

IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'

BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA Nos.1339, 1340 & 1344/Bang/2015
and 1343/Bang/2014
(Asst. Years 2009-10, 2010-11, 2013-14 & 2014-15)

The Income-tax Officer,
TDS, Ward-3(1),
Bangalore.

. Appellant

Vs.

M/s Railway House
Building Co-operative Society Ltd.,
No.197/B, M.G Colony,
Bangalore-560 023.

. Respondent

Appellant by : Shri Sunil Kumar Agarwala, JCIT

Respondent by : Shri PR Suresh, CA

Date of Hearing : 26-04-2016

Date of Pronouncement : 29-04-2016

ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

These are appeals filed by the Revenue directed against the
order of Commissioner of Income-tax (Appeals) – 13, Bangalore

dated 19/3/2015 for the assessment year 2008-09, 2009-10, 2012-13 and 2013-14. Since common issues are involved in all these appeals we proceed to dispose off these appeals by way of this consolidated order. For the sake of convenience and clarity, the facts in ITA No.1339/Bang/2015 are stated here under:

2. The Revenue has raised the following grounds of appeal :

(1)The order of CIT(A) is opposed to the facts and nature of the case on hand.

(2)The learned. CIT(A) erred in holding that the assessee was not required to deduct tax at source u/s 194C from the payments made to developer.

(3)The learned CIT(A) ought to have considered the fact that as per the assessee's agreement with the developer, the works to be carried out like formation of roads, chip carpeting, storm water drains etc., clearly indicates that the contract included 'works contract' which attracts provisions of sec. 194C.

(4) The learned CIT(A) ought to have considered the fact that the agreement entered into by the assessee with the developer are in the nature

of composite contracts for works for which provisions of sec. 194C is clearly applicable.

(5)The learned CIT(A) ought to have considered Clause IV.2 and 5.1(b), 5.2(b)(c) of addendum to the agreement dated 3/12/2008 wherein, though the agreement is for the acquiring of lands and formation of layouts, it is seen that the lands, after acquisition, are sold to the society and subsequently, the development of the layout is undertaken which is clearly evident of an underlying contract. Hence, TDS ought to have been made on the development works of the layout.

(6)The learned CIT(A) has erred in not considering para 6.1(b) of the agreement executed on 3/12/2008 wherein, it is clearly mentioned that Rs.240/sq.ft. is towards development charges, cesses, etc and Rs.360/sq.ft is towards land cost thereby ensuring that payment is on particular milestones of completion of contract.

(7)The learned CIT(A) erred in relying on the decision of the jurisdictional High Court in the case of M/s Karnataka State Judicial Department Employees House Building Co-operative Societies while allowing the assessee's appeal.

(8) Without prejudice to the above grounds, it is prayed that even if it is held that there is no element of contract for procurement of land whether there is no element of contract for developmental works also, especially when the supplemental agreement envisages the release of payment on a milestone basis which is typical of 'contracts'?

3. The brief facts of the case are that the respondent society duly incorporated under the provisions of Karnataka State Co-operative Society Act. The society was set up for the purpose of acquiring the land and developing the same into the house sites to its members and associate members. The survey operation under the provisions of sec.133A of the Income-tax Act were carried out in the premises of the respondent society on 14/10/2013 by ITO, TDS Ward-18(1), Bangalore (hereinafter called as TDS Officer). Subsequently, TDS Officer called for certain information from the respondent society including details of Memorandum of Understanding with the developers entered in connection with the purchase of lands and development of the same. Based on the information so collected, the TDS Officer was of the opinion that the respondent society had failed to deduct the tax at source under the provisions of sec. 194C of the

Act on the amount of payments paid to the developer and contractor in terms of the agreement entered by the respondent society. It was contended before the TDS Officer that the respondent society had purchased developed sites from the developer. It is contract of sale of developed sites. Thus it was submitted that the provision of sec. 194C were not applicable to the payment made to the developer. The contentions of the appellant company were brushed aside and TDS Officer had proceeded with treating the respondent of the assessee, as 'assessee in default' and demanded tax under provision of sec. 201(1) and interest there on u/s 201(1)A and accordingly orders were passed under aforesaid provisions.

4. Against the said orders, the appeals were filed before the CIT(A), the CIT(A) held that the role of the respondent society was facilitator and the society only procured developed sites and developed according to the norms prescribed by the co-operative society and, therefore, it was a case of a purchase of the site and, therefore, there was no element of works contract involved in the contract. Thus it was held that the provision of sec. 194C were not applicable and the reliance was placed on the decision of Jurisdictional High Court in the case of CIT(A) V s. Karnataka State

Judicial Department Employees House Building Co-operative Society in ITA No.1260 of 2005 and accordingly the CIT(A) cancelled the orders passed by the TDS Officer u/ss 201(1) and 201(1A) of the Act.

5. Being aggrieved by this, the Revenue is before us with the present appeals.

6. The learned Sr. DR drawn our attention and submitted that the agreement entered by the respondent society with the developer namely Lakshman and Eswar are in the nature of works contract. In support of this proposition, he had drawn our attention to the clause 6.1 of the sub clause (a) (b) (c) and (d) of clause 6.1 of the agreement entered by the respondent of the developer. The relevant clause reads as under:-

“6.1 The sale consideration as stated above shall be paid by the First Party Society to the Second Party Developer in the following manner:

(a) A sum of Rs.1,00,00,000/- (Rupees One Crore Only) at the time of execution of this agreement. Accordingly the Society hereby paid a sum of Rs.1,00,00,000/- (Rupees One Crore Only) by Account Payee Cheque bearing No.....; dated 03.12.2008, drawn on Vijaya Bank,

Gandhi Bazar Brach, Bangalore in favour of Second Party and receipt of which the Second Party Developer hereby accepts and acknowledges.

(b) The balance sale consideration shall be paid in stages depending upon progress for acquisition, approvals, development etc based on the progress of the Project to the Second Party Developer from time to time to complete the project within the stipulated period. However after registering the converted land in favour of the First party i.e Society, the First party shall release 60% cost of the sital area i.e 60% of 600/- is Rs.360/- per sq. ft as land cost and balance 40% cost of the sital area i.e 40% of 600/- is Rs.240/- per sq. ft towards approvals, cesses and development charges.

(c) 5% of the total cost of sites shall be retained by the First Party Society as Security Deposit (EMD) as retention amount and it shall be paid to the Second Party Developer after completion of six months maintenance period stipulated herein below.

(d) The aforesaid amount received as advance (as per clause 6.1 a & b) and during the course of implementation of the project as provided hereinabove shall be adjusted by the Second Party Developer towards sale consideration of the sites as per 6A & 6B to be conveyed to the members of the Society.”

7. He also submitted that mere perusal of the above clause goes to prove that the agreement were entered only to development of the site which involves works as he also submitted that the facts in the present appeals are different from the facts in the case of Kautilya House Building Co-operative society decided by this Tribunal.

8. On the other hand, the learned Authorized Representative of the respondent society submitted that the terms and agreement should be construed as a whole and it is a case of contract of purchase of the developed sites and the sub sec (a) and (b) only stipulates the payment schedule, as per the stage of completion of the works it does not mean that the consideration was paid for work in terms of the works contract. He drawn our attention to the sale deeds executed by the developer in favour of the members of the respondent society, to say that it is purely a contract for the purchase of developed sites.

9. We have heard rival submission and perused the material on record. The issue in the present appeals is whether there was an obligation on the part of respondent society to deduct tax at source in respect of amount paid by the respondent society to the developer viz. Lakshman. On perusal of the said agreement, it is clear that the

payment were made as per the stage of completion of work contract but the contract is only for purchase of developed sites as evidenced by sale deeds. The issue in appeal is covered by the decision of this Bench in the case of Kautilya House Building Co-operative Society Ltd., wherein it was held as follows:

8. *The issue in the present appeals is whether the payments made by the respondent-co-operative society to Shri Lakshman, stated to have been paid to acquire lands are in the nature of payment made for any work contract or consideration paid for purchase of sites. It is needless to mention that the provisions of sec.194C are applicable only to works contract. Once it is established that payments made to Shri Lakshman are not in the nature of works contract, question of deducting tax at source under the provisions of sec.194C does not arise. To determine the character of payments, it is essential to look into terms of the contract. We have perused the agreement dated 11/4/2005 entered into by the respondent-co-operative society with Shri Lakshman as well as the sale deed entered into by Shri Lakshman with members of the society on 27/8/2014 placed at page 11 of the paper book. Clauses 2, 3 and 4 of the agreement dated 11/4/2005 are as under:*

“2. DEVELOPMENT OF LAYOUT & FORMATION OF SITES:

The Second Party shall acquire the schedule property after securing conversion of the same from agriculture to non-agriculture residential use, apply for and obtain sanction from BMRDA/Competent Authority and develop the layout in accordance with the sanctioned plan confirming to the zonal regulations of the BMRDA;

3. FACILITIES & AMENITIES TO BE PROVIDED IN THE LAYOUT:

- (a) Wide Asphalted Roads ranging from 30 to 60 as per sanctioned plan.*
- (b) Water & Sanitary connections to each site with Feeder & sub main connections;*
- (c) Electrification with overhead lines and Transformers, Adequate Street Lights as per KPTCL norms,*
- (d) Dedicated Telephone Exchange; Milk booths. KPTCL Extension Counter, Police out post. BUS Terminus. shopping arcade including vegetable market etc*

(e) *Overhead Tank/Sump Tank connected to Borewells in order to provide adequate water supply:*

(f) *Road side tree plantation with tree guards.*

4. SITES TO BE HANDED OVER TO THE SOCIETY FOR ALLOTMENT TO ITS MEMBERS;

(a) *The Second party shall reserve all the 'intermittent sites (excluding 50 intermittent sites of various dimensions to be identified by the second party) for the benefit of the members of the First Party.*

(b) *As soon as the Second party informs the First party of the formation of the sites for the benefit of the members of the First Party, the First Party shall allot the same to its members and inform the Second party accordingly.*

(c) *After such allotment, the Second Party shall convey the site to the allottee after receipt of the sale consideration (at the rates stipulated in clause 5 herein below) from the First Party by executing and registering the sale deed in the jurisdictional sub-registrars office.*

(d) *In respect of all the corner sites and 50 intermittent sites (reserved for land owners*

and/or their nominee) retained by the Second Party shall be disposed off by Second Party in the manner he deems fit.

Clauses 1, 2 and 3 of the Sale Deed dated 27/8/2014 are as under:

- 1. The Vendor and confirming party in conformity with the facts stated above, today handed over actual vacant possession of the schedule site to the Purchaser. Pursuant to this deed of conveyance, a separate Possession Certificate issued confirming the site number, dimension and boundary.*
- 2. The Purchaser shall be entitled to hold, possess, build upon and enjoy the schedule site hereby conveyed and the rents and profits received there from without any disturbance or interference by the Vendor/Developer/Confirming Party and/or any other person claiming through or under them.*
- 3. The Schedule Site is one of the intermediate site formed in the private residential layout formed by the Vendor for the benefit of members of Koutilya Housing Building Co-operative Society Ltd., i.e. the Conforming Party herein and accordingly conveyed the same to the purchaser under this sale deed.*

A perusal of the above clauses reveals that it is a case of sale of developed sites of the developer to individual

members of the co-operative society. The society was only acting as a facilitator. Therefore, it does not involve any works contract. It is a case of sale of plots to members of society. In such circumstances, it is settled law by now that the provisions of sec.194C are not applicable. We do not find any reason to interfere with the orders of the CIT(A) and accordingly, uphold the same.

10. We find that identical clauses are found in the sale deeds executed by the developer in favour of members of society in this case also. The fact that the payments are made as per stage of completion of work, doesn't have impact on the true nature of contract entered into. Respectfully following the decision of the Coordinate Bench in the case of Kautilya House Bldg. Co-operative Society Ltd., to which one of us i.e Hon'ble Accountant Member is author of the order, we hold that the respondent society is not under obligation to deduct tax at source on the payment made to the developer. Accordingly, we do not find any reason to interfere with the orders of the CIT(A), hence the appeal filed by the Revenue is dismissed.

11. In the result, appeals filed by the Revenue are dismissed.

Order pronounced in the open court on **29th Apr, 2016.**

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Bangalore
Dated : 29/04/2016

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.