

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.933/Bang/2019
Assessment Year : 2011-12

Smt. Hirehal Raghavendra Soudamini, No.66, ‘Shreema’ 1 st Main, 5 th Cross, RMV 2 nd Stage, 1 st Block Aswath nagar, Bangalore – 560 025. PAN : APKPS 4537 B	Vs.	The Income Tax Officer, Ward –6[3][2], Bangalore.
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Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Priyadarshi Mishra, JCIT(DR)(ITAT), Bangalore

Date of hearing	:	15.12.2020
Date of Pronouncement	:	17.12.2020

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 22.03.2019 of CIT(A)-6, Bangalore, relating to Assessment Year 2011-12.

2. The only issue that arises for consideration in this appeal is with regard to computation of full value received on sale of property by the assessee for the purpose of computing the Long Term Capital Gain (LTCG). The undisputed facts are that the assessee sold 4 acres of land situated in S.No.4 /P16, Kurubarahalli Village, Kasaba Taluk, Mysore District, on 07.09.2010 for a consideration of Rs.80 lakhs. Admittedly, the value of the property sold for the purpose of stamp duty and registration was adopted at Rs.160 lakhs.

3. Sec.50-C(1) Income Tax Act, 1961 (hereinafter called ‘the Act’), provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable 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. In view of the provisions of section 50C of the Act, the AO adopted full value of the consideration received and on transfer of Rs.160 lakhs and computed LTGC as follows:

“Full value of sale consideration *:1,60,00,000*

Less: Indexed value 535090x711/406-937066

Indexed value 536690x711/406=939868 *: 18,76,935* *: 1,41,23,065”*

4. Even before the AO, the assessee had requested for a reference to the District Valuation Officer (DVO) for evaluating the value of the property under section 50C(2) of the Act. The AO made reference to the DVO but since the report had not been received by that time, the assessment was completed. The AO could not take cognizance of the same.

5. In the appellate proceedings before the First Appellate Authority i.e., CIT(A), the report of the DVO was available and it showed the value of the property as estimated by the DVO was at Rs.95,68,400/-. The CIT(A) directed the AO to adopt the DVO’s value as full value of consideration received on transfer of the property and thus gave partial relief to the assessee.

6. The Assessee is in appeal against the order of the CIT(A) contending that the valuation as given by the DVO is erroneous. It is the submission of the learned Counsel of the assessee that the DVO gave a preliminary value report dated 28.08.2018 in which he has outlined the basis of evaluation which is as follows:

“8.0 Comments of the undersigned

8.1 *Following are the comments of undersigned based upon the documents submitted by the assessee, documents received from the concerned SRO and site inspection:*

1. *The PUC is located at the outskirts of the Mysore city, facing the road, leading to Chamundi Temple, which is one of the prominent places of Mysore.*
2. *Services like water supply, drainage etc. were not evident in the locality.*
3. *Neither any construction nor constructed structures were found in the locality*
4. *The assessee submitted copy of a notification dated 03/04/2006, issued by MUDA (Mysore Urban Development Authority). During scrutiny of the document, it was observed that the authority has banned any construction activities on around 145 plots falling under survey number 4, Kurubarahalli village, as the authority intended to acquire certain lands for public utilities PUC is also among the notified plots.*
5. *It is learnt that there was a dispute between a private party as well as University of Mysore on ownership issue. Final verdict was pronounced by Honourable Supreme Court in favour of the Mysore University. Further it was intimated by the assessee that there were similar kind of disputes over other properties too.*
6. *Vide letter No SBR/Mysore North/275/ dated 23 01 2018, details of comparable sale instances of other properties during the period of valuation along with prevailing guideline value for the years 2006 to 2010. 2010 to 2011. 2011 to 2013 were received.*
7. *During examining the contents, received from the SRO. following observations are made:*
 - a. *Size of the properties were either ranging from 1 acre to around 10 acres or 1200 Sqft to around 4000 Sqft.*
 - b. *Smaller plots were sold at the rate ranging from Rs 300/sft to Rs.750/sft*
 - c. *Bigger plots were sold at three rates – i. At par with prevailing guideline rate, ii. Few above guideline rate, iii. Rates much lower than prevailing guideline rate.*
8. *In order to determine fair market value of PUC, only those plots were shortlisted. which have similarities with regard to size. location - situation, notified as per the list dated 03/04/2006. Subsequent to short listing the comparable transactions, following observations were made with regard to rate of transaction:*
 - a. *Rate of one transaction was above prevailing guideline rate.*
 - b. *Few transactions occurred at par with prevailing guideline rate.*
 - c. *More than 50% of the shortlisted transactions occurred at much lower rate than prevailing guideline rate.*
9. *In view above stated observations, undersigned deemed fit to determine average rate of all the shortlisted properties in order to determine fair market value of the PUC with time factorisation.*

10. *The assessee submitted details of 3 transactions in order to justify her rate of consideration. During scrutinizing the details of transaction received from the concerned SRO, two of the transactions, submitted by the assessee were found among the list. Both SIP, have been considered while determining fair market value of the PUC.*

7. Learned Counsel had filed an objection to the preliminary report vide letter dated 29.08.2018 of assessee's Chartered Accountant. The objections so raised reads as follows:

"The Assessee is having the following objections for adopting the fair market value as on 27-09-2010 as Rs. 95,68,400/-

1. *The property was notified by MUDA to acquire the land vide notification no. LAQ(5)CR540/2005-06 Dated 03-04-2006.*
2. *There were lot of litigations regarding the ownership of the land.*
3. *Many suits were filed regarding the ownership of the lands at Sy no. 4 Kurubarahalli Village before the High Court of Karnataka. Ultimately the case was referred to District Magistrate. The honorable District Commissioner decided the case vide order new no. RRT540/2014-15 Date 26-05-2015 and awarded that*
 - a. *Sy. No. 4 of Kurubarahalli Village is B kharab Land and it was reserved for public purpose.*
 - b. *All kathas made in Sy no. 4 at Kurubarahalli Village is void ab initio and ordered to cancel them by Tahsildar Mysore.*

Considering the above facts the assess sold the land for Rs. 80,00,000/- as she not could get the good price from any other buyers.

Please note that according to the notification by MUDA the land can't be transferred and the land was B kharab land."

8. The learned Counsel also drew our attention to the final report of the DVO in which the DVO arrived at the valuation of Rs.95,68,400/- based on the 9 sale instances which are given as Annexure to this order.

9. Learned Counsel pointed out that in second sale instance given in the annexed chart, the valuation is very high in as much as 6 acres of land and the very same survey No. had been sold for a sum of Rs.4,80,00,000/- giving an average rate of Rs.80 lakhs per acre. If this sale instance which is a very extraordinary sale instance is excluded, then the average rate per acre to be adopted would be much less. It was submitted by him that a very comparison of the second sale instance with the other 8

sale instances given in the chart would show that the same is an extraordinary instance of sale and the price adopted is also extraordinary. The learned Counsel's submission was that in the light of the fact that all the khatas in survey No. 4, Kurubarahalli Village, Kasaba Taluk, Mysore District, Mysore, have been declared to be void-ab-initio and in the light of the fact that there are many litigations in the ownership of the land, the DVO ought to have excluded second sale instance in the charge as given as Annexure to this order. If it is so removed the valuation of the property would be less than Rs.80 lacs for which the Property was sold by the Assessee. The Learned DR submitted that the method adopted by the DVO is reasonable and should be upheld.

10. We have given careful consideration to the rival submissions and are of the view that in the light of the objections given by the assessee to the preliminary report of the AO, the second sale instance which appears to be an extraordinary instance of sale ought to have been excluded. The admitted position is that all the khatas in the survey No. 4, Kurubarahalli Village, Kasaba Taluk, Mysore District, Mysore, have been cancelled by the Tahsildar, Mysore, and there are several litigations. There is also a third acquisition by Mysore Urban Development Authority (MUDA). The specific objection of the Assessee to the preliminary report of the DVO has not been considered by the DVO while giving his final report. In the circumstances, we accept the submission made by the learned Counsel for the assessee and direct that sale instance No.2 as given in the chart above should be excluded and if so excluded, the price of Rs.80 lakhs received by the assessee should be accepted as correct. Consequently, there can be no addition on account of application of provisions of section 50C of the Act. The addition made is therefore directed to be deleted.

11. In the result, the appeal of the assessee is allowed.

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

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 17.12.2020.

/NS/*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.

ANNEXURE

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SALE INSTANCES DETAILS

Appraiser: Smt.H.R.Sudhamsani, No.66, "Shreeem" 1st A Main Road,5th Cross, 1st Block, Adiwathnagar, R.M.V 2nd Stage,Bengaluru-560094.

Property: Agricultural Dry lands bearing Survey No.4/P-60, situated at Kurubarahalli village, Kasaba and Taluka Mysore, Mysore District

Date Of valuation: As on 27.09.2010

Area In Acre: 4

Details	SIP-1	SIP-2	SIP-3	SIP-4	SIP-5
SIP Properties	Land property Sy No.4/P 65, at Kurubarahalli village, Mysore	Land property Sy No.4/P 11(Block 17), at Kurubarahalli village, Mysore	Land property Sy No.4/P 37, at Kurubarahalli village, Mysore	Land property Sy No.4/A at Kurubarahalli village, Mysore	Land property Sy No.4, Block No.9, at Kurubarahalli village, Mysore
Area in Acre	1	6	10	4	3
Cap. Consideration	1850000	48000000	40000000	350000	4500000
Rate Per Acre	925000	8000000	4000000	87500	1500000
Date of sale	28.04.2010	15.05.2010	19.05.2010	26.05.2010	05.06.2010
Seller	Shri.Javaraj Gowda.	Shri.M.Vasanth Kumar	Shri.Maharajah and 2 others	Shri.Muhammed Mukhtar Ahmed	Shri.Hajjaj Athunasa.
Purchasser	Shri.Mulla Abi Bunnosa	Vinayak Enterprises.	Shri.Vasanth Agade	Sreebatha Ramani and 4 others	Shri.S.R.Mudhavan .

1/2 Cont..

SALE INSTANCES DETAILS

Assessee: Smt. H. H. Soudhamani, No. 66, "Shreeva" 1st A Main Road, 5th Cross, 1st Block, Ahdwathnagar, R.M.V 2nd stage, Bengaluru-560004.
 Property: Agricultural Dry lands bearing Survey No. 4/P-60, situated at Kurubarahalli village, Kasaba and Taluk Mysore, Mysore District
 Date of valuation: As on: 27.09.2010

Area in Acre: 4

Details	Sr. 6	Sr. 7	Sr. 8	Sr. 9
SP Properties	Land property Sy No.4, Block No.19, at Kurubarahalli village, Mysore	Land property Sy No.4, Block No.8, Kurubarahalli village, Mysore	Land property Sy No.4, Block No.7, at Kurubarahalli village, Mysore	Land property Sy No.4/P-60, at Kurubarahalli village, Mysore
Area in Acre	7	3	3	5
Sale Consideration	24500000	375000	300000	20000000
Rate Per Acre	3500000	125000	100000	4000000
Date of sale	15.06.2010	27.08.2010	27.08.2010	25.09.2010
Seller	Smt. Mumuksha and 3 others.	Shri. Parveen Taj and 3 others	Shri. Parveen Taj and 3 others	Shri. M.S. Somesh Kumar & 2 others
Purchaser	Vineyak Enterprises.	Shri R. Ramamujam and Shri. Preem Bamanujam	Shri. Anun Kumar	Shri. KT Rajeshwar

(Signature)
NEERA KISHORE
 Valuation Officer,
 Income Tax Department,