

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'SMC', BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
ITA No. 1496(Bang) 2016  
(Assessment year : 2006 - 07)**

Sri K. S. Ramesh Babu,  
No. 645, 18<sup>th</sup> Main, 'A' Block,  
Sahakarnagar,  
Bangalore - 560092  
**PAN : AAJPR9302D**

Appellant

Vs

ITO, Ward - 6 (3) (2),  
Bangalore

Respondent

**Assessee by :Shri S. Ganesh Rao, Advocate  
Revenue by : Shri Naresh Saka JCIT**

**Date of hearing : 22-09-2016  
Date of pronouncement : 23-09-2016**

**ORDER**

**PER A. K. GARODIA, A.M.:**

This appeal is filed by the assessee. This is directed against the order of learned CIT (A) - 6, Bangalore dated 03.05.2016 for A. Y. 2006 - 07.

2. The assessee has raised several grounds. The grievances are two. First grievance is about disallowance of the claim of brokerage of Rs. 150,000/- paid to agents out of sale consideration of Rs. 70 lacs. The second grievance is about not reducing the amount of taxable capital gain in view of section 112 (1) (a).

3. Learned AR of the assessee made various submissions about the first issue. A query was raised by the bench that the finding of the A.O. is this that the assessee has not produced any proof of payment of brokerage of Rs. 150,000/- as claimed then whether any proof was filed before him. In reply, he submitted that the confirmation of the payee is available on page no. 8. Second query was raised by the bench that as per this confirmation, payment was made in cash at the time of registration of the sale deed on 09.12.2005 and as per the ground no. 2 raised before the tribunal, such payment was made out of sale consideration then whether the sale consideration was received in cash. In reply, he submitted that sale consideration was received by cheque but the payment of brokerage was made out of savings out of other incomes which was Rs. 64,280/- in the present year. Learned DR of the revenue supported the orders of the authorities below.

4. I have considered the rival submissions and perused the material on record. I find that the A.O. has given a categorical finding in the assessment order that the assessee has not produced any proof regarding the claim of payment of brokerage. As per the confirmation available on page 8, it is stated that the payment was received on the date of execution of sale deed in cash. The learned AR has admitted that sale consideration was received by cheque and therefore, the same cannot be used for this payment on the date of execution of sale deed because it requires time to deposit the cheque in bank,

clearance of cheque and then cash withdrawal from bank. Very surprisingly, as per Ground No. 2 raised before the tribunal, it is stated that this payment is out of sale consideration but when confronted that how cheque can be used to make payment in cash, a different contention was raised by the learned AR of the assessee that such payment is out of saving from other incomes. This contention raised as afterthought has no merit because other income is only Rs. 64,280/- and the assessee requires money for day to day expenses also. Hence, on the first issue, I confirm the orders of the lower authorities.

5. On the second issue, I feel it proper to restore the matter back to the A.O. to compute the Capital gain in the light of the provisions of section 112 (1) (a) because the income other than capital gain is below the maximum amount which is not chargeable to income tax. The A.O. is directed to pass necessary order as per law on this aspect as per section 112 (1) (a) after providing adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on the date mentioned on the caption page.

**Sd/-**  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Bangalore:

Dated: 23.09.2016

**am\***

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By order,  
AR, ITAT, Bangalore

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