

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1231/Bang/2015
Assessment year : 2006-07

Shri A.N. Sanjay, No.89, NGEF Layout, Sanjaynagar, Bengaluru – 560 094. PAN: ALKPS 3251L	Vs.	The Assistant Commissioner of Income Tax, Circle 14(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Anil Kumar, CA
Respondent by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)

Date of hearing	:	04.05.2016
Date of Pronouncement	:	13.05.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order dated 27.07.2015 of the CIT(Appeals)-5, Bengaluru *inter alia* on 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 the consideration mentioned in the two sale deeds amount to Rs. 81,13,000/-.
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 he may be permitted to raise additional grounds at the time of hearing of this appeal.”

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the assessment order that the AO has noted from the ITS details that assessee has sold the immovable property for Rs.35 lakhs during the financial year relevant to impugned assessment year and assessee was asked to explain the transaction. In response thereto, it was submitted that assessee jointly owned (1/5th share) and sold immovable property in two parts to different parties for Rs.81,13,000. The AO has noted from the details and has observed that in the return of income for the impugned assessment year, assessee has declared capital gain of Rs.5,00,000 and claimed exemption u/s. 54EC of the Act. The assessee has claimed that assessee has received lesser amount, but the AO has taken total sale consideration as Rs.81,13,000 and after allowing exemption u/s. 54EC, estimated the long term capital gain at Rs.8,63,960. Accordingly addition of Rs.8,63,960 was made, against which an appeal was filed before the CIT(Appeals).

3. The assessee has filed written submissions before the CIT(Appeals) explaining the receipt of lesser amount. It was also contended that though assessee has raised a dispute with regard to actual sale consideration adopted by the AO, but the AO has not made any reference to DVO to assess the fair market value of the property. Relying upon the assessment order, the CIT(A) confirmed the addition after granting part relief.

4. Now the assessee is before us with the submission that once the assessee has raised an objection to the valuation to be adopted by the AO as per the provisions of section 50C of the Act, the AO should have made a reference to the DVO in order to ascertain the fair market value of the property so that capital gain may be computed properly if arisen. The Id. counsel for the assessee further contended that in the interest of justice, the matter be restored to the AO with a direction to make reference to the DVO and adjudicate the issue in accordance with law in light of the assessee's contentions.

5. The Id. DR simply placed reliance on the order of the CIT(Appeals).

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 were 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 1/5th right to the property and 4/5th right belongs to vendors 1 to 4. The right of the appellant has been determined at 1/5th 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/-
1/4 th share 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.

7. Having carefully examined the order of lower authorities, we find that the contentions of the assessee with regard to lesser receipt of sale consideration were not examined by the revenue authorities. Therefore, in the interest of justice, we set aside the order of Id. CIT(Appeals) and restore the matter to the file of Assessing Officer with a direction to readjudicate the issue afresh after affording opportunity of being heard to the assessee. If need be, reference may be made to the DVO to ascertain the fair market value.

8. In the result, the appeal stands allowed for statistical purposes.

Pronounced in the open court on this 13th day of May, 2016.

Sd/-

Sd/-

(INTURI RAMA RAO)
Accountant Member

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 13th May, 2016.
/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.