

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.29/Bang/2018
(Assessment Year: 2010-11)

Smt. B. S. Leelavathi,
Rep. By Legal Heir Sri B S N Hari,
No.1, Gutte Anjaneya Temple Street,
Hosur Main Road, Wilson Garden,
Bangalore-560 027
PAN AAPPL 8104M

....Appellant

Vs.

Income Tax Officer,
Ward 7(2)(2), Bangalore.

.....Respondent.

Assessee By:	Shri V. Srinivasan, Advocate.
Revenue By:	Shri Sundar Rajan, Addl. CIT (D.R)

Date of Hearing :	20.08.2020.
Date of Pronouncement :	31.08.2020.

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-10, Bangalore passed u/s.143(3) r.w.s. 147 and u/s 250 of the Income Tax Act, 1961 (the Act).

2. The assessee has raised the following grounds of appeal:

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

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. The learned CIT[A] is not justified in upholding the taxable long term Capital Gains of Rs.89,90,000/- on the alleged transfer of property by invoking the provisions of sec. 50C of the Act, under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] failed to appreciate that there was no transfer of any capital asset belonging to the appellant to any person and the sale deed executed by the appellant was only a deed of conveyance of the property by the Agent to his Principal and hence, there was no transferor or transferee and thus, the transaction did not constitute transfer to attract the levy of capital gains tax.

4. Without prejudice to the above, the learned CIT[A] failed to appreciate that the computation of the Capital Gains based on the guideline value adopted by the learned A.O. was unjustified and hence, in accordance with the provisions of sec. 50C[2] of the Act, the learned A.O. ought to have made a reference to the DVO to determine the fair market value of the asset on the date of transfer.

4.1 Without prejudice to the above, the learned CIT[A] failed to appreciate that the guideline value of the property on the date of the MOU dated 02/01/1995 entered into by the appellant ought to have been taken as the sale consideration instead of the guidance value on the date of execution of the sale deed in light to the proviso to sec. 50C[1] of the Act, which ought to have been considered as retrospective in effect.

5. The learned CIT[A] is not justified in not allowing a paltry deduction towards the indexed cost of acquisition of the property while computing capital gains under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies herself liable to be charged to interest u/s.234-A, 234-B and 234-C of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

7. For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. The Brief facts of the case are that the assessee is an individual and has income from house property and income other sources. The assessee has filed the return of income electronically on 12.04.2016 for Assessment Year 2010-11 with total income of Rs.1,01,970/-.The A.O found during the F.Y. 2009-10, the assessee has sold the immovable property admeasuring two acres of land to M/s. JB & Hara Properties for a consideration of Rs.10,000/-, whereas the guidance value as per the

Stamp Registration Act is Rs.89,90,000/- and the provisions of Section 50C of the Act shall apply and invoked the provisions of Section 147 of the Act, and issued notice under Section 148 of the Act with the prior approval of Prin. CIT. Further the Assessing Officer issued notice under Section 142(1) of the Act and show cause notice. In compliance, the Authorized Representative appointed by the Legal Heir of the assessee appeared and filed submissions on 17.6.2016. It was submitted that the assessee was only a procuring agent for M/s. JB & Hara Properties and the LdAR referred to copy of Memorandum of Understanding (MOU) dt.2.1.1995 and the sale deed was registered on 28.03.1995 with the funds provided by M/s. JB & Hara Properties. It was emphasized that the assessee is only a nominee owner and has not invested any money. The agriculture lands were converted to non Agriculture by order dt.15.11.1995 and subsequently it was registered in the name of M/s. JB & Hara Properties by Sale Deed dt.6.11.2009. In the sale deed, the assessee was referred as procuring agent and therefore the provisions of Section 50C of the Act does not apply. Further submissions were filed on 12.12.2016 explaining that the assessee is only a procuring agent and the land was disclosed in the financial statements of M/s. JB & Hara Properties for the Assessment Year 1998-99 to A.Y. 2001-02. The Assessing Officer has not considered these facts and the unregistered MOU, which is not enforceable. The AO is of the opinion that the assessee is a rightful owner and applied the guidance value of Rs.89,90,000/- as

deemed consideration and assessed the total income of Rs.86,75,443/- and passed order under Section 143(3) r.w.s. 147 of the Act dt.30.12.2016. Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals). The CIT (Appeals) considered the grounds of appeal, submissions, and findings of the Assessing Officer and concurred with the action of the Assessing Officer and dismissed the appeal. Aggrieved by the order of CIT (Appeals), the assessee is in appeal before the Tribunal.

4. At the time of hearing, the learned Authorized Representative made submissions on the merits of the case, and mentioned that the ground of appeal No.2 is not pressed and is dismissed as withdrawn. The contentions of the Id.AR that the assessee is not the owner of the property and only a procuring agent for the purpose of acquiring the land and further after conversion of agricultural land, the property was registered in the name of M/s. JB & Hara Properties. The Assessing Officer and CIT (Appeals) have not considered the original MOU dt.2.1.1995 filed in the Assessment proceedings. He emphasized on the MOU, which is very clear that the assessee is only a procuring agent. The applicability of provisions of Section 50C of the Act does not arise as the assessee is not rightful owner and the property is not in the possession of the assessee and was disclosed in the Books of Accounts of M/s. JB & Hara Properties and supported the arguments with the

Paper Book and prayed for allowing the appeal. Contra, the Ld. DR relied on the orders of the CIT (Appeals).

5. We heard the rival submissions of the parties and perused the material on record. The sole disputed issue contested by the LdAR with respect to the applicability of provisions of Section 50C of the Act and the assessee is not a owner, but only a procuring agent. In the year 1995, the assessee entered into MOU dt 2.1.1995 with M/s. JB & Hara Properties referred at page 21 to 24 of the Paper Book, and the assessee is entitled to commission in respect of purchase of property in favour of M/s. JB & Hara Properties. Further the Sale Deed was executed on 6.11.2009 referred at page 49 of the paper book, that the assessee was a procurement agent and also at page 51, were the Principals are in possession and enjoyment of the Schedule Property and has paid the taxes and other charges and the property was purchased out of the firm funds. The A.O. has overlooked the unregistered MOU dt.2.1.1995 entered by the assessee for procurement of land on commission. The LdAR referred to the Income Tax Returns filed by M/s. JB & Hara Properties placed at page 58 to 69 of the Paper Book and in particular at page 63 Serial no 33 where the said land property was disclosed. The contention of the ld. AR, that the assessee was only a procurement agent and entitled for commission and the original owners are M/s. JB & Hara Properties, who provided the funds and after conversion to non-agriculture lands, the assessee has executed a registered sale deed in favour of M/s. JB & Hara Properties. The Assessing Officer's observations that the assessee is a rightful owner and applying the provisions of Section 50C of the Act cannot be accepted. We found the ld. AR, has demonstrated the MOU, which plays a vital role in deciding the role of the assessee as procurement agent or Owner. Accordingly, in the interest of justice, we remit the disputed issue for limited purpose to the file of Assessing Officer for examination and verification of

the claims. The assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information and we allow the grounds of appeal of the assessee for statistical purposes.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 31.08.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore