

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.676/Bang/2022
Assessment year : 2019-20

RaviKumar Tirupati Parthasarathy, B5-1805, South City Housing Complex, Arekere Layout, Bannerghatta Road, Bangalore – 560 076. PAN: AENPR 7573N	Vs.	The Deputy Commissioner of Income Tax, Circle 2(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Arjun Raj, CA
Respondent by	:	Shri K. Sankar Ganesh, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	27.10.2022
Date of Pronouncement	:	28.10.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the final order of assessment passed u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] dated 14.7.2022 for the assessment year 2019-20.

2. The assessee is a non-resident individual working in Netherlands. The assessee filed the return of income for the AY 2019-20 on 20.7.2019 admitting total income of Rs.2,95,600. The case was

selected for scrutiny. The assessee being an eligible assessee as per the provisions of section 144C of the Act, the AO completed the assessment u/s. 143(3) r.w.s. 144C by issuing a draft assessment order in which an addition of Rs.52,89,346 was made towards capital gains. Aggrieved, the assessee filed its objections before the DRP, who confirmed the said addition. The AO in the final assessment order considered the correct indexation value of the year of acquisition and revised the addition to Rs.64,60,469. The assessee is in appeal before the Tribunal against the final order of assessment in accordance with the directions of the DRP.

3. The only issue contended in this appeal through various grounds raised by the assessee is the cost of acquisition considered by the AO at Rs.49,08,340 as against Rs.70,00,000 considered by the assessee while computing the capital gains.

4. The assessee also raised additional grounds with regard to maintainability of the draft assessment order for opting DRP route for a non-resident for the year under consideration and also for AO not considering the brokerage / selling expenses of Rs.1,55,000 while computing capital gains.

5. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds.

6. We notice that as per the Explanatory Memorandum to Finance Bill, 2020, though the amendment to include non-residents as eligible assessee with effect from 1.4.2020, it is mentioned that, “if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable”. This would mean that all pending assessments for which orders are passed after 1.4.2020, would get covered by the amended section of 144C whereby the non-residents would be eligible assessee for taking up the DRP route. In assessee’s case, the AO has issued the draft assessment order on 27.9.2021 and accordingly the amended provisions of section 144C would become applicable. In view of this, the additional ground raised by the assessee is dismissed.

7. We will now consider the issue on merits. During the year under consideration, the assessee sold a property for a consideration of Rs.1,55,00,000. In the statement of income the assessee computed the capital gain as under:-

Sale Consideration	Rs. 1,55,00,000/-
<u>Less:</u>	
brokerage/Selling expenses	Rs. 1,55,000/-
Net Sale Consideration	Rs. 1,53,45,000/-
<u>Less:</u>	
Indexed Cost of acquisition (Rs.70,00,000 * 280/129)	Rs. 1,51,93,798/-
Long Term Capital Gains	Rs. 1,51,202/-

8. The breakup of the cost of acquisition as submitted by the assessee before the AO is extracted below :-

1	Amount paid towards purchase cost 49,44,000/- (As per Assignment agreement) Total of Rs 49,44,000/-	49,44,000/-	Copy of Assignment deed dt. 01/10/2007.
2	Amount Paid to L&T towards Deposits 5,98,160/- (As per Assignment Agreement)	5,98,160/-	Copy of Assignment deed dt. 01/10/2007.
3	Registration Charges Rs 1,500/- Stamp Duty Rs. 4,37,800/- Conti Deposit (Sales Tax)- Rs. 9,881/- Total Rs. 5,89,181/-	5,89,181/-	Copy of Registered Purchase deed dt. 01/02/2008.
4	Assignment Fees paid to the Builder L&T	1,54,500/-	Copy of Assignment deed dt. 01/10/2007
	Interior works, Paintings, curtains etc. payments to: -		
5-9	Concept Interiors	10,05,452/-	Quotation and Bills attached
10	Masterpiece	40,641/-	Bills attached
11	Asian Paints	61,012/-	Bills attached
12	Floating walls	26,903/-	Bills attached
13	The Tailor	2,415/-	Bills attached
14	JP Lights and Appliances	11,825/-	Bills attached
15	Godrej & Boyce	65,757/-	Payment receipt attached
16	LG Electronics	25,500/-	Bills attached
17	Floor & furnishing	32,000/-	Bills attached
18	Veekay Coolers	28,000/-	Bills attached
19	Adishwar	35,580/-	Bills attached
	Total	76,20,926/-	

9. The assessee though had submitted that he has incurred Rs.76,20,926 towards cost of acquisition, claimed only Rs.70,00,000 while computing the capital gains based on the bank loan availed for the said amount. On perusal of the Sale Deed for purchase of property dated 1.2.2008, the AO noticed that as per the Sale Deed, the fair value

of the property was adopted at Rs.36,05,000 on which the assessee paid the stamp duty, whereas the assessee has adopted a value of Rs.49,44,000 as the purchase cost for the purpose of computing capital gains. The AO issued a show cause notice in this regard to the assessee. The assessee in response submitted that the property was originally booked by one Mr. Manish Dokania and Manoj Dokania (assignment holders) with the builder, Larsen & Toubro [L&T] and since the assessee was interested in the said property, he paid a sum of Rs.49,44,000 to the agreement holder. The assessee also submitted that he has entered into an assignment agreement dated 1.10.2007 with the assignment holders in this regard and that he has paid a sum of Rs.1,54,500 as assignment cost and Rs.5,98,160 towards covered car park, corpus deposit etc., to L&T. Therefore, the assessee submitted that the cost of acquisition of Rs.49,44,000 and other amounts paid as per assignment agreement are towards the consideration paid by the assessee for acquisition of the property and hence the same was claimed as cost of acquisition for the purpose of capital gains. The assessee also submitted supporting documents / bills pertaining to the interior works, paintings, etc. which were claimed as part of cost of acquisition before the AO.

10. The AO did not accept the submissions of the assessee by quoting the following reasons:-

- (1) The agreement of assignment has not been registered as evidently both parties believe that there is no transfer of any right, title or interest which will attract the provisions of Transfer of Property Act or that of the Indian Registration Act, 1908.

(2) The property was registered for the value of Rs.36,05,000 only and not for Rs.49,44,000.

11. The AO proceeded to consider a sum of Rs.49,08,340 as the cost of acquisition (registered value of the property and cost of improvement) and arrived at the capital gain which resulted in an addition of Rs.52,89,346. Aggrieved, the assessee filed its objections before the DRP.

12. The DRP confirmed the addition by stating that :-

“a) The plea of assessee that Assessing Officer has wrongly considered the returned income as Rs.73,47,020/- as against the actual adjusted total income which was only Rs.2,95,600/-. This panel has verified the copy of income tax returns filed by the assessee and computation statement, it is found that the actual adjusted total income was only Rs.2,95,600/-. Hence this panel directs the Assessing Officer to adopt the correct returned income as per Income Tax return filed by the assessee.

b) The plea of the assessee that the Assessing Officer has not provided details for cost of acquisition arrived in the draft order at Rs.49,08,340/-. This panel has verified this plea of the assessee and found that the AO has given complete details in para 5 & 6 of the draft assessment order. This panel finds no infirmity in the action of the Assessing Officer. Hence, this plea is rejected.

c) The plea of the assessee regarding adopting of incorrect cost inflation index by the Assessing Officer, this panel found that AO has rightly dealt the issue and finds no infirmity in the action of the AO. Hence, the plea of the assessee is rejected.

d) The assessee contended that Assessing Officer has wrongly taken capital gains offered was Rs.27,41,441/-, whereas the actual capital gains offered in return of income by assessee was only Rs.2,00,425/-. This panel has verified and found that AO has rightly dealt the issue and we did not find infirmity in the action of the AO. Hence this plea of the assessee is rejected.

e) Assessee contended that Assessing Officer has computed excess capital gains by not considering Rs.13,39,000/- paid to the assignor towards relinquishing of rights for which cost of inflation works out to Rs.29,06,356/-. This panel has verified this issue and found that AO has correctly dealt the issue by giving reasons in para 8 of the Draft Assessment Order. Hence, this panel upholds the action of AO.

f) Assessee contended that AO has not considered cost of improvement of the property by the assessee/objector amounting to Rs.13,35,085/- for which cost inflation index works out to Rs. 28,72,679/- while computation of capital gains. This panel has verified the issue and found that AO has rightly dealt the issue by giving reasons in para 8 of Draft Assessment Order. Hence, this panel upholds the action of AO.”

13. The AO issued the final order of assessment after correcting the index value of the year of acquisition that resulted in final addition of Rs.64,60,469. Aggrieved, the assessee is in appeal before the Tribunal.

14. The Id. AR submitted that the actual amount of consideration paid by the assessee to the agreement holders is a sum of Rs.49,44,000 and the reason quoted by the AO for not considering the agreement of assignment is that the agreement is not registered. The Id. AR also submitted that the payment by the assessee to the agreement holders is done through proper banking channels and in this regard, drew our attention to the agreement of assignment at page 74 of PB. The Id. AR also drew our attention to the fact that the AO has not disputed the payment made by the assessee to the agreement holders and has acknowledged the same in the order of assessment. The Id. AR also submitted that since the original purchase cost agreed between L&T and the agreement holders was Rs.36,05,000, the Sale Deed was executed for the said amount. The Id. AR argued that merely for the reason that the assignment agreement is not registered, the actual cost

of acquisition paid by the assessee cannot be denied. With regard to other cost of improvements, the Id. AR submitted that the relevant details have been furnished along with bills and invoices before the AO but breakup of the total amount considered as cost of acquisition at Rs.40,94,980 was not made available to the assessee. It is submitted that the issue of how the cost of acquisition is worked by the AO was contended before the DRP also which has not been considered in the directions given by the DRP. The Id. AR further submitted that the genuineness of the amount of consideration paid by the assessee to the assignment holders is not disputed and therefore prayed that the same may be considered as cost of acquisition for the purpose of capital gains.

15. The Id. DR submitted that as per the registered Sale Deed, the cost of acquisition is only Rs.36,05,000 which has been correctly considered by the AO. The Id. DR also submitted that the amount paid by the assessee to the assignment holders through an unregistered document is done to avoid payment of stamp duty and there is no acquisition of any title by the assessee through unregistered deed. It is submitted by the Id. DR that the amount paid through Assignment Agreement cannot be considered as cost of acquisition. The Id. DR therefore supported the cost of acquisition considered by the lower authorities.

16. We have heard the rival submissions and perused the material on record. From the perusal of the breakup of the cost acquisition extracted in the earlier part of this order and the assignment agreement it is noticed that the assessee has considered a sum of Rs.49,44,000 paid to the assignment holders as per the assignment agreement dated 01.10.2007 as cost of acquisition. It is also noticed that the assessee has paid Rs.5,98,160 towards covered car park charges, corpus deposit, etc. and also a sum of Rs.1,54,500 as assignment fee to L&T. From these facts, it is clear that the actual outflow in the hands of the assessee towards acquisition of the property includes the said amounts and is an undisputed fact as admitted by the AO in his order that the assessee has paid the above-mentioned amount through proper banking channels as mentioned in the Assignment Agreement. Therefore we see merit in the argument that merely for the reason that the assignment agreement is not registered, the actual outflow from the hands of the assessee towards acquisition of the property cannot be ignored for computing the capital gains. It is further noticed that the assessee has claimed several items towards cost of improvement for which bills and invoices were submitted before the AO. However, the breakup of the amount considered by the AO as of acquisition i.e. Rs.40,94,980 is not available on record and the reference given in the assessment order as para 5 & 6 also does not provide any clarity on how this amount is arrived at. In view of this discussion we remit the issue back to the AO for arriving at the cost of acquisition with proper breakup. The AO while doing so is directed to consider the actual

amount paid by the assessee as per the Assignment Agreement including amounts paid to L&T and stamp duty based on evidences / supporting documents submitted in this regard. The AO is also directed to verify the bills and documents with regard to cost incurred towards brokerage of Rs.1,55,000, interiors, painting etc., and consider these amounts for the purpose of arriving at the capital gains in accordance with law. Needless to say that the assessee may be given an opportunity of being heard.

17. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 28th day of October, 2022.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th October, 2022.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.