

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1378/Bang/2017
Assessment year : 2008-09

Income Tax Officer (TDS), Ward – 3(2), No.59, 4 th Floor, HMT Bhavan, Bellary Road, Bengaluru – 560 032.	Vs.	M/s. Sri Lakshmi Co-operative Housing Society Ltd., Sri Mailarlinga Nilaya, #1211, 1 st Main Road, 1 st Cross, 1 st Phase, 5 th Stage, BEML Layout, Rajarajeshwarinagar, Bengaluru – 560 098. PAN : AAAAL 2556 M
APPELLANT		RESPONDENT

Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT
Assessee by	:	Shri. G. V. V. S. Murthy, Advocate

Date of hearing	:	20.03.2018
Date of Pronouncement	:	23.03.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of CIT(A), *inter alia*, on the following grounds:

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 levelling, constructing drawings and culverts, metalling and asphaltting roads, providing electricity, etc. clearly indicates that the contract included "works contract" which attracts 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 ITAT'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.

2. During the course of hearing, the learned counsel for the assessee has invited our attention to the order of the CIT(A) with the submission that CIT(A) has adjudicated the issue in the light of the judgment of 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. Besides he has also followed the order of the Tribunal in the case of M/s. Kautilya House Building Co-Operative Society Limited in ITA No. 1324 to 1337/Bang/2015. Since the CIT(A) has adjudicated the issue following the judgment of the jurisdictional High Court, no interference in his order is called for.

The learned DR however placed reliance upon the order of the AO.

3. Having carefully examined the order of the CIT(A), we find that CIT(A) has decided the issue following the judgment of the jurisdictional High Court in the case of M/s. Karnataka State Judicial Department Employees House Building Co-Operative Societies (supra). The relevant portion of the order of the CIT(A) is extracted hereunder for the sake of reference:

“I have gone through and carefully considered the orders of the assessing Officer, the written submissions filed by the appellant, relevant case laws and other material on record. The main issue in the present appeals is whether there was an obligation on the part of the appellant society to deduct tax at source in relation to the amounts paid by the appellant society to the developers. To determine the true character of the payment, it is pertinent to revisit the relevant clauses of the Agreements which are extracted in the order of the Assessing Officer (from the agreement with M/s. Lakshmi Narasimha Enterprises). The same are reproduced hereafter:

WHEREAS the First Party is the House Building Co-operative Society registered under the provision of Karnataka Co-operative Society's Act, interallia carrying on the business of acquiring the lands, forming the layout, distributing the sites to its members and having identified suitable land for developing them in to layouts, approached to the Second Party with a proposal as to the layout formation.

*AND WHEREAS the SECOND PARTY, is an estate agent contractor carrying on the business of doing private layout house sites around Bangalore **city**, accepted the proposal which interallia, purchase of the identified lands, **more** fully described in the schedule hereunder and hereafter and referred to as the schedule property; conversion of schedule property into residential property; and the development of the same into a layout, after obtaining **required** permissions and clearances from the Government.*

AND WHEREAS the SECOND PARTY will get the layout plan approved by the Competent Authority.

***WHEREAS** the FIRST PARTY after the negotiations with the SECOND PARTY agreed for the proposals on the following terms and conditions.*

NOW THEREFORE THIS WITNESTH AS HEREUNDER:

- 1. First Party required 900 sites in various dimensions i.e. 30 x 40 = 700 sites, 40 x 60 = 150 sites and 50 x 80 = 50, same is accepted by the Second Party.*
- 2. In consideration of a Sum of Rs. 410/- Sq.ft (Rupees Four Hundred and Ten Only) towards the developed sites cost. The Second Party shall complete the same within a period of 12 months.*
- 3. The Second Party hereby agreed to provide the fit land for residential layout which includes scaling, removal of boulders, sour filling, levelling, formation of drainage along with roads etc., for consideration to be given to the Second Party.*
- 4. The land shall be measured, stone and boulders removed with necessary earth work like digging, scour filling, levelling and removing of the clay/ sand and transporting it to a distance, drainage pits to be dug, digging of ditches.*

5. *The First Party has agreed to pay the Second Party an amount calculated at Rs. 410/- Per Sq.ft for actual layout formed towards cost of sites towards layout works, specified as asphaltting of roads, drainage work, culverts and providing water and UGD, underground cable electricity line, digging of bore-well, and construction of sump tank, septic tank etc., within the layout an providing UGD & water supply lines for individual sites to avoid the road cuttings.*

6. *On completion of layout work in all respects, the Second Party agreed to get the sites registered into First Party or its members.*

7. *The First Party agrees to pay total cost for the individual developed site to the Second Party before registering the sale deed or CPA in favour of the First Party or its members.*

8. *The Parties have agreed that the amount towards the developed site cost shall be paid to the Second Party as per the following schedule by the First Party on the basis of progress of the work.*

a. The First Party has this day paid an advance as party of payment of the sale consideration, in a sum of Rs. 41,00,000/- (Rupees Forty One Lakh Only) by the way of Cheque bearing No. 371101 dated: 24.11.2006, drawn on Syndicate Bank, J.C. Road Branch, Bangalore-02. Further they have agreed to pay the balance amount in Four equated monthly instalments out of which the first instalment amount will be paid before 31st December 2006.

9. The Second Party covenants as hereunder:

a. The Second Party shall carry out and complete the layout works as per the approved plan.

b. The Second Party agrees to provide all civic amenities as mentioned hereunder:

1. The residential sites to be formed of different dimensions as per the First Party request.

2. Sites to be marked and boundary stone fixed.

3. Main road and cross road should be metalled and chip carpeted.

4. The sites in the layout to be provided with side drains, culverts, water supply main line with CI pipes, underground sewerage lines for individual sites, underground cable electricity line and street lights including supervision charges payable to KPTCL and outside feeder work.

5. *Water supply to the site owners to be provided through bore-wells and overhead tank with Sump tank.*
6. *Required number of septic tanks of suitable capacity in the layout.*
7. *Tree plant & tree guard shall be provided.*
8. *Sufficient number of operational bore-wells in different parts of the layout to be provided for proper and continuous water supply to the layout.*
9. *The Second Party agrees and undertakes to engage their own watchman, contractors, site engineers and labour force etc., for forming the layout work.*
10. *The First Party is entitled to inspect the layout at any time during the progress of work.*
11. *The First Party is entitled to change the specification and also suggest minor changes by giving written request to the Second Party in that regard.*
12. *The First Party as already stated above shall complete the layout work within a period of 12 months subject to extension by mutual agreement.*
13. *The Second Party shall make out a marketable title to the schedule property hereditaments and agreed to be sold free from all encumbrances and shall at their own cost and expenses, clear all defects in title and all encumbrances and claims on or to the said property including all claims by way of sale, exchange, mortgage, trust inheritance, possession, easement, lien or otherwise.*
14. *The Second Party states that the property agreed to be **developed** is free from all encumbrances and is not subject to **lispendence or** attachments and if any encumbrances **lispendence or** attachment charge or any claim by minors and claim for maintenance and found or discovered by the existing the same shall be cleared by the Second Party at their own cost and expenses before the expiry of the time for completion of the sale.*
15. *The Second Party shall execute the sale deed or GPA of Conveyance or assignment and all other assurances in favour of the First Party or its members or such person or persons as the First Party may direct and nominate.*
16. *The Second Party shall deliver the originals of all documents of title in respect of the Schedule property to the First Party after completion of the layout work.*
17. *The stamp duty, registration charges for execution and registration if executed sale deed or GPA shall be borne by the First Party.*

18. *Both the First Party and Second Party shall have the right to sue for specific performance of this contract.*
19. *In case the Second Party commits any default or cause any loss by negligence, improper, substandard works and puts the First Party into loss, delay and inconvenience the First Party is at liberty to take such action open to it and proceed against the Second Party for recovery of the loss.*
7. *As noted by the Assessing Officer, the other Agreement/MOU with the other developer/ contractor also contains similar clauses. On perusal of the relevant clauses of the said Agreement, it is clear that the payment was calculated on sq.ft. area of the property and was paid for the purchase of completed property and not development work carried out. The agreement is only for purchase of developed sites and does not involve any works contract.*
8. *The issue is clearly covered by the decision of Hon'ble Karnataka High Court in the case of **Karnataka State Judicial Department Employees House Building Co-operative Society Ltd. (ITA 1275/2006)**. The relevant extract of the said judgement is reproduced as under -*

".....the short question 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 deduc: 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."

In the said case, earlier Hon'ble ITAT, Bangalore had held that -

"....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 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.

9. *Similar decision has been rendered by Hon'ble ITAT, Bangalore in the case of M/s Kautilya House Building Co-op. Society Ltd. (ITA No. 1324 to 1337/Bang/2015, order dated 07.04.2016). The facts in the case of the appellant are similar to the facts in the cases referred to above. Respectfully following the decisions of the Hon'ble High Court of Karnataka and ITAT, Bangalore, it is held that the appellant society was not required to deduct tax at source from the payments made to the developers. Accordingly, the demand raised u/s 201(1) and 201(1A) is deleted. Ground number 2 is allowed."*

4. Since no specific infirmity is pointed out in the order of the CIT(A), we confirm his order as he has adjudicated the issue following the judgment of the jurisdictional High Court.

5. In the result, appeal of the Revenue stands dismissed.

Pronounced in the open court on 23rd March, 2018.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 23rd March, 2018.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. Guard file |

By order

Sr. Private Secretary,
ITAT, Bangalore.