

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “SMC-B” BENCH, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.155/Bang/2020 : Asst.Year 2008-2009

Smt.Arifa Yasmeen No.635, 34 th Cross, 2 nd Main Road 4 th T Block, Jayanagar Bengaluru – 560 041. PAN : ACCPY6958P.	v.	The Income Tax Officer Ward 7(2)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Smt.Preethi Patel, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 16.09.2021	Date of Pronouncement : 20.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 29.11.2019. The relevant assessment year is 2008-2009.

2. The Registry has marked delay of 2 days in filing this appeal before the Tribunal. At the time of hearing, the learned AR submitted that the appeal has been filed on Monday, 03rd February, 2020, thus, the intervening days were Saturday and Sunday, being 1st and 2nd February, 2020. Therefore, the learned AR submitted that there is no delay in filing this appeal. After perusing the material on record, I find that there is no delay in filing this appeal before the Tribunal. Hence, I proceed to dispose of the appeal on merits.

3. The grounds raised read as follows:-

“1. The impugned order is opposed to law and facts of the case.

2. The Hon’ble Commissioner of Income Tax (Appeals)-10, Bengaluru, ought to have held that the provisions of section 147 / 148 of the Income Tax Act are not applicable in the facts of the case.

3. The Hon’ble Commissioner of Income-tax (Appeals)-10, Bengaluru ought to have held that in the absence of service of notice u/s 148 of the Act the order of assessment is ab-initio-void.

4. The Hon’ble Commissioner of Income-tax (Appeals)-10, Bengaluru, failed to appreciate that in the absence of service of notice u/s 142(1), no assessment u/s 144 could have been passed.

5. The Hon’ble Commissioner of Income-tax (Appeals)-10, Bengaluru, ought to have appreciated that the provisions of section 50C are not applicable in the facts of the case.

6. The appellant craves for leave to add to delete from or amend the grounds of appeal.”

3. The brief facts of the case are as follows:

The assessee along with co-owners had sold a site of BTM Layout, Bangalore on 13.07.2007 for a total consideration of Rs.34,50,000. During the course of assessment proceedings, notice u/s 142(1) was issued and assessee’s mother appeared and the case was discussed with her. The Assessing Officer noticed that guidance value of the property which was sold on 13.07.2007 was Rs.41,82,000. As the guidance value was more than the value recorded in the sale deed, the Assessing Officer adopted the guidance value as per the provisions of section 50C of the I.T.Act for calculating capital gains. Further, the A.O. noticed that the

impugned property was purchased by the late father of the assessee on 11.10.2014 for a consideration of Rs.5,84,000 including stamp duty and registration charges. As the property was held less than three years, the A.O. computed short term capital gains. The assessee's 1/3rd share was arrived at Rs.11,78,337. The computation made by the Assessing Officer with regard to the short term capital gains reads as follow:-

Sale value as per sale deed	Rs.34,50,000
Guidance value of the property	Rs.41,51,300
Cost of acquisition	Rs.6,12,750
Income from STCG	Rs.35,38,550
Assessee's share	Rs.11,78,337.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority it was submitted that the reassessment is bad in law and *ab initio void* since there was no service of notice u/s 148 of the I.T.Act. It was also contended that in absence of service of notice u/s 142(1) of the I.T.Act, no assessment order could have been passed. On merits it was contended that if at all the capital gain is to be taxed in the hands of the assessee, it can be only in respect of shares that fell to the assessee under the Muslim Law as applicable to Sunnis. Further, on merits, it was contended that the Assessing Officer has erred in invoking the provisions of section 50C of the I.T.Act.

5. The CIT(A) rejected all the contentions of the assessee, except with regard to assessee's share that is to be assessed.

The CIT(A) held that the assessee's share to be assessed is only 17.5% of the total short term capital gains and that being so, it is only a sum of Rs.6,24,618. As a result of the same, the assessee got relief of Rs.5,53,719. Accordingly, the appeal filed by the assessee is partly allowed by the first appellate authority.

6. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities.

7. The learned Departmental Representative supported the assessment and the order of the CIT(A).

8. I have heard rival submissions and perused the material on record. As regards the issue of non-service of notice u/s 148 of the I.T.Act, I find that the assessee's mother had appeared before the A.O. and notice was served to her. The assessee's mother had had participated in the assessment proceedings. Therefore, the ground taken in the appeal regarding non-service of notice u/s 148 of the I.T.Act is dismissed.

8.1 As regards the contention that no notice u/s 142(1) of the I.T.Act was issued, the CIT(A) had categorically held that notice u/s 142(1) of the I.T.Act dated 18.01.2016 was issued to the assessee and in response to the above notice the assessee's mother appeared on behalf of the assessee and the case was discussed. The categorical finding of the CIT(A) has

not disproved by the assessee. Therefore, the ground taken with regard to non-service of notice u/s 142(1) of the I.T.Act is also rejected.

8.2 As regards the issue on merits, the assessee contends that the fair market value of the property is less than the guidance value. It was submitted that the impugned property needs to be valued by making a reference to the Valuation Officer. In this context, the learned AR relied on various judicial pronouncements:-

- (i) Sunil Kumar Agarwal v. CIT reported in 372 ITR 831 (Calcutta)
- (ii) N.Jagannath v. ITO in ITA No.2218/Bang/2016 (order dated 16.03.2017)
- (iii) ITO v. M/s.Aditya Narain Verma (HUF) in ITA No.4166/Del/2013 (order dated 7th June, 2017)

8.3 In the instant case, the assessment has been completed on best judgment basis u/s 144 r.w.s. 147 of the I.T.Act. Before the CIT(A), the assessee has objected in clear terms with regard to the applicability of provisions of section 50C of the I.T.Act. The assessee by placing reliance on the Hon'ble Calcutta High Court judgment in the case of Sunil Kumar Agarwal v. CIT (supra) had requested for reference for valuation of the impugned property to the DVO. It is settled position of law that the CIT(A)'s powers are co-terminus with that of the Assessing Officer. The Hon'ble Calcutta High Court in the case of Sunil Kumar AGarwal v. CITI (supra) had held that the Assessing Officer has a bounden duty to educate the assessee regarding the possible reliefs available to him, and even in a case where no specific reference to the Valuation

Officer was sought by the assessee, it was the duty of the Assessing Officer that such option was available to him. This decision of the Hon'ble Calcutta High Court has been followed by the Bangalore Bench of the Tribunal in the case of N.Jagannath v. ITO in ITA No.2218/Bang/2016 (order dated 16.03.2017) and the Delhi Bench of the Tribunal in the case of ITO v. M/s.Aditya Narain Verma (HUF) in ITA No.4166/Del/2013 (order dated 07.06.2017). In the light of the above judicial pronouncements cited supra, I restore the matter to the Assessing Officer to refer the issue to the DVO to arrive at the fair market value of the impugned property. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 20th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-10, Bengaluru
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore