



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIRCLE 5(3)(2), BANGALORE/

To,
SURESH KALYANASUNDARAM
B-184, Krishvi Gavakshi ,Gear Road, Kaverappa Layout
Kadabeesanahalli
BANGALORE 560103 ,Karnataka
India

PAN:
ALBPK8704H

Assessment Year:
2016-17

DIN & Notice No :
ITBA/AST/F/143(2)_4/2020-
21/i028111435(1)

Dated:
30/09/2020

Notice under section 143(2) read with section 147 of the Income-tax Act, 1961('Act)

Dear Taxpayer,

Thank you for filing your return of income for Assessment Year **2016-17** in response to notice under section 148 of the Act, vide Ack. no. **301357500090220** on **09/02/2020**.

2. While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification:-

Issues as per reasons recorded for reopening

The assessee Shri Suresh Kalyansundram has e-filed his return of income for A.Y. 2016-17 on 22/07/2016 vide acknowledgement number 288492700220716 declaring gross total income of Rs. 1,07,46,174/- and total income of Rs. 1,05,72,270/- after claiming deduction of Rs. 1,73,901/- under Chapter-VIA of the Income Tax Act, 1961. The gross total income includes Income from Salary of Rs. 75,14,142/-, Income from House Property of Rs.2,31,034/-, Income from Long Term Capital Gains Rs. 9,95,990/- and Income from Other Sources Rs. 20,05,008/-.

Subsequently the assessee filed an application on 05/08/2019 for closure of Capital Gains Account opened under the Capital Gains Account Scheme and issue of Form G in our office. The assessee in his application submitted that he had sold a property at H-204, Rohan Jharokha, Kempapura Main Road, Yamalur, Bangalore- 560037 on 12/08/2015 and the long term capital gains arrived had been offered to tax in return of income filed for A.Y 2016-17. It is noted that the Assessee has arrived at a long term capital gain of Rs. 9,95,990/- based on following computation:

Note: If digitally signed, the date of digital signature may be taken as date of document.
,HMT BHAWAN, NO. 59, BELLARY ROAD, GANGANAGAR, BENGALURU, Karnataka, 560032

Full Value of Consideration received: Rs.1,00,00,000

Cost of Acquisition with Indexation: Rs.89,63,717

Cost of improvement with indexation: Rs.40,293

Long term Capital Gain payable: Rs. 9,95,990

On perusal of the details furnished by the Assessee, it is noticed that the assessee has sold a residential property being Flat bearing No. H-204, Rohan Jharokha (Hereinafter "**the said property**") vide sale deed dated 12/08/2015 for a sale consideration of Rs. 1,00,00,000/-. The said property has been purchased by the Assessee from Fern Builders and Developers, Mr. Austin Roach and Rohan Housing Private Limited (Hereinafter, the "**Vendors**") for a consideration of Rs.11,16,000 vide a registered sale deed dated on 11/3/2011 (the "**Sale Deed**").

In support of claim of cost of acquisition, the Assessee has furnished copies of two unregistered agreements dated 05/01/2008 in addition to the Sale Deed. The Sale Deed provides the full and final consideration paid by the Assessee to the Vendors. The unregistered agreements precede the Sale Deed and the Sale Deed mentions that pursuant to these unregistered agreements an amount of Rs.11,16,000 has been paid to the Vendors. No mention of any other amount paid vide the unregistered agreements is mentioned in the Sale Deed. Furthermore, stamp duty has been paid only on Rs.11,16,000 by the Assessee. Both the unregistered agreements filed by the assessee cannot be considered as they do not have any evidentiary value, Since the agreements to sell were not registered, assessee's claimed that he paid certain amount in addition to that mentioned in registered sale deed cannot be relied upon. Hence, the claim of assessee qua unregistered documents do not survive.

It is settled law that an assessee would not be entitled to explain the difference between apparent consideration and fair market value by relying on an agreement of sale unless the agreement is registered. (CITvs. Jumramal Sons (1986) 25 Taxman 242(Allahabad)

It may be separately noted that Hon'ble Supreme Court, in the case of CIT v. Balbir Singh Maini (2017) and in Mother Hospital (Private) Limited v. CIT, Trichur (2017) has cautioned against giving effect in law to any unregistered document transferring immovable property. In fact, as per Section 17 of Registration Act, it is compulsory to register any document involving immovable property.

Various tribunals and high courts have also refused to entertain assessee's claim of cost of acquisition based on unregistered agreements. Please see below a list of these cases:

1. Shagan Lal v. ITO Ward-II (4), Abohar (2018) 89 taxmann.com 117 (Amritsar Tribunal) (See para 28)
2. CIT v. Jumramal Sons (1986) 25 Taxman 242 (All)
3. Sathyanarayana Gowda [ts-109-ITAT-2018 (Bang)]

Hence, submissions of the Assessee to include the consideration amounts mentioned in the unregistered agreements in the computation of cost of acquisition cannot be considered.

Therefore, cost of acquisition of the said property has to be adopted only at Rs. 11,16,000/- plus stamp duty Rs. 1,02,346/- and registration fees of Rs.15,230/- = Total Rs. 12,33,576/-. The indexed cost of acquisition works out to Rs. 18,24,479/- and long term capital gains at Rs. 81,24,479/-. Out of this the Long term Capital gain of Rs.9,95,990/- is already offered to tax in return of income filed for A.Y 2016-17. So the assessee is liable to declare taxable long term capital gains of Rs. 71,28,489/-.

In view of the above, income chargeable to tax which includes taxable long term capital gains of Rs. 71,28,489/- has escaped assessment in Assessee case for A.Y. 2016-17.

Therefore, I have reason to believe that income chargeable to tax amounting to Rs. 71,28,489/- has escaped assessment for the A.Y. 2016-17 in the Assessee's case within the meaning of section 147 of the I.T. Act.

3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filing website(www.incometaxindiaefiling.gov.in) at your convenience on or before 30/09/2020
4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for information/document may be issued subsequently
5. A brief note on E- Proceeding is enclosed for your kind reference. In case you require any assistance in filing your response, you may contact toll free Call Centre number 1800 103 4215

Enclosure: As above

Yours faithfully,
NABEEL AHMAD SAAD
CIRCLE 5(3)(2), BANGALORE/

Customer ID 2000003675



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आयकर महारक आयुक्त का कार्यालय
O/o. Asst. Commissioner of Income-Tax
राजस्थान/Circle-5 (D.K.2),
पि. 59, चौथा मंजिरा, मंगलगिरी, अहम,
NO. 59, 4th Floor, Mangalgi Bhavan,
बेल्लारी रोड, बेंगलूर - 560 032.
Bellary Road, Bangalore - 560 032.