

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

ITA No.873/Bang/2014
Assessment year : 2007-08

Sri Javeed Ahmed, # 51, H Siddaiah Road, J J Automobiles, Opp. 4 th Cross, Bangalore – 560 027. PAN: ABEPJ 7343J	Vs.	The Deputy Commissioner of Income Tax, Circle 9(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri Kamaladhar, Standing Counsel

Date of hearing	:	17.10.2016
Date of Pronouncement	:	21.10.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of
CIT(Appeals) *inter alia* on the following grounds:-

“1. The order of the Commissioner of Income Tax (Appeals),LTU, hereinafter referred to as CIT(A)-LTU ,wherever such reference appears, is opposed to law and facts of the case.

1. Cost of addition/Improvement of Rs.14,50,000/-

Reply to paras 4 and 4.1 of the CIT (A)-LTU order is as follows:-

The CIT(A)-LTU has erred in confirming the additions of Rs.14,50,000/-, made by the AO, since a Registered Valuer's report (Evidence Document No.1) was submitted disclosing the value of addition of Rs.14,50,000/-. The CIT(A)-LTU's claim that sanctioned plan was not submitted is not correct because no construction can be taken up in Bangalore, especially in the heart of the city without a sanctioned plan. Further claim by the CIT(A)-LTU that the direct evidence of incurring expenditure towards construction is also not valid since when a building is constructed on a 'material contract' basis, the materials and labour are supplied by the contractor himself and only cash /cheque payments are made to him from time to time, which has been confirmed by the CIT(A)-LTU herself in para 4.1 of her order, that a payment of Rs.10 Lacs has been paid by cheque to M/s Mohite and Mohite on 26/06/2006, and as per her statement, that bills for payment of labour, attendance register maintained, bore well digging expenses are not maintained by the appellant is true, but also not necessary, since the same is to be maintained by the contractor himself, Her further claim that bill has not been raised by the Contractor is also not valid, since the Construction had just started, and is incomplete even till the day of filing of this appeal, since the property even after the sale deed was executed, continued to be a disputed one, with one or the other of the relatives of the seller filing suits, fed up with this, the appellant had sold the site along with the Incomplete construction on the said site.

Her Further claim that the area over which the work excavation etc have been made is not mentioned by the Registered Valuer is also not correct because a copy of the sale deed submitted clearly shows the site dimension etc in the schedule attached to such sale deed ,(Copy of the sale deed and **the sketch, showing the dimensions**, is enclosed as Evidence Doc No.2) , more over every Registered valuer shall always attach a copy of the sale deed to his valuation report .The CIT(A)-LTU's claim that the quantity and unit is blank but mentioned as local supply is because the construction is at the very initial stages and is not yet completed, only the final report shall have all the details, even till this day the construction is incomplete, Again because of

disputes, there was delay in commencement of construction (11/10/2006) by the contractor, even though advance payment was made to contractor on 26/02/2006 and that to prove, the disputed nature of the property (Evidence No.3-Sample of one of the many suites filed by the Sellers relatives is enclosed).

Again the claim by the CIT(A)-LTU that the payment to contractor on 26/02/2006, well before the start of construction (11/10/2006), is acceptable because without an advance no contractor will commence the construction, Further as already stated, the start of construction was also delayed because of the disputed nature of the property and obstructions made by some of the legal heirs/relatives of the seller, Further her claim that estimates are rounded off, is because The Estimates can always be rounded to the nearest hundreds or Thousands by the Registered Valuer, and also the construction was in its initial stages, with only the foundation laid and the columns are also in their initial stages, and remain to be so, even to this day.

Therefore the CIT(A)-LTU's decision to confirm the additions of Rs.14,50,000/-, made by the AO , is arbitrary and against the principles of Natural Justice and hence the Appellant humbly begs that this addition of Rs 14,50,000/-, be set aside by The Honourable Tribunal.

2. Eviction Expenses of Rs.20,50,000/-

Reply to paras 5.1 5.25.3 of the CIT (A)-LTU order is as follows:-

The CIT(A)-LTU has erred in confirming the additions of eviction expenses paid to various tenants of the previous owner totaling to Rs.20,50,000/-. (Copies of Receipts for Compensation received by all the 22 tenants is enclosed as Evidence Documents No.4), by the appellant. The necessity to pay eviction charges arose due to the reason that they were tenants of the previous owner and had refused to vacate and the appellant was bound to evict them before putting up a new structure, The CIT(A)-LTU's claim that all the 21 confirmations were written in identical language and issued on 20/05/2009 is true because all the tenants were called for a meeting by the appellant and explained to them that they had to issue a receipt for the compensation that they had received from the appellant, since the

appellant had received a notice u/s. 148, for which all of them accepted ,Further the CIT(A)-LTU 's claim that all the receipts were dated 20/05/2009 and the appellants claim that the compensation paid was not before the foundation was put up is also not correct ,because she has not gone through the receipt properly, since the receipt though dated 20/05/2009 clearly states that the amount was received on 15/10/2006 and the dismantling and demolition of the old structure ,started on 11/10/2006, the day the tenants accepted to vacate the shops, moreover there is a gap of just 4 days only, more over the tenants after receiving the eviction charges on 15/10/2006 had not issued a receipt but the appellant had to convince them into issuing such a receipt because he had been issued a notice u/s. 148 and had to prove such eviction expenses as cost of transfer to the DCIT-Circle 9(1) and the tenants had agreed to sign such receipts on 20/05/2009 during the assessment proceedings but have clearly stated in the receipt that the payment had been received on 15/10/2006. Therefore it is clear that the CIT has not applied her mind properly in her discussion in para 5.3

Reply to Para 5.4 of the CIT(A)-LTU order is as follows:-

The claim of the CIT (A)-LTU that one of the tenants Sri Muneer Pasha was paid a lesser compensation was because he had a smaller shop compared to others. Again The claim of the CIT (A)-LTU that the rents were not disclosed in the IT Returns by the seller is because the previous owner had let out the shop to the tenants, on a meager rent because the tenants being scrap dealers, could not afford higher rents, Moreover ,as stated by him, the ex- owner had only this property and the rents received by him were below the taxable limits and having no other income he was not an IT assessee ,this is the fact disclosed by the previous owner to the appellant, who in turn, had informed the same to the CIT(A)-LTU, during the appellate proceedings and hence her claim that this is one sided or self serving argument is not correct. Moreover her further claim as to whether the tenants were illegal occupants or whether the previous owner had taken legal action against them is of no consequence to the appellant, because his aim was to vacate the tenants, and to buy and enjoy peaceful possession of the property and not go deep into the legalities of the tenants issues

Reply to Para 5.5 of the CIT (A)-LTU order is as follows:-

The claim by the CIT(A)-LTU that the shops consisted of Tin sheds is not correct , since the old dilapidated house which was let out to the tenants by the previous owner had been modified by the tenants by putting up metal doors for their safety only and after having been paid the compensation, the tenants will have taken away their stock of scrap and metal (tin)doors, but still the remnant structure consisting of stones, bricks and mortar **will not be carted away**, by the tenants but shall have to be cleared by the appellant only and have to be disposed away from the city limits, that was what was stated by the registered valuer, in his report, as being 30 kms away from site, Further the claim by the CIT(A)-LTU, that the sale deed does not mention the existence of 22 sheds is correct, because dilapidated structures which have no value is not shown in the sale deed at the time of registration, further claim by CIT(A)-LTU that the AR's claim that the omission was deliberate to reduce the stamp duty is also not correct, since no stamp duty is levied on dilapidated structures in such transactions.

In the case of Piroja C Patel, if compensation paid to the hutment dwellers, being illegal occupants, is treated as cost of improvement by the Hon'ble Court, then why not the compensation paid to the shop keepers to provide vacant possession, be not treated as cost of improvement, moreover the Hon'ble CIT(A)-LTU, here has failed to understand that the compensation payable to the existing tenants can be of two kinds, it can be paid either by the seller and hand over vacant possession or by the purchaser assessee, as in the present case and claim the same as cost of improvement by him, It is as per mutual agreement between the seller and the buyer.

Hence the decision of the CIT(A)-LTU to confirm the addition of Eviction Expenses of Rs. of Rs.20,50,000/- by the AO is against the law and facts of the case and is arbitrary. And therefore the Appellant humbly begs that this addition of Rs.20,50,000/- be set aside, by The Honourable ITAT.

3. Out of Court settlement of Rs. of Rs.4,70,000/-

Reply to Para 6.1, 6.2, 6.3 and 6.4 of the CIT(A)-LTU order is as follows:-

The decision of the CIT(A)LTU to confirm the addition of Out of Court settlement of Rs. of Rs.4,70,000/-(Evidence Document No.5) is against the law and facts of the case and is arbitrary.

As already stated in the submissions hereinabove the said property is a disputed one, and one such party creating hurdles for the sale of the property is the brother of the seller Sri G Rama Rao, and the fact that he filed a suit against the seller is clearly mentioned in the settlement agreement dated 27/12/2006 ,the suit pertains to the year 1995 (OS No.6240/1995) nearly a decade before the execution of this sale deed and claim by the CIT(A)-LTU that the compensation was paid after the sale deed shows that she has not applied her mind properly to the facts of the case , Moreover her further claim that compensation should have been paid by the seller to his brother is also not correct because when any disputed property is to be purchased a clear title is to be created by the buyer himself, if the seller is unable to create such a clear title, to facilitate the purchase of such properties, moreover there shall be such conditions imposed and agreed to, between the seller and the buyer usually mutually, to avoid legal hurdles for the smooth execution of the sale transaction, moreover the CIT(A)- LTU s claim that the payment of compensation was not linked to the land purchase, nor was it legally necessary and is not linked to title improvement, is not correct, because legal hurdles can be created, even after the execution of a sale deed, by the legal heirs of the seller and a suit can be filed for cancellation of the sale deed itself.

Hence the decision of the CIT(A)-LTU to confirm the addition of Out of Court settlement of Rs. of Rs.4,70,000/- is against the law and facts of the case and is arbitrary And therefore the Appellant humbly begs that this addition of Rs.4,70,000/- be set aside By The Hon'ble ITAT.

For these and such other grounds that may be urged at the time of hearing of the Appeal, the Appellant most respectfully begs the Honorable ITAT to set aside the order of CIT (A)-LTU, in the interest of Natural law and justice.”

2. This appeal was listed for hearing on 17.10.2016, but none appeared on behalf of assessee. On careful perusal of record, it is noticed that this appeal was listed for hearing for a number of times, but none appeared on behalf of assessee.

3. On the last date of hearing, the assessee has sent an application for adjournment and accordingly hearing was adjourned. The date of hearing was also informed to the assessee by registered letter which has been received back unserved with the remarks "Left Return to Sender". Since the appeal was filed by the assessee and he has sought the adjournment on the last date of hearing, it is his responsibility to find out the next date of hearing. Even otherwise, the Tribunal has sent a notice of hearing to him, but it was received back unserved. Under these circumstances, we are of the view that the absence of assessee is intentional and we therefore proceed *ex parte* against him. Accordingly, the revenue was heard on all the issues raised by the assessee.

3. We have carefully examined the order of authorities below in the light of revenue's contention and we find that the CIT(Appeals) has adjudicated all the issues in detail in his order in the light of relevant provisions of the Act. Since we do not find any infirmity in the order of CIT(Appeals), we confirm his order.

4. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 21st day of October, 2016.

Sd/-

(S. JAYARAMAN)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 21st October, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.