

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

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.334/Bang/2014
(Assessment Year : 2005-06)

Shri. K. N. Surendra Reddy & Smt. Vinutha S. Reddy,
No.109, 17th C Main, V Block, Koramangala,
Bangalore 560 095 .. Appellant
PAN : AADHS6630R

v.

Asst. Commissioner of Income-tax,
Circle -7(1), Bengaluru .. Respondent

Assessee by : Shri. S. Venkatesan, CA
Revenue by : Shri. Bipin C. N, JCIT

Heard on : 13.07.2016
Pronounced on : 26 .08.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee it is aggrieved on an addition of Rs.1 crore under the head short-term capital gains.

02. Facts apropos are that assessee, a HUF had filed return of income declaring income of Rs.1,81,67,475/-. During the assessment proceedings it was noted by the AO that assessee had received a sum of Rs.1 crore from M/s. Shobha Inntercity Technopolis P. Ltd, towards development and other works, based on a development agreement dt.31.12.2004. The assessee had on the very same day sold land at S. No.95/2, Bellandur village, Varthur Hobli to the very same party wherein consideration shown was Rs.1,28,00,000/-. Assessee had shown short term capital gains from such sale in its return. However vis-a-vis the development agreement entered on the very same day assessee declared Rs.8 lakhs as business income taking 8% of the receipt of Rs.1 crore from M/s. Shobha Inntercity Technopolis P. Ltd. Assessee had estimated the profit since it had not maintained books of account. AO was of the opinion that the development agreement was a farce and it reflected the extra amount paid by M/s. Shobha Inntercity Technopolis P. Ltd, to the assessee as a part of consideration for sale of the land. As per the AO, agreements were dated even and the payments mentioned in the development agreement were received by the assessee much before the date of agreement itself. He therefore refused to accept the working of the assessee. Short-term capital gains was computed considering the sale consideration of Rs.2,28,00,000/- instead of

Rs.1,28,00,000/- claimed by the assessee. Addition resulted in prorata increase in capital gains.

03. Aggrieved assessee moved in appeal before the CIT (A). Argument of the assessee before the CIT (A) was that sum of Rs.1 crore received from M/s. Shobha Inntercity Technopolis P. Ltd, was for development works like levelling of land, fencing, construction of compound wall etc., As per the assessee sum received was in addition to the sale consideration. It could not be considered as a part of the capital gains. However the CIT (A) was not appreciative of the above contentions. According to him assessee's claim that it was carrying on any business of development was not substantiated. As per the CIT (A) development agreement merely stated that assessee was to carry out various development works in the scheduled property like laying of electricity lines, cables, pipes, levelling of land, fencing of property, construction compound wall, planting of trees etc., As per the Ld. CIT (A) scope of work was diverse and there was nothing on record to show any work was executed. Further as per the assessee, if the amount was considered as business receipt assessee was liable to do a tax audit which it had not done. He thus confirmed the order of AO.

04. Now before us, Ld. AR submitted that without doubt there were two agreements. Development agreement clearly specified the role of assessee as doing development works in the land. According to Ld. AR it was clearly in the nature of a works contract. Ld. AR submitted that no verification was done before the lower authorities came to a conclusion that assessee had not done any of the work mentioned in the development agreement. In any case according to him, two different agreements ought not have been combined by the lower authorities and non-existent capital gains fastened on the assessee.

05. Per contra, Ld. DR supported the orders of lower authorities. According to him, the two agreements were on the very same date. Assessee was camouflaging the consideration received on sale of land as development income.

06. I have perused the orders and heard the rival contentions. Contention of the assessee is that the sum of Rs.1 crore received in pursuance to development agreement was not a part of consideration for sale of land. It is true that there were two separate agreements, one for sale of land and the other called development agreement, entered by the assessee on the very same day with SICT. It is not disputed that the type of

work required to be done by the assessee as mentioned in the development agreement was in the nature of laying of electric lines, cable, water line, pipes, levelling of land, fencing of property, construction of compound wall etc., Lower authorities had not examined any person from SICT before concluding that the consideration mentioned in the development agreement was only a part of the consideration for sale of the land. If the assessee had done the work as mentioned in the development agreement it could very well claim such receipts to be business receipt. However, for ascertaining this, it was necessary to verify the records of SICT and also examine the concerned person from the said company. What was to be seen was whether assessee had actually executed such work. Just because consideration mentioned in the development agreement was received by the assessee prior to the date of agreement would not change the complexion of the transaction, if it was in the nature of a business transaction. In the fitness of things, I am of the opinion that the matter requires a fresh look by the AO. I set aside the order of the AO and remit the issue regarding short-term capital gains for consideration afresh in accordance with law.

07. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26th day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar