

IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI  
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

ITA No.: 1634/Chny/2019

Assessment Year: 2007-08

Shri. A. Jesu Rajendran, Income Tax Officer, No. 7/13,  
Vallalar Street, v. Business Ward XIII (2), Vetri Selvi, Anbalagan Nagar,  
Chennai – 34.

Chennai – 600 082.

[PAN: ACQPJ-5627-E]

(□□□□□□ /Appellant)

(यथ /Respondent)

□□□□□□ □ □□ □□/Appellant by : Shri. K.G. Raghunath, Advocate

□□ □ □□ □□/Respondent by : Shri. AR V Sreenivasan, Addl. CIT

□□□□□□ □ □□□□□/Date of Hearing : 31.01.2023 □□□□□ □

□□□□□□/Date of Pronouncement : 08.03.2023

□□□□ /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the  
learned Commissioner of Income Tax (Appeals)-12, Chennai, dated 21.03.2019  
and pertains to assessment year 2007-08.

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

“1. The Assessment Order for the Assessment Year-2007-08, passed under Sec.143(3) of the Act, by the Learned Assessing Officer was arbitrary and is against law and contrary to facts of the case and hence Erroneous and untenable in Law. .

2. The Assessing Officer has grossly erred by ignoring the evidences and the relevant documents furnished to substantiate the fact that the appellant was maintaining his books of accounts under the cash system of accounting and proceeded to conclude the assessment based on the presumption that the mercantile system of accounting was adopted, which is erroneous and unjustified.

3. The Learned Assessing Officer, had, failed to understand and appreciate the true nature, spirit, and scope of Section 145, and its importance over the issue of determination of income under Chapter VI- D

4. The Learned Assessing Officer has grossly erred in considering an land, forming part of the business stock of the appellant, as a capital asset in the hands of the appellant on irrelevant and arbitrary grounds; and had invoked the provisions of Section 50 C of the Act.

5. The Learned Assessing Officer, has miserably failed to appreciate the content, spirit, and scope of Section 50C of the Act read with Section 2(14) of the Act.

6. The Honourable Commissioner - Appeals 4 had, without considering the statements and submissions furnished vide the paper book, had disposed off the appeal ex-parte, which is unjustified.

7. The Learned Assessing Officer has miserably failed to comprehend and appreciate the binding nature of the decisions of the various Hon'ble High Courts on the same issue on hand and various associated aspects thereof.

In view of the above and in view of further grounds that may be advanced, as the circumstances may warrant, in the interest of deliverance of justice, during the course of hearings, it is prayed that the Honourable Commissioner of Income Tax (Appeals) may be pleased to grant suitable relief after considering all the evidences and explanations that the Assessee could produce before the Honourable Commissioner of Income Tax (Appeals), during the course of hearing on appeals, on the issues raised in the Assessment Order concerned.”

3. The brief facts of the case are that, the assessee did not file his return of income for the assessment year 2007-08, u/s.

139(1) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”). The assessment has been reopened u/s. 147 of the Act, for the reasons recorded as per which income chargeable to tax has been escaped assessment on account of nondisclosure of capital gains from sale of property and thus, notice u/s. 148 of the Act, dated 05.03.2013 was issued. In response to the notice, the assessee filed return of income on 07.02.2014, declaring total income of Rs. 1,39,420/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noted that the assessee has sold a property in financial year relevant to assessment year 2007-08, for a consideration of Rs. 95 lakhs, but admitted a sum of Rs. 47 lakhs under the head ‘profits and gains from business’. The AO, further noted that the assessee has purchased said property on 12.10.2004, for a total consideration of Rs. 79,21,500/-. Therefore, the AO called upon the assessee to furnish necessary evidences including purchase and sale deed copies of property and relevant computation of income under the head profits and gains from business or profession. In response, the assessee submitted that he has purchased a property for the purpose of commercial exploitation and thus, the same has been treated as stock in trade in the books of accounts of the assessee. Therefore, consideration received towards sale of property has been offered to tax on cash system of accounting. Therefore, submitted that the question of computation of capital gains on transfer of property does not arise.

4. The AO, on the basis of information submitted by the assessee opined that, the claim of the assessee that he had purchased impugned property for business purpose and shown as stock in trade in the books of account is unsubstantiated. Therefore, rejected arguments of the assessee and computed short term capital gains from transfer of property by adopting full value of consideration in terms of provisions of section 50C of the Act and determined short term capital gains of Rs.

2,40,29,848/-. The relevant findings of the AO are as under:

“ADOPTION OF MARKET VALUE U/s 50 C

5. The market value adopted for the land sold as per the S.R.O. is Rs.3,00,00,000/-. When questioned about the applicability of Sec.50C, the AR. in his reply filed on 28/02/2014 has contented that the sale consideration reflected in the sale deed at Rs. 95,00,000/- is just reasonable and the estimation of the market value by the Sub-registrar as Rs. 3,00,00,000/- is unreasonable. The AR. had further contented that the adoption of the value of Rs. 3 Crores will be grossly erroneous and that no such proposal may be contemplated without a reference of the property to a Valuation Officer,

6. The contention has been examined. The sale had taken place on 23/01/2007. The Sub-registrar has adopted the market value of Rs. 3 Crores as against Rs. 95 lakhs. The assessee has not agitate against the value adopted by the Sub-registrar at the time of registration. No appeal of any kind has been filed against the decision of the Sub-registrar. The property conveyed does not include any building. It is only a vacant land. Having accepted the valuation determined by the Subregistrar at the time of registering the property and agitating before the Assessing Officer for adopting the value u/s.50C is not proper and fair. In view of this the contention of the A.R. that the matter should be referred to the Valuation Officer does not hold good and as such the plea of the A.R.to refer the matter to

the Valuation Officer is rejected. As the property conveyed is only a vacant land, the decision of the SRO determining the value of the property will hold good.

#### TREATMENT OF CAPITAL ASSET INTO STOCK IN TRADE

7. The assessee has not done any development on the land which was purchased on 12/10/2004 and sold a part of the land on 23/01/2007 without any development even after a period of 27 months from the date of purchase. If he is in the business of real estate he would have carried out some developments on the land to foster his real estate business. It is observed that the assessee invested in the land with the intention of getting good returns within a short period. It is because of Income-tax Investigation wing's action u/s 132 and other related proceedings the investment of the assessee came to light. Then only the assessee filed revised return for asst. year 2005-06 offering unaccounted income which he invested in the land. In this situation it can be categorically confirmed that the assessee is not in the business of real estate and the land he purchased is a capital asset only and not stock in trade as per Income tax provisions.

#### CHANGE OF ACCOUNTING

8. The assessee sold land measuring 4,81,402 sq.ft for a sum of Rs.95,00,000/- and he received the sale amount of Rs.47,00,000/- by way of cash and Rs.48,00,000/- by way of Cheque. The assessee has admitted Rs.47,00,000/- only as sale amount in the return of income filed for the Asst. Year 2007-08 and treated the cheque amount of Rs.48,00,000/- as amount due from the purchasers.

9. The assessee is claiming that he has changed the system of accounting from mercantile to cash basis and also claimed that the assessee will offer the income when the full amount (Rs.48,00,000) is realized. The A.R. has not adduced any evidence why the assessee has chosen to adopt the change in the system. The contention is acceptable when the assessee filed the return of income within due date as contemplated under Section 139(1) of the Act and the accounts are subjected to audit as provided in Section 44AB of the Act. The assessee has not mentioned the method of accounting during any of the Previous Years scrutiny proceedings. Just because he could not realize the sale amount for the land sold he cannot change the method of accounting. In this background the plea of the assessee is only an after thought, as the same has been claimed without any basis.

10. In this background the assessment is finalized by adopting the market value determined by the Subregistrar as the correct consideration amount received and the period of holding by the assessee is less than 36 months, and the profit is taken into account as a short term capital gain.”

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee reiterated his arguments taken before the AO and submitted that the AO is erred in computing short term capital gains from transfer of property, ignoring fact that the assessee has purchased impugned property for commercial exploitation and has also shown as stock in trade in the books of accounts. The assessee further contended that, the assessee could not develop the property because of civil dispute and this fact has been brought to the notice of the AO. But, the AO ignored all evidences filed by the assessee and computed profit derived from transfer of property under the head capital gains.
6. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of relevant facts opined that, there is no error in the reasons given by the AO to assess consideration received for transfer of property under the head capital gains, because the assessee could not justify claim of stock in trade in the books of accounts with any evidence. The Id. CIT(A), further observed that the assessee has filed his return of income by deriving income from manpower agency and except said source, the assessee does not have any income from real estate business. Therefore, he opined that profit derived from sale of property is assessable under the head capital gains and thus, the AO has rightly computed as short term capital gains,

because period of holding the impugned property is less than 36 months.

The relevant findings of the CIT(A) are as under:

“7.2. Vide Grounds 2 and 3, the Appellant has argued that he was following cash system of accounting. Therefore, it has been argued that income is not assessable in the impugned year. It is clearly found that the transfer of the property was in AY 2007-08. The transaction was complete in all respects. It is not the case that part of the sale has happened in AY 2007-08 and the rest in another assessment year. Thus the transaction is complete and the appellant has received the amount in the same year. The appellant had sold the property for Rs.95,00,000 and he received cash of Rs.47,00,000/- and cheque of Rs.48,00,000/-. Thus the transaction is complete and there is no relevance for any debate whether the proceeds are received or accrued by raising an argument that cheque of Rs. 48,00,000, though received in the year, was encashed only the subsequent year. Therefore, it is immaterial whether the appellant was following cash system or mercantile system of accounting. Even otherwise, argument that department has accepted his method accounting as cash in earlier years, by referring to a reference in the assessment order, cannot be valid, since there was no specific finding on this. there was no audit report submitted by the appellant, though he claimed that the receipts were stock-in-trade, which attracted the provisions of section 44AB. Appellant's argument that he followed cash system of accounting and therefore part of the amount was not accrued is not valid.

7.3. Vide Ground 4, the appellant argued that the AO has grossly erred in coming to the inference that the transferred asset was a capital asset. The appellant argued that he was engaged in purchase and sale of land. This is clearly an afterthought. Appellant was showing income from manpower agency this year and earlier years and there was no business income from land in any of these years. The appellant has not done any development on the land Which was purchased on 12/10/2004 and sold a part of the land on 23/1/2007 after 27 months without any developmental work. When the transaction came to light through a search under section 132 by the IT Act, the assessee filed revised return disclosing the unaccounted income. The asset transferred was a capital asset and the appellant had not shown the asset as Stock-in-trade in the books of accounts since the time it was purchased- Therefore, the AO has rightly assessed the Property as capital asset and assessed the Short Term Capital Gains.

7.4. Vide Grounds 5 and 6, the appellant has argued that the AO has erred in invoking section soc of the IT Act. Section SOC is mandatory and the appellant's transaction is covered by the provisions concerned. As per section soc, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this

section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted Or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. AO has invoked the provisions correctly and adopted the value of Rs. 3,00,00,000/- as notified by Sub-Registrar. Assessee has not agitated against the value adopted by the SRO at the time of registration. He noted that no appeal was filed against the decision of the SRO. Therefore, AO rejected the plea and determined the short term capital gains on the basis of value of the SRO. As discussed earlier, the appellant has filed the appeal without submitting any plea or ground for reference to DVO, after the decision of Aon High court in this regard, and maintained his argument that transferred asset is not a capital asset in the Grounds of Appeals, in the subsequent appeal and 22/9/2016, and no other alternate plea or ground was raised for reference. To DVO at the appeal stage and during appeal hearings, AR has reiterated that there is no requirement for reference to DVO, the issue of reference to DVO does not arise and the value adopted by AO stands. Grounds in this regard are dismissed.

7.5. In the above facts and circumstances, I confirm the order of assessment and the addition of Rs 2,39,76,791/-.”

7. The Id. Counsel for the assessee, submitted that the Ld. CIT(A) has erred in sustaining additions made by the AO towards computation of short term capital gains from transfer of property by applying the provisions of section 50C of the Act, without appreciating the fact that the assessee has declared the impugned property as stock in trade in the books of accounts and further, the assessee has explained reasons for not developing the property, even though said property has been purchased for the purpose of commercial exploitation. The Ld. Counsel for the assessee, submitted that the assessee has purchased property in the year 2004, but could not develop the property because M/s. Alfa Home makers (P) Ltd has filed a civil suit before the Jurisdictional Civil Court challenging transfer of property in favour of the assessee by one Shri. T. Balan, who was the managing director of M/s. Alfa

Home Maker (P) Ltd. Therefore, the assessee could not invest in development of the property, though the property was purchased for commercial exploitation. He further submitted that, but fact remains that the assessee has declared said property as stock in trade in the books of accounts and also filed return of income for assessment year 2007-08, where it has been shown as stock in trade. The AO disregarded all evidences filed by the assessee and made addition under the head capital gains.

8. The Ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, the assessee did not file return of income on or before due date prescribed u/s. 139(1) of the Act. Further, the assessee has filed return of income in response to notice u/s. 148 of the Act, on 05.02.2014 and claimed that impugned property is a stock in trade, but the AO has given various reasons to allege that it is an afterthought. Therefore, he submitted that there is no error in the reasons given by the AO and the ld. CIT(A) to compute short term capital gains from transfer of property and their order should be uphold.
9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that the assessee has purchased a property in Devanahalli, Bangalore on 14.10.2004, for a consideration of Rs.

79,21,500/-. The assessee has sold said property in the financial year relevant to assessment year 2007-08 for a consideration of Rs. 95 lakhs and guideline value of the said property as per stamp duty authority was at Rs. 3 crores. The assessee has declared consideration received from transfer of property on cash system and actual consideration received in the impugned assessment year amounting to Rs. 47 lakhs has been treated as business receipts. The AO, assessed profit derived from transfer of property under the head short term capital gains and has also adopted full value of consideration in terms of provisions of section 50C of the Act and determined short term capital gains of Rs. 2,39,76,791/-, after allowing cost of acquisition of the property. The sole dispute requires to be resolved in the given facts and circumstances of the case is whether profit derived from transfer of property is assessable under the head profit and gains of business or profession as claimed by the assessee or under the head capital gains as assessed by the AO. The AO, assessed profit under the head capital gains, on the ground that the assessee could not file any evidences to prove that said property has been purchased as a stock in trade and further, the assessee did not invest any amount for development of the property. It was the argument of the assessee before the AO that property has been purchased and shown as stock in trade in the books of accounts and further, although said property has been purchased for commercial exploitation, but could not develop the property because of civil dispute pending in Civil Court.

10. We have given our thoughtful consideration to the reasons given by the AO to assess profit derived from transfer of property under the head capital gains and we ourselves do not subscribe to the reasons given by the AO for the simple reason that non-development of property during the period of holding the asset does not decide the nature and head of income under which profit derived from transfer of said property is assessable. But, what is relevant to decide the nature and head of income on a particular receipt is intent of the assessee and the treatment given in the books of accounts for the relevant assessment year. In this case, the assessee claims to have purchased the property for the purpose of commercial exploitation, keeping in view the location of land, which is adjacent or near to Bangalore International Airport, where lot of scope for commercial exploitation of property. The assessee further explained that he could not develop the property because of pending OS No. 615/2005 before

Devanahalli Civil Court filed by M/s. Alfa Home Maker (P) Ltd, disputing transfer of property. We find that the assessee has filed necessary evidences, including financial statement for the relevant assessment years to prove its claim that property has been shown as stock in trade in the books of accounts of the assessee. The assessee had also filed relevant details including case particulars of OS No. 615/2005 pending before Devanahalli Civil Court, to prove that there was a pending litigation on the property and thus, he could not invest any amount for development of property in absence of clear title. The assessee had also filed necessary financial statements including tax audit report to prove that amount received from transfer of property has been treated as business receipts. From the above, it is very clear that the intent of the assessee when the property has been purchased was to commercially exploit the property keeping in mind the locational advantage of the property. Further, the assessee had also made clear its intention by recording purchase of property as stock in trade in the books of accounts for the

relevant assessment years. Therefore, we are of the considered view that the assessee has rightly declared profit derived from transfer of property under the head profit and gains of business and profession. It was only the AO by wrong appreciation of facts has assessed profit derived from sale of property under the head capital gains by holding that income declared by the assessee under the head profit and gains from business or profession is afterthought. In our considered view, the observations of the AO is nothing but suspicion and surmise, but not backed by any evidence. On the other hand, the evidences filed by the assessee clearly suggests that the impugned property sold for the assessment year is a stock in trade and profit derived from transfer of property is assessable under the head profit and gains from business or profession. Therefore, we are of the considered view that the AO and the CIT(A) completely erred in assessing profit derived from transfer of property under the head capital gains.

11. Having said so, let us come back to the application of provisions of section 50C of the Act. The provisions of section 50C deals with deeming consideration in place of actual consideration received towards transfer of property being land and building, in a case where the transfer of capital asset being land or building and a consideration received for transfer of property is less than guideline value of the property assessable by stamp duty authorities, then the difference between consideration received and actual value of the property will be treated as full value of consideration. In this case, what was transferred by the assessee is a stock in trade, but not a capital asset. Therefore, we are of the considered view that provisions of section 50C cannot be applied when asset transferred is not a capital asset. Thus, we are of the considered view that the AO and CIT(A) erred in applying provisions of section 50C of the Act and determination of full value consideration to compute short term capital gains from transfer of

property. Thus, we direct the AO to delete additions made towards computation of short term capital gains from transfer of property.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 8<sup>th</sup> March, 2023 at Chennai.

Sd/-

Sd/-

(□□ □□□ □ □□□) (□□□□□□□. □□)

(V. DURGA RAO) (MANJUNATHA. G)

□□□□□□□ य /Judicial Member □□□□□□□ य /Accountant Member

□□ ई /Chennai,

□□□□□/Dated: 8<sup>th</sup> March, 2023 JPV

□□□□ □ □□□□□□ □ □□□□/Copy to:

1. □□□□□□ /Appellant
2. □□ /Respondent
3. □□□□ □□□ (□□□□)/CIT(A)
4. □□□□ □□□ /CIT
5. □□□□□□□ □□□□□□□/DR
6. □□□ □□□□/GF