

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1550/PUN/2014

निर्धारण वर्ष / Assessment Year : 2004-05

Mangesh A. Tupe,  
S. No. 147, Magarpatta,  
Hadapsar, Pune-411028

PAN : AELPT5216Q

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward – 11(1), Pune

Assessee by : Shri Suhas P. Bora  
Revenue by : Dr. Vivek Agarwal

सुनवाई की तारीख / Date of Hearing : 17-11-2017

घोषणा की तारीख / Date of Pronouncement : 09-02-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-I, Pune dated 28-02-2014 for the assessment year 2004-05.

2. The brief facts of the case as emanating from records are : During the period relevant to the assessment year under appeal, the assessee executed a development agreement dated 19-01-2004 for sale of development rights in favour of M/s. City Corporation Limited for a consideration of Rs.31,98,820/-. The assessee did not file return of income disclosing income from transfer of such rights. Notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 14-03-2011. The assessee did not respond to notice. Thereafter, several notices were issued to the assessee u/s. 142(1) of the Act, the assessee remained silent and never appeared before the Assessing Officer. The Assessing Officer was constrained to complete the assessment u/s. 144 of the Act. The Assessing Officer observed that as per agreement consideration is Rs.31,98,820/-, whereas, as per Government valuation for stamp duty purpose, the value of land is Rs.54,20,320/- as on the date of execution of development agreement. The Assessing Officer determined the value of land by invoking the provisions of section 50C of the Act at Rs.54,20,320/- and computed Long Term Capital Gain as Rs.25,05,172/-.

Aggrieved by assessment order dated 01-12-2011 passed u/s. 144 r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the findings of Assessing Officer and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal against invoking of the provisions of section 50C, as well as computation of Long Term Capital Gain at Rs.25,05,172/-.

3. Shri Suhas P. Bora appearing on behalf of the assessee submitted at the outset that the assessee has raised 5 grounds in appeal, the ground

No. 1 of the appeal is not pressed. The ground Nos. 4 and 5 are general in nature. Thus, the effective grounds for adjudication before the Tribunal are ground Nos. 2 and 3 which are as under :

- “2. *The Learned Commissioner of Income Tax has further erred in confirming the capital gain worked out by the Assessing Officer on sale of the land amounting to Rs.25,05,172/- without verification of the facts of the case and not appreciating the factual position of the case.*
3. *The Learned Commissioner of Income Tax has also erred in applying provisions of section 50C of the Income Tax Act, 1961.”*

4. The ld. AR of assessee submitted that the assessee vide Development Agreement dated 17-01-2004 with Shri Popat Keshav Tupe and others acquired development rights in respect of land situated at Grampanchayat Sadesatranalli, Hadapsar for a consideration of Rs.23,00,000/-. The copy of the development agreement is at pages 1 to 33 and true English translation of the Development Agreement is at pages 104 to 118 of the paper book. Two days thereafter, the assessee vide Development Agreement with M/s. City Corporation Limited in respect of same land transferred the Development Rights against consideration of Rs.31,98,820/-. The translated copy of the agreement is at pages 34 to 61 of the paper book and the English translation is at pages 119 to 131 of the paper book. The ld. AR submitted that admittedly, before the Assessing Officer, the assessee did not appear. The Assessing Officer treated the land to be ancestral and computed Long Term Capital Gain by invoking the provisions of section 50C of the Act. The Assessing Officer while computing Long Term Capital Gain disturbed both, the sale price of land, as well as cost of acquisition of land. The ld. AR submitted that the land in question is not an ancestral land of the assessee. The assessee had acquired development rights in the land vide development agreement dated

17-01-2004 and two days thereafter executed another development agreement dated 19-01-2004 with M/s. City Corporation Limited for sale of Development rights. Thus, the intention of the assessee was to trade in land and not to keep the land as investment. The intention of the assessee is evidently clear from execution of the Development Agreement dated 17-01-2004. Since, the assessee had acquired the development rights in the land for business purpose the provisions of section 50C are not attracted.

4.1 The ld. AR further submitted that a search action u/s. 132 was carried out at the residential premises of the assessee on 21-02-2008. The assessment order u/s. 143(3) r.w.s. 153A for the assessment year 2004-05 was passed on 31-12-2009. The said assessment order is at pages 80 to 85 of the paper book. The income arising from development agreement executed by assessee on 19-01-2004 with M/s. City Corporation Limited has already been subject to tax under the head "Income from Other Sources". Therefore, any addition in respect of income arising from transaction of sale of land as mentioned in agreement dated 19-01-2004 would result in double taxation of income. The ld. AR further furnished copy of certificate giving the details of cheque issued by M/s. City Corporation Limited to the assessee in respect of land comprising in Survey No. 187/1B at Grampanchayat Sadesatranalli, Hadapsar.

5. On the other hand Dr. Vivek Agarwal representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of assessee.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered various documents placed on record by assessee in the form of paper book. It is contention of the assessee is that the development rights in respect of land acquired by assessee vide development agreement dated 17-01-2004 were further transferred to M/s. City Corporation Limited vide development agreement dated 19-01-2004. However, on perusal of both the agreements we find that the description of property given in para 1 of the development agreement dated 17-01-2004 is different from the schedule of property annexed with agreement dated 19-01-2004 between M/s. City Developers and Promoters Limited and assessee & others.

7. The properties which is subject matter of agreement dated 17-01-2004 between the assessee and Shri Popat Keshav Tupe and others is as under :

- i. Survey No. 197/5 admeasuring 00 Hector 66 Aar.
- ii. Survey No. 197/3C admeasuring 00 Hector 20 Aar.
- iii. Survey No. 187/1B admeasuring 00 Hector 29.33 Aar.
- iv. Survey No. 187/12 admeasuring 00 Hector 24 Aar.
- v. Survey No. 188/1A admeasuring 00 Hector 13.66 Aar.

situated at Grampanchayat Sadesatranalli, Hadapsar. Whereas, the properties for which development agreement dated 19-01-2004 was executed between M/s. City Developers and Promoters Limited and assessee and others is as under :

- i. Survey No. 187/1B admeasuring 00 Hector 12.23 Aar from and out of total area 00 Hector 88 Aar.

- ii. Survey No. 187/12 admeasuring 00 Hector 10 Aar from and out of total area 00 Hector 24 Aar.
- iii. Survey No. 188/1A admeasuring 00 Hector 5.69 Aar from and out of total area 00 Hector 41 Aar.
- iv. Survey No. 187/3C admeasuring 00 Hector 8.34 Aar from and out of total area 00 Hector 20 Aar.
- v. Survey No. 187/5 admeasuring 00 Hector 2.75 Aar from and out of total area 00 Hector 20 Aar.

situated at Grampanchayat Sadesatranalli, Hadapsar.

A perusal of description of above properties clearly indicate that the survey numbers giving description of property in development agreement dated 17-01-2004 are different from survey numbers of land which are subject matter of agreement dated 19-01-2004. Even the total area of land is different in both the agreements. Both the authorities below have failed to examine that the land which is subject matter of development agreement dated 19-01-2004 is different from the land which was mentioned in development agreement dated 17-01-2004. Thus, in the first instance the land which is subject matter of Long Term Capital Gain needs to be identified.

8. The ld. AR has placed on record a copy of assessment order dated 31-12-2009 passed u/s. 143(3) r.w.s. 153A for assessment year 2004-05. The contention of the assessee is that the transaction which has been subjected to tax in the present proceedings has already been offered to tax in proceedings arising from search operations u/s. 153A of the Act. We find that this plea has been raised by assessee for the first time before the

Tribunal. During the assessment proceedings the assessee never appeared before the Assessing Officer and apparently no such ground was raised by assessee before the First Appellate Authority. Therefore, we deem it necessary to remit this appeal back to the file of Assessing Officer for necessary verification and identification of the land before proceedings with the assessment of any gain arising from sale of land. The Assessing Officer shall also verify whether the gain arising from sale of agreements dated 19-01-2004 has been offered to tax by the assessee in return of income filed in pursuance to notice u/s. 153A of the Act.

9. A perusal of certificate placed on record by the assessee from M/s. City Corporation Limited admitting the payment of Rs.31,98,820/- reveal that the payment has been made to the assessee in respect of land comprising in Survey No. 187/1B at Sadesatra Nali, Hadapsar. It is not clear from the certificate whether the payment of Rs.31,98,820/- is in respect of entire land comprising in Survey No. 187/1B or part of the land in the said survey number. The total area of land has not been specified in the said certificate. Therefore, the said certificate is not of any relevance.

10. Thus, in view of our above findings we remit this issue back to the file of Assessing Officer for de-novo adjudication in line with our above observations. The Assessing Officer before deciding this issue afresh shall grant reasonable opportunity of hearing to the assessee, in accordance with law. Accordingly, ground Nos. 2 and 3 of the appeal are allowed for statistical purpose.

11. The ground No. 1 of the appeal has not been pressed, thus, the same is dismissed as not pressed. Ground Nos. 4 and 5 are general in nature, hence, requires no adjudication.

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

Order pronounced on Friday, the 09<sup>th</sup> day of February, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> February, 2018

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-I, Pune
4. आयकर आयुक्त / The CIT-I, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune