

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.533/Bang/2017
Assessment year : 2012-13

Shri Sohanlal, M/s. Ramdev Jewellers, # 1, M.G. Road, Kanakapura – 562 117. PAN: AGDPS 4826R	Vs.	The Income Tax Officer, Ward 2(2)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Smt. Swapna Das, Jt.CIT(DR)(ITAT)-2, Bengaluru

Date of hearing	:	17.05.2017
Date of Pronouncement	:	26.05.2017

ORDER

This appeal is preferred by the assessee against the order of
CIT(Appeals) *inter alia* on the following grounds:-

“1. The learned Assessing Officer had erred in making an addition of Rs. 33,79,546/- to the income of the appellant as income from business of Real Estate and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The authorities below have not properly appreciated the facts and circumstances of the case, resulting in erroneous conclusion about income and business activities and such a conclusion being against the facts of the case is totally to be ignored.

2. The authorities below have not appreciated that the share of land belonged to the appellant was transferred by the appellant on 02.04.2010, relevant to Assessment Year 2011-12 and have erred in taxing the income from business of the same transaction in Assessment Year 2012-13 being the year under appeal. Such an action having no force in law, being erroneous on facts is to be ignored and the addition made is to be deleted.

3. On the facts and circumstances of the case and on appreciation of evidence available, it would be clear that the conclusion of authorities below that the appellant had sold sites and that the appellant had entered into business venture would be totally erroneous and consequently the addition as made and sustained also being erroneous is to be deleted.

4. In any case and without prejudice, the computation of income, both sale price and cost are incorrect and the computation is excessive. The excessive income as computed, is to be deleted.

5. The Assessing Officer had erred in levying Interest U/s. 234A and U/s. 234B of I.T. Act, 1961. The interest having been levied erroneously is to be deleted.

6. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that impugned order be quashed or at least the addition as made be deleted and interest levied be also deleted.”

2. Though various grounds are raised, but they all relate to addition of Rs.33,79,546 to the income of the assessee as income from business of real estate.

3. During the course of hearing, the Id. counsel for the assessee has invited our attention to the fact that assessee has entered into a sale agreement with M/s. Royal Prime Developers for sale of converted land measuring 3 acres 20 guntas situated at Mallapura Village, Kasaba Hobli,

Nelamangala Taluk, Bangalore Rural District for a consideration of Rs.2,62,50,000. Consequent to sale agreement, the assessee offered long term capital gain for A.Y. 2011-12. Later on, flats were constructed and sale deeds were executed by the assessee being owner of the land to the prospective buyers as per terms of lease agreement and Memorandum of Understanding (MoU) executed between the assessee along with owners of different lands with the developer.

4. The AO during the course of assessment proceedings conducted an enquiry with M/s. Royal Prime Developers with whom the assessee has entered into sale agreement. M/s. Royal Prime Developers vide letter dated 18.02.2015 have made the statement, which was recorded by the AO in para 4 of his order. The statement made by the developer through its letter dated 18.02.2015 and the documents filed by it were thoroughly examined by the AO and he came to the conclusion that assessee had developed the sites in the land held by him through M/s. Royal Prime Developers and sold the sites to the purchasers directly and he was of the view that the assessee was engaged in the business of adventure and accordingly the income derived by the assessee was brought to tax under the head 'income from business'. Thereafter he calculated the business income of the assessee and made addition of the same.

5. Assessee preferred an appeal before the CIT(Appeals), but did not find favour with him. Now the assessee is before the Tribunal and has invited

my attention to the agreement for sale and MoU executed with the developer with the submission that by virtue of agreement of sale, assessee has handed over possession of the land to the developers against a sum of Rs.2,62,50,000, though payment was received on subsequent dates when the sale deed was executed. The corresponding capital gain was offered in the year of execution of sale agreement. Therefore, it is not proper to assess the business income in the hands of assessee as he has simply executed the sale deeds in favour of prospective buyers as per the terms of sale agreement as well as the MoU.

6. The Id. DR, on the other hand, has invited my attention that AO has categorically recorded in his order the *modus operandi* of these transactions. He has stated that the developer would develop the property and sell the same on behalf of land owners irrespective of ownership in the property. All the owners would execute the sale deed as per the agreed sale consideration and thereafter the assignment fee for development including margin would be transferred and paid to them on case to case basis. It means that assessee has received certain amounts over and above the fixed sale consideration of Rs.2,62,50,000. The assessee has not furnished the complete details, therefore AO was constrained to calculate the actual receipts in the hands of assessee either on account of capital gain or business income.

7. Having carefully examined the orders of lower authorities in the light of rival submissions, I find that under sale agreement, assessee has agreed for sale of land against a sum of Rs.2,62,50,000 which was to be received on subsequent dates. As per the MoU, assessee was required to execute the sale deeds in favour of prospective buyers. In these documents, there is no reflection of MoU of the transactions. But when the AO made necessary enquiry from the developer, the developer made its submissions in which it has been stated that irrespective of ownership of the property, the owners would execute the sale deed as per agreed sale consideration and thereafter assignment fee for development including margin would be transferred and paid to them on cost to cost basis. It was further stated by the authorized representative of the developer that sale consideration mentioned in the sale deeds are consideration received by the land owners and does not include assignment fees collected by the developer. The relevant observations of the AO in this regard is extracted hereunder for the sake of reference:-

“4. During the course of assessment proceedings enquiries were conducted with M/s. Royal Prime Developers with whom the assessee had entered into sale agreement. The M/s. Royal Prime Developers vide letter dated: 18.02.2015 has made the following submission:

- 1) They have entered into sale agreement with the assessee Mr. Sohanlal in respect 3 acre 20 guntas of land.

- 2) The developer stated that they have also entered into sale agreement with other land owners Mr. Khiwaram and Mr. Bholeram in respect of their properties
- 3) The developer stated that the sale agreements are entered in respect land totally measuring of 5 acres 25 guntas and out of this assessee land is 3 acre 20 guntas.
- 4) The Developer stated that modus operandi of the transaction is that they would develop the property and sell the same on behalf of the land owners. The developer further stated that irrespective of the ownership in the property all the owners would execute the sale deed as per agreed sale consideration and thereafter assignment fee for development including margin would be transferred/paid to them on case to case basis.
- 5) The Developer stated that they have developed the property based on agreement of sale without being registered with concerned authority and without having General Power of Attorney.
- 6) The Developer in his letter stated that they have made three types of transaction in sale of plots. The details given by the developer is reproduced hereunder:

1. Sale of plot against Bank Loans/Financial Institution Loans:

In this type of transaction loan facility is availed by the intended purchaser of plot and same had been paid directly to the joint bank account of the owners of the property maintained at the Canara Bank. For this kind of transaction our assignment fees were paid by the owners by way of cheques.

2. Sale of Plots against cash directly by the owner:

In this type of transaction, at the time of registration purchaser would pay the entire agreed sale consideration to the owner of the land by way of cash and at the same time we would collect our assignment fees by way of cash.

3. Collection on Behalf of the Owner

In this type of transaction, the intended purchaser would either paid the part of the entire agreed sale consideration to us or paid in full amount of the entire agreed sale consideration. When part payment is received by us at the time of registration, the balance amount of agreed amount of sale consideration would be paid directly by the purchaser to the owner and we, after retaining our assignment fees, have settled the balance amount to the owner, periodically by way of cheque. When full amount is received by us, after registration of the plot, the entire sale consideration has been paid, periodically to the owner after retaining our assignment fees.

- 7) The Authorised Representative of the Developer also stated that the sale consideration mentioned in the sale deeds are consideration received by the land owners and it does not include assignment fees collected by the Royal Prime Developers.”

8. From a careful perusal of the sale agreement, MoU and the letter of developer dated 18.02.2015, it appears that assessee has received certain amount over and above the amount payable under the agreement for sale at the time of execution of the sale deed in favour of prospective buyers. But the quantification of the amount is not done by the AO nor any formula was worked out. In the light of these facts, I am of the view that this issue requires readjudication by the AO in the light of the letter of the developer, agreement for sale and MoU. If need be, the AO may summon the developer and examine him in the presence of assessee. If the assessee has received amount over and above the sale consideration, the same

should be assessed as income of the assessee. Accordingly, this issue is restored to the file of Assessing Officer for adjudication afresh in the terms indicated above.

9. In the result, the appeals of the assessee stand allowed for statistical purposes.

Pronounced in the open court on this 26th day of May, 2017.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 26th May, 2017.
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.