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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 01/Bang/2017
Assessment year : 2006-07

Dr. Veena Giriyapur, 240/202, 17th Cross, 12th Main, 5th Phase, J.P. Nagar, Bangalore – 560 078. **PAN: AGBPG 2989D**	Vs.	The Income Tax Officer, Ward-4(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prashanth G S, CA
Respondent by	:	Shri AR.V. Sreenivasan, JCIT (DR)

Date of hearing	:	27.02.2017
Date of Pronouncement	:	17.03.2017

O R D E R

Per Vijay Pal Rao, Judicial Member

This appeal by the assessee is directed against the order dated: 31.08.2016 of CIT(A) for the assessment year 2006-07. The assessee has raised the following grounds.

1. The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies herself to be assessed on a total income of Rs.17,84,015/- under the facts and circumstances of the case.

3. The order of assessment is bad in law as the mandatary conditions for assumption of jurisdiction under section 148 of the Income Tax Act, 1961 (the Act) have not been complied with on the ground that:

   a. The proceedings initiated under section 147 of the Act are barred by limitation as the notice under section 148 of the Act dated 27.03.2013 was issued after expiry of four years from end of the impugned assessment year.

   b. The copy of the reasons recorded for issue of notice under section 148 of the Act has not been provided to the appellant before completion of the assessment.

   c. The action of the learned assessing officer in initiating the assessment based on the information received from the investigation wing amounts to borrowed satisfaction and the reassessment proceedings so completed based on borrowed satisfaction is totally untenable in the eyes of law. Reliance is placed on the decision of Rajasthan High Court in the case of CIT vs. Shree Rajasthan Syntex Ltd., 313 ITR 231.

   d. The copy of the approval has not been obtained from the Joint Commissioner before passing the order or having been obtained, the copy of the same has not been provided to the appellant on the facts of the case.

4. The order of the assessment passed under section 144 r.w.s 147 of the Act is further bad in law as the mandatary condition of issuance of show-cause notice for best judgement assessment is not complied with under the facts and circumstances of the case.

5. The learned CIT(A) failed to appreciate the fact that there was no transfer of property during the impugned assessment year as envisaged under section 2(47)(v) of the Act and consequently erred in confirming the additions made by the assessing officer under the facts and circumstances of the case.

6. Without prejudice, the authorities below grossly erred in adopting the market value of the property at Rs.900/- per sq. ft. for determining the short-term capital gains, which is incorrect under the facts and circumstances of the case.

7. Without prejudice, the authorities below erred in determining the capital gains on 2,221.66 sq. ft. instead of 1,785 sq. ft. actually received by the appellant under the facts and circumstances of the case.

8. Without prejudice, the authorities below ought to have granted exemption under section 54 of the Act while computing the taxable income of the appellant under the facts and circumstances of the case.

9. Without prejudice, the authorities below failed to appreciate the fact that the Joint Development Agreement was entered into by the group of individuals and thus the capital gains if any arises ought to have brought to tax in the hands of the Association of Persons and not in the hands of the individual appellant under the facts and circumstances of the case.

10. Without prejudice, the addition made as short-term capital gains is highly excessive and needs to be substantially reduced under the facts and circumstances of the case.

11. The appellant denies herself liable to be levied to interest under sections 234A, 234B & 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case.

12. Without prejudice the interest under sections 234A, 234B and 234C is not leviable and ought to have been waived on the facts of the case.

13. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

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

2. The assessee is an individual and did not file any return of income for the year under consideration and claimed that no taxable income exceeding the maximum limit prescribed under Income Tax Act. The AO issued a notice u/s. 148 on 27.03.2013. Since there was no response from the assessee to the notice issued by the AO, the AO has completed the assessment u/s. 144 r.w.s. 147. The AO has assessed the capital gain to tax in respect of the property developed under Joint Development Argument (JDA). The assessee challenged the action of the AO before the CIT(A) and raised various grounds regarding the taxability of capital gain in the year under consideration and further the actual area received by the assessee in the project as well as the rate adopted by the AO for computing the capital gain. The CIT(A) issued a remand order directing the AO to submit a remand report. After considering the remand report the CIT(A) confirmed the action of the AO in assessing the capital gain.

3. Before the Tribunal, the ld. AR of the assessee has submitted that the AO has computed the capital gain by taking the area received by the

assessee of 2,221.66 sq.ft. instead of 1,785 sq.ft. of flat no. FF010 and further the flat no. TF005 which were actually sold. He has further submitted that the flat bearing no. TF005 was owned by the assessee along with Smt. Pushpalatha Rudramuni and Shri Satish Baleekai. Therefore, the assessee's share in this flat was 1/3rd of total area of 1,310 sq.ft. which comes to 436.66 sq.ft. The ld. AR of the assessee has further submitted that the AO has applied the rate at Rs. 900/- per sq.ft. without taking into account the Fair Market Value (FMV) as on the rate of JDA. Further, the ld. AR has contented that the AO did not supply the reasons recorded for issuing notice u/s. 148 and only during the remand proceedings the reasons were supplied to the assessee. Though the assessee raised the issue and objections against validity of notice issued u/s. 148, the CIT(A) has not adjudicated that issue. Thus, the ld. AR has contented that the matter may be remanded to the record of the AO for deciding the objections against the notice issued u/s. 148 as well as considering the other aspect of applying the correct rate of price for computation of capital gain as well as the area received by the assessee.

4. On the other hand, the ld. DR has submitted that it is not mandatory for AO to supply suomoto the reasons recorded for reopening of the assessment to the assessee. It is for the assessee to request for the

reasons if the assessee chooses to file objection thereto. He has relied upon the decision of the Delhi High Court in the case of Safetag International India (P.) Ltd *(332 ITR 622)*. On merits the ld. DR has submitted that when the authorities below have examined this issue and assessee was given opportunity in the remand proceedings then no grievance is left regarding non providing opportunity to assessee.

5. Having considered the rival submissions and relevant material on record, it is noted that the assessment was framed u/s. 144 r.w.s. 147 as the assessee did not appear in the assessment proceedings. Thus, it is clear that there was no occasion during the assessment proceedings for making request for supply of reasons recorded by the AO. Before the CIT(A) the assessee has requested for the reasons recorded for reopening of the assessment which were supplied to the assessee during the remand proceedings. It is manifest from the objections raised by the assessee before the CIT(A) that the assessee raised the objections against the reasons recorded for reopening of the assessment and validity of section 148 of the Act. However, there is no finding on this issue by the CIT(A). Thus, in view of the decision of the Hon'ble Supreme Court in case of G.K.N Driveshafts (Inida) Ltd. Vs ITO *(259 ITR 19)* as well as decision of Hon'ble Bombay High Court in case of CIT Vs Videsh

Sanchar Nigam Ltd *(340 ITR 66)* objections of the assessee against the notice u/s. 148 are required to be decided by the AO or by the CIT(A) as case may be. In this case since none of the authorities below have dealt with this issue, therefore in the facts and circumstances of the case and in the interest of justice, the matter is remanded to the record of the AO for deciding the objections of the assessee against the notice u/s. 148 and further the other objections of the assessee regarding the rate applied by the AO as well as the area considered by the AO to be considered while adjudicating the matter afresh.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 17th day of March, 2017

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dated, the 17th March, 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.