A.O. without referring it to Valuation Officer, is an invalid order.*

*4. The Appellate Officer has erred in determining the share of the appellant in the Long Term Capital Gain at Rs. 13,60,856/-.*

*5. The appellant prays that she may be permitted to raise additional grounds at the time of hearing of this appeal."*

2. The only issue arises for consideration and adjudication of this Tribunal is regarding the full value consideration of sale of property in question and consequently long term capital gain assessed in the hand of the assessee. The assessee along with the co-owners sold the immovable property for Rs. 35 lakhs. The AO noted that the market value of the property as per sale it is Rs. 66,50,000/- and the sale consideration admitted by the assessee is less than the market value. The AO took the value as adopted by the stamp valuation authority at Rs. 81,13,000/- and after allowing the deduction u/s. 54EC assessed the 1/5<sup>th</sup> share of the assessee as long term capital gain. The assessee challenged the action of the AO before the CIT(A) regarding the valuation adopted by the AO as well as share of the assessee in the sale consideration and contented that the AO has not considered the share given to the third party who has filed a suit against the transfer of the property and therefore, the matter was settled after parting with a share of sale consideration. The CIT(A) did not accept the contention of the assessee and confirmed the addition of

the AO except the relief granted in respect of the indexed cost of acquisition as well as deduction u/s. 54EC.

3. I have heard the Id. AR as well as Id. DR and considered the relevant material on record. At the outset it was brought to my notice that in the case of co-owner Shri A.N. Sanjay Vs ACIT the coordinate bench of Tribunal has considered this issue vide order dated 13.05.2016 in ITA No. 1231/Bang/2015 and set aside this issue to the record of the Assessing Officer for readjudication affairs in para 6 as under.

*"6. Having carefully examined the order of lower authorities, we find that undisputedly the assessee raised an objection to the valuation being adopted by the AO. Instead of making a reference to the DVO, the AO himself has adopted the value declared in the Sale Deeds without looking into the assessee contentions with regard to lesser receipt of sale consideration. The CIT(A) has also not examined the explanation furnished before him and for the sake of reference, we extract the relevant portion of the submissions made before the CIT(Appeals) as under:-*

*"I. (a) During the accounting year ended 31.03.2006 the appellant along with other co-owners of the property bearing present No 68/2, Krishna Block, 1st 'A' Main Road, Seshadripuram, Bangalore and agreement holder (one Sri L Mallikarjun) sold by two sale deeds for a total consideration Rs. 45 lakhs and appellant received Rs. 6 lakhs and invested the same in Nabard Bonds and claimed exemption u/s 54EC.*

*(b) The immovable property sold was under litigation. The property was agreed to be sold to one Sri L Mallikarjun (hereinafter referred as agreement holder) and the agreement holder had filed two suits under specific performance clause. The suites were numbered as O.S. No.540911994 and O.S. No.51711996 and cases ere being dragged on past many years. The agreement holder had no funds to make payment in terms of the agreement When new buyers showed interest to purchase the property it was inter-alia agreed amongst the owners and agreement holder, that property was to be sold for Rs. 45 lakhs and sale proceeds be dividend in particular ratio.*

*The suit was compromised and dismissed as settled on 28.11.2005 on the understanding the agreement holder will receive RS.20 lakhs and the owners (appellant, father of appellant brother(s) and sister of appellant) will receive Rs 25 lakhs. The property was sold for Rs.45 lakh making agreement holder as one of the Vendors.*

*(c) The Karnataka Government has conferred under Rule 7 of the Karnataka Stamp (constitution committee for Estimation of Properties) Rules, 1992 the right for determination of the estimated market value of the immovable properties coming under the jurisdiction of each sub Registry Offices of the State. These are called "Guide Line Value" and Sub Registrar is bound to follow "the same. There is no question determination of the market value on the date of transfer. The rates are given for square feet road wise and if there is no specific rates mentioned for ones property, the rate mentioned nearest to the immovable to be transferred is to be adopted for stamp value. No reduction is given for inferior land bigger area of the site etc.*

*Hence the stamp duty and registration charges were paid by the purchasers by DDs as mentioned in the sale deeds enclosed based on "Guide Line Value" at Rs. 66.50 lacs + Rs. 14.631akhs = 81.13 lacs. This is the value taken by AO u/s 50C of the I T Act.*

*(d) The appellant has submitted before the A.O that value determined for stamp duty by the registering authority is more than the fair market value on the date of transfer and same must not be taken into consideration for the purpose of determination of sale price. The property was agreed to be sold to the present buyers when the dispute between the owners and agreement holder existed i.e O. S. No 5409/1994 and O. S No. 517/1996, the agreement holder got Rs.20 lacs whereas the owners including appellant got only Rs.25 lacs.*

*(e) The AO has determined the sale proceeds u/s 50C at Rs. 81,13,000 and has computed the capital Gain without referring the issue of valuation to Valuation Officer as required under section 50C (2). In view of the same the order now passed is an invalid order and hence to be cancelled.*

*2. The A.O has held in the order the agreement holder Sri L Mallikarjun has got 1/5<sup>th</sup> right to the property and 4/5<sup>th</sup> right belongs to vendors 1 to 4. The right of the appellant has been determined at 1/5<sup>th</sup> whereas the right of the appellant ought to have been determined at  $25/45 \times 1/4 = 25/180 = 5/36$  only based actual amount received*

3. The A.O has determined the market value of the land as 1.04.81 at Rs.50 per square feet to determine the cost of sale. The value fixed is too low. It may be fixed at Rs. 100 per square feet, as prayed for. In the case of appellants father Sri D N Char the same has been determined at Rs 79 sq feet. A copy of the order is enclosed. The said valuation IS also challenged in appeal before you.

4. Without prejudice to the contention the order passed is an invalid order, the net sale consideration to be accounted for the purpose of determination of the capital gain be taken at Rs.45,07,222/-.

The long term capital gain of appellant will work out to Rs.730200/- as against Rs.1463900/-.

Notional sale consideration	Rs.4507222/-
Less: Index cost	Rs.1586420/-
Long term capital gain	Rs.2920802/-
1/4thshare of appellant	Rs. 730200/-
Amount invested in bonds	Rs. 600000/-
Hence taxable income	Rs. 130200/-

Income tax on LTCG @ 20% Rs.26040 before SC & EC.”

4. Following the earlier order of the Tribunal in case of co-owner of this property this matter is set aside to the record of the AO with similar directions of deciding afresh.
5. In the result the appeal of the assessee is allowed for statistical purposes.
6. Pronounced in the open court on this 31<sup>st</sup> day of May, 2017

Sd/-  
(VIJAY PAL RAO)  
Judicial Member

Bangalore,  
Dated, the 31<sup>st</sup> May, 2017.  
/ 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.