

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE BENCH 'B'**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER  
AND SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA Nos.1372 to 1377/Bang/2017  
(Asst. Year – 2008- 09 to 2013-14)

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

Vs.

M/s REMCO (BHEL) House Building  
Co-operative Society Ltd.,  
No.36, 5<sup>th</sup> Main, 2<sup>nd</sup> Stage,  
RPC Layout,  
Bengaluru. . Respondent

Appellant by : Smt. Padmameenakshi, JCIT  
Respondent by : Smt. Anitha R, C.A

Date of Hearing : 1-2-2018  
Date of Pronouncement : 2-2-2018

**ORDER**

**PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :**

These are a bunch of six appeals by the Revenue, directed against the order Commissioner of Income-tax (Appeals) – 13, Bangalore dated 30/3/2017 for the assessment years 2007-08 to 2012-13. Since common issues are involved, these appeals were heard together and are being disposed off together by way of this order.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee is a co-operative society engaged in the activity of identifying suitable lands and forming a residential layout for allotment of residential sites to its members. The Assessing Officer ('AO') called for information u/s 133(6) of the Income-tax Act, 1961 (in short 'the Act') pertaining to the details of payments made to developers/contractors and tax deducted thereon. From the details filed, the AO noticed that the assessee had entered into certain agreements and MOU's, with the developer/contractor M/s Lion Estates and Properties for carrying out the above activities and had failed to deduct tax at source on payments made to these parties with whom it had entered into agreements for the acquisition of land and formation of residential layout for the benefit of its members (requiring the carrying out of civil work such as laying of roads, drainage, electrification, etc.); which were in the nature of composite work contracts. The AO, inter alia, noticed that the aforesaid layout is to be developed as per the assessee's specifications and the words procurement of land meant that the developer does not own any land as on the date of agreement. In that view of the matter, the AO held that the aforesaid work, carried out by the developer/contractor on behalf of the assessee, is the nature of works contract and therefore the provisions of Sec. 194C of the Act was attracted. Since the assessee has failed to deduct tax at source on payments its made to developers/contractors as required u/s 194C of the Act; AO held the assessee to be an assessee in default u/s 201(1) of the Act and also to be charged the consequential interest u/s 201(1A) of the Act. The

explanations put forth by the assessee did not find favour with the AO and he passed orders u/s 201(1) and 201(1A) of the Act for asst. years 2007-08 to 2012-13 dated 31/3/2016, 1/4/2016 and 5/4/2016 holding the assessee to be an assessee in default for failure to deduct tax at source on payments made by it to developer/contractor as required u/s 194C of the Act as it was in the nature of works contract.

2.2 Aggrieved by the orders u/s 201(1) and 201(1A) of the Act dated 31/3/2016, 1/4/2016 and 5/4/2016 for asst. years 2007-08 to 2007-08 to 2012-13, the assessee preferred appeals before the CIT(A)-13, Bangalore. The Id CIT(A) allowed the aforesaid appeals filed by the assessee for asst. years vide a common order dated 30/3/2017 holding that the assessee was not liable to deduct tax at source on the payments it made to developers/contractors as the provisions of sec. 194C of the Act were not attracted in the case on hand..

3.1 Revenue, being aggrieved by the orders of the CIT(A)-13, Bangalore dated 23/11/2016 for asst. years 2008-09 to 2014-15, has filed these appeals before the Tribunal raising the following common grounds for the aforesaid asst. years.

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

*2. The Id. 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 Ld. CIT(A) erred in deleting the demand u/s. 201(1) and 201(1A).*

4. *The Id. 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 for procuring of land, developing, conversion, plan for approval, drainage, laying roads etc. clearly attracted provisions of Section 194C.*

5. *The Id. 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 Section 194C is clearly applicable.*

6. *The Ld. 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 in ITA No. 1275 of 2006 and the TAT's order in the case of M/s. Kautilya House Building Co-Operative Society Limited in ITA No. 1324 to 1337/Bang/2015 dated 7.4.2016 while allowing the assessee's appeal which have been accepted by the Department only for low tax effect and not in principle.*

*For these and other grounds that may be raised during the course of appeal and actual hearing it is prayed that the order passed by the AO u/s. 201(1) and*

*201(1A) be upheld and the order of the learned Commissioner of Income Tax (Appeals) may be set aside and cancelled.”*

3.2 The grounds raised (Supra) relates to the single issue pertaining to the deletion of the demands raised u/s 201(1) and 201(1A) of the Act by the Id CIT(A) by following the decision of the co-ordinate bench of this Tribunal in the case of Kautilya House Building Co-operative Society in ITA No.1334 to 1337/Bang/2015 dated 7/4/2016, which had in turn followed the decision of the Hon’ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra).

3.3 The Id DR for Revenue was heard in support of the grounds raised (Supra). It is the contention of Revenue that the activity mentioned in the agreements entered into by the assessee with developers/contractors clearly indicate that they are composite contracts for acquiring land, forming residential layouts thereon with attendant civil works and therefore, since it amounts to a composite works contract, the provisions of section 194C of the Act are applicable. According to the Id DR, the judgment of the Hon’ble Karnataka High Court relied on by the Id CIT(A) (Supra) in distinguishable as in that case, the contract for purchase of sites was not a composite contract. It is further submitted that the two decisions of the Tribunal relied upon by the Id CIT(A) have not been accepted

by the Department and the same are being contested in further appeal by Revenue.

3.4 Per contra, the Id AR of the assessee supported the impugned orders of the Id CIT(A), and submitted that there is no error therein as the issue in dispute is covered by the orders of the co-ordinate benches of this tribunal which were relied on by the assessee i.e (i) Kautilya House Building Co-operative Society Ltd. (Supra); (ii) Karnataka Legislature Secretariat Employees Housing Co-op Society Ltd., in ITA Nos.1324 to 1337/Bang/2015 and (iii) Lokseva Housing Co-operative Society Ltd., in ITA Nos:219 to 225/Bang/2017. It was prayed that in the light of the above judicial precedents and facts of the case, the impugned order of the Id CIT(A) be upheld.

3.5.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. On an appraisal of the material before us, we find that there is nothing therein that shows that the assessee is liable to deduct tax at source on payments made to the developers in the years under appeal.

3.5.2 Now coming to the merits of the issue in dispute, it is seen that the assessee society has entered into agreement/MOU with developer/contractor M/s Lion Estates and Properties, Anekal Taluk, Bangalore District dated 1/1/2016, 20/9/2006, 1/11/2006 and 1/4/2008. From the aforesaid agreement/MOU's it is seen that the assessee society has entrusted the procurement of 100 acres of land at Adigare Kallahalli Village, Sarjapur, Anekal Taluk and development

of residential layout thereon with the conditions to execute civil works such as roads, common amenities, drainage, electrification, plan approval, conversion of lands from agriculture to non-agriculture status, etc., to the developer. However, the fact remains that the agreements essentially and basically relate to the purchase of land development and purchase of residential sites from the developer/contractors. The relevant portion of the agreement of the assessee society with M/s Lion Estates and Properties i.e; developmental contractor is as under:-

*“Whereas the first party is a Developer-cum-Builder, having a vast experience in the field of acquisition and formation of residential Layouts and formed private layouts in around the Bangalore Metropolitan city.*

*Whereas, the Second party is a Co-operative housing society whose in objective is to provide house sites, and accordingly has formed several layouts and distributed sites for the benefit of its members. However due to non-availability of land, it could not allot sites to all its members and hence in order to allot sites to the remaining members and also to meet the increasing demand, the society has resolved to acquire land in and around Bangalore.*

*Whereas the second party approached the First Party Developers and offered a proposal to develop*

*these lands and provide the society a private layout to an extent of about 100 acres in one Compact Block at Adigarakallahalli & S. Medahalli Village, SarjapuraHobli, Anekal Taluk, Bangalore District by obtaining necessary permission, conversion etc. and also to get the layout plan approved by BMRDA/Competent Authority to form the residential sites as per present law applicable with financial implication and involvement in various government departments.*

*Whereas, the first party also assured the second party that the 'NO OBJECTION CERTIFICATE' from all relevant government authorities prior to formation of layout will be obtained with the latest date for the Sy. No. in S.Medahalli and AdigaraKallahalli, SarjapuraHobli, Anekal Taluk, Bangalore.*

**NOW THE MEMORANDUM OF UNDERSTANDING  
WITNESSETH AS FOLLOWS**

1. ....

2. ....

3. *Whereas, the total consideration payable by the second party Society to the first party Developer is @ Rs. 3751- (Rupees three hundred seventy five only) per Square feet plotted Area which includes the sale consideration paid for purchase of the lands from the*

*First party Developer, Conversion charges and incidental expenses to be incurred in getting conversion of the land for residential purpose. Payment of the layout charges and other incidental expenses to be incurred in obtaining the layout plan approved by BMRDA/Competent and supervision charges if any to KPTCL (BESCOM) or any other authorities, etc. , and any other expenses to be incurred for the formation of the Layouts as per approved plan.*

4. *It is agreed by and between the parties that in case the land proposed to be sold is acquired by any Authorities, in that even, of the Second Party is entitled for all the benefits and compensation amount to the extent of their share of the amount paid to the first party and the balance if any shall e paid by the first party.*

5. *Whereas in pursuance of the said offer, the party Developer has agreed to develop the lands into a residential layout in according to the terms and conditions for payment of consideration in the following manner.*

6. *On the execution of this M.O.O by parties, the Second party Societies pay a sum of Rs. 25,00,000(Rupees Twenty Five Lakhs Only) to the First party Developers as first advance vide cheque bearing*

*No.543741 dated 0110112006. This advance amount shall be adjusted at time of final settlement.*

*7. It is responsibility of the party of the First Party they would form a layout by providing the following civic amenities:*

- a) Formation of Roads with side drains and culverts.*
- b) Asphaltting of Roads as per residential layout norms.*
- C) Laying of sanitary lines with manholes.*
- d) Laying of water pipes.*
- e) Drilling of Bore Wells with sufficient water source, with overhead Tank and sump.*
- f) Providing and erecting of electricity poles. Conductor, transformers, streetlights etc.,*
- g) Name Board with site numbers, layout plan, display board etc.,*
- h) Planting of saplings and tree guards.*
- i) Water and Sanitary points to each plot.*
- j) Provision of septic tank.*
- k) Arch & Compound wall with security room will be provided at the front portion of the project.*

*8. The First party Developer agreed to complete the project and deliver the possession of the entire converted land along with the plan approval from BMRDA to the Second party Society within a period of Eighteen months from this M.O.U.*

*9. The First party Developer shall keep the Second party Society fully indemnified and harmless against all proceedings, claims or damages that may incur by the acts of the first party Developer.*

*10. The second party Developer shall keep the Second party society fully, indemnified and harmless against all proceedings, claims or damages that may incur by the acts of the first party developer.”*

3.5.4 On appeal, the Id CIT(A) on perusal of the aforesaid clauses of the agreement has arrived at the conclusion that the payments for the purchase of the sites was calculated on sq. ft. area of the property and the amount was paid for the purchases of completed property and not for development work carried out. The Id CIT(A) found that the agreements were only for purchase of sites and does not involve any ‘works contract’. In our view, the aforesaid conclusion/finding of the Id CIT(A) cannot be faulted and the same is a correct reading of the scope of the agreements; which has to be treated as a whole and not in piece meal manner. The mere fact that the contractor/developer were required to layout roads and undertake other activities before the delivery of the completed sites cannot be either determinative of the facts or need to mean that the agreements entered into by the assessee society is a composite contract and amounts to a works contract. Thus, in our considered opinion, the case of the assessee is squarely covered by the decisions of the Hon’ble Karnataka High Court in the

case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra); the relevant portion of which judgment is extracted hereunder:-

*“the short that fell for the consideration for the Assessing Officer, the Commissioner of Income-tax and the Tribunal was whether if the assessee has agreed to purchase the sites from a vendor if any sale consideration is paid on instalment basis, the assessee is required to deduct the tax at source or not. When the assessee is only a purchaser, if any advance sale consideration is paid, the assessee has no business to deduct the tax at source as it is for the seller of the sites to pay the capital gains depending upon the tax payable by him.”*

3.5.5 In the aforesaid case decided by the Hon’ble Karnataka High Court (Supra), the co-ordinate bench of this Tribunal had rendered the following finding:-

*“....the agreement between Sh. Lakshman, and Karnataka State .Judicial Department Employees House Building Co-operative Society begins to operate only after the layout is formed and so can never be construed*

*as an agreement in the nature of works contract. A contractor is one who I undertakes to do a particular work-for a price. No such contract is envisaged in this agreement. This agreement envisages purchase of specified intermediate sites at a price after Sri Lakshman completes the job of formation of a layout either in full or in part. We accordingly hold that the assessee was not required to deduct tax in this regard.”*

3.5.6 We find that Revenue’s contention that the aforesaid judgment of the Hon’ble Karnataka High Court in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra) is distinguishable from the case on hand has also been considered on similar fact situation, by co-ordinate benches of this Tribunal in the cases of Karnataka State Co-operative Subhadra Housing Federation Ltd. (ITA Nos.1301, 1307 to 1313/Bang/2015), Railway House Building Co-operative Society (ITA Nos.1139, 1140 & 1344/Bang/2015 & 1343/Bang/2014), and in the case of Kautilya House Building Co-operative Society Ltd., (ITA Nos. 1324 to 1337/Bang/2015 dated 7/4/2016. The Id CIT(A) has observed that in these cases (Supra) also, the contents of the agreements were similar to those of the assessee in the case on hand and the various co-ordinate benches of this Tribunal after examining the same has applied the ratio of the judgment of the Hon’ble Karnataka High Court in the case of Karnataka State Judicial Department Employees House Building

Co-operative Society Ltd., (Supra) and have held that there was no requirement for deduction of tax at source u/s 194C of the Act. Respectfully following the ratio of the decision of the Hon'ble Karnataka High Court in the case of Karnataka State Judicial Departmental Employees House Building Society Ltd., (Supra) and of the co-ordinate benches of this Tribunal in the cases of Karnataka State co-operative Subhadra Housing Federation Ltd., (Supra), Railway House Building Co-operative Society Ltd, (Supra), Kautilya House Building Co-operative Society Ltd., (Supra), Karnataka Legislature Secretariat Employees Co-operative Employees Co-operative Society Ltd., (Supra) and in the case of Telecom Employees Co-operative Society Ltd., (Supra). We find no reason to interfere with or deviate from the view taken in these decisions which have been rendered on similar facts and issues as in the case on hand. We, therefore, uphold the impugned orders of the Id CIT(A) deleting the demands raised by the AO u/s 201(1) and 201(1A) of the Act. Consequently, the grounds raised by the Revenue (Supra), being devoid of merits, are dismissed.

4. In the result, Revenue's appeals for asst. years 2007-08 to 2012-13 are dismissed.

Order pronounced in the open court on **2<sup>nd</sup> February, 2017.**

Sd/-

**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Bangalore

Dated : 2/2/2018

Vms

Sd/-

**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

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

By order

Sr. Private Secretary, ITAT, Bangalore.