

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3912/MUM/2014  
Assessment Year: 2007-08**

DCIT-24 (3), Room No. 701 C-11, 7 <sup>th</sup> floor, B.K.C., Bandra (E), Mumbai-400051.	Vs.	Mr. Awadhnarayan Laxmi Singh, 204, Awadh House, S.V. Road, Goregaon (W), Mumbai-400062.
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**Appellant**

**PAN No. AAGPS0470C  
Respondent**

**C.O. No. 238/MUM/2017  
Assessment Year: 2007-08**

Mr. Awadhnarayan Laxmi Singh, 204, Awadh House, S.V. Road, Goregaon (W), Mumbai-400062.	Vs.	DCIT-24 (3), R. No. 701 C- 11, 7 <sup>th</sup> floor, B.K.C., Bandra (E), Mumbai-400051.
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**PAN No. AAGPS0470C  
Appellant**

**Respondent**

Revenue by	:	Mr. N.S. Jangpangi, CIT-DR
Assessee by	:	Mr. Vimal Punmiya, AR

Date of Hearing : 16/07/2018  
Date of pronouncement: 31/07/2018

**ORDER**

**PER N.K. PRADHAN, AM**

The appeal by the revenue and the cross objection by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-34, Mumbai [ in short 'CIT(A)'] and arise out of the

assessment order passed by the Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. We find that the contentious issue raised in the cross-objection filed by the assessee in respect of his claim that the capital gains accrued in the assessment year (AY) 2002-03 and not in AY 2007-08 has been decided in favour of the assessee by ITAT 'A' Bench, Mumbai in the case of *Shri Awadhnarayan Singh v. DCIT* (ITA No. 7363/Mum/2010) & *Shri Satyaprakash Singh v. DCIT* (ITA No. 7982/Mum/2010) for AY 2007-08; *DCIT v. Shri Awadhnarayan Singh* (ITA No. 6062/Mum/2011) for AY 2007-08; *Jaiprakash L. Singh v. DCIT* (ITA No. 1574/Mum/2013) for AY 2007-08.

3. In response to a query raised by the AO, the assessee submitted during the course of assessment proceedings that he is one of the co-owners of the land situated at Goregaon (W). The assessee along with the co-owners had entered into a development agreement on 09.10.2002 with M/s Brickwork Trading Pvt. Ltd (BTPL) for development of the land and construction of building. The land belonged to Shri Laxmi Singh Udit Singh, father of the assessee who died intestate at Mumbai on 15.03.1996 leaving behind his widow Smt. Kaushalya Laxmi Singh, his five sons and five daughters. Smt. Singh and her five daughters had relinquished their rights in favour of their five sons. One son Dr. Omprakash Singh also died intestate at Mumbai on 07.06.1991 leaving behind his widow Smt. Neelam Omprakash Singh, son Shri Aniruddha Singh and daughter Natasha. Therefore, the said property belonged to four sons of late Shri Laxmi Singh, sharing 1/5<sup>th</sup> share each

and the balance 1/5<sup>th</sup> share in the said property belonged to Smt. Neelam Omprakash Singh along with her son and daughter. Thus each son inherited 1/5<sup>th</sup> share in the land. They entered into an agreement on 09.10.2002 with BTPL for the development of the land and accordingly executed power attorney on the above date. According to the assessee, the possession of the land was handed over to the developers at that point of time itself.

The AO observed that the said terms and conditions were further amended vide 'Deed of Rectification' dated 09.01.2007, wherein the assessee is allotted four flats, two penta houses and shop area in Ozone, in addition to the revenue which is already shown in the previous years as per the ratio agreed upon by the assessee and the developer. In addition to this, the assessee was also entitled for 8% of shopping area in the shopping mall known as Ozone.

The AO, after examining the details brought to tax long term capital gains of Rs.30,99,88,067/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) followed the order of her predecessor in the case of another co-owner Shri Satyaprakash Singh for AY 2008-09 and AY 2009-10 and in the case of Shri Harinarayan L. Singh and Shri Jaiprakash L. Singh for AY 2008-09, wherein the addition made on account of notional income of flat, pent house, shop and area in E-zone was deleted. The Ld. CIT(A) thus concluded:

"6.4 Since there is no change in the facts and circumstances and in view of detailed discussion above, addition made by the Assessing officer based

Market sale Price of Brickworks Trading Pvt. Ltd in respect of O-Zone Flat (Rs.3,40,86,000/-), Pent House (Rs.3,59,25,799/- and shops (Rs.2,92,50,000/-) totally amounting Rs.9,92,61,799/- is hereby deleted. Similar addition made in respect of E-Zone shops on notional basis amounting Rs.16,97,10,000/- is also deleted. However, with regard to O-ZONE issue is already adjudicated by my predecessor CIT(A) vide para 4.3 for considering assessment year and allow the cost of acquisition at 29.21% of total acquisition cost and also allowed the share of appellant amount Rs.2,15,15,103/- in expenditure actually made by the owners for making the land free from tenements by evacuating them and making it free from any encumbrances as cost of improvement. Thus, amount of Rs.2,15,15,103/- could have been allowed by the assessing officer along with the cost of acquisition while computing the capital gain during the assessment proceedings. The Assessing officer is accordingly directed. This ground of appeal is partly allowed.”

5. The main contention of the Ld. counsel of the assessee is that the “transfer” of the property took place in the year relevant to the AY 2003-04 and hence the capital gains assessed in the AY 2007-08 was not in accordance with law.

6. On the other hand, the Ld. DR relied on the order passed by the AO and submitted that the assessee have got their respective share only in the year relevant to the AY 2007-08 and they have also declared the same in their respective return of income. Accordingly, he submitted that the assessee be precluded from taking a different stand at this point of time.

7. We have heard the rival submissions and perused the relevant materials on record. It is found that the same issue arose before the

ITAT 'A' Bench, Mumbai in the case of the other co-owners i.e. *Shri Awadhnarayan Singh* (ITA No. 7363/Mum/2010) & *Shri Satyaprakash Singh* (ITA No. 7982/Mum/2010) for AY 2007-08. Referring to and relying upon the judgment of the Hon'ble Bombay High Court in the case of *Chaturbhuj Dwarkadas Kapadia v. CIT* 260 ITR 491, the Tribunal held as under:

“10. We feel it necessary to discuss about the facts of the case of Charubhuj Dwarkadas Kapadia, referred supra, in order to understand the legal proposition laid down by the Hon'ble Bombay High Court. In that case, the assessee entered into an agreement on 18.8.1994 to sell the property to a builder for a consideration of Rs.1.85 crores with a right to the builder to develop the property in accordance with the relevant rules. The assessee shall grant an irrevocable license to enter upon the assessee's share of the property upon receipt of necessary permissions and approvals and also the NOC under Chapter XXC of the Income tax Act. By 31.3.1996, the builder obtained most of the approvals and also paid major portion of the consideration. The power of attorney was executed in favour of the builder on 12.3.1999. The assessee offered the capital gains in the assessment year 1999-2000, since the licence and power of attorney were given in the financial year 1998-99. The AO and ITAT held that the capital gains is assessable in the assessment year 1996-97 since substantial compliance of terms of agreement has taken place before 31.3.1996. However, the High Court held that the impugned sale agreement is only a “Development agreement” and hence the capital gain is assessable in the year in which the said agreement was entered into. Thus the contentions of both the assessee as well as that of the revenue with regard to the year of chargeability were rejected.

11. Thus, as per the legal proposition laid down by the Hon'ble Bombay High Court in the above cited case, the factors such as "date of possession, substantial compliance of the contract etc." are not relevant in the case of development agreements. The High Court has observed that the aim of the builder under the development agreement was to make profits by completing the building and therefore, no interest in the land stands created in their favour under such agreements. Thus the said agreements are only a mode of remunerating the builder for his services of constructing the building. The High Court has noticed that the assesseees were entering into development agreements with the builders by conferring privileges of ownership to them and were claiming that the capital gains would arise only after registering the conveyance deed. Accordingly the High Court held that the section 2(47)(v) was brought into the statute to plug this kind of loophole. Thus by considering the object of the Development Agreements and also the purpose of introduction of section 2(47)(v) of the Act, the Hon'ble High Court has finally held that the year of chargeability in the case of Development Agreements is the year in which the contract was executed.

12. In view of the foregoing discussions, we are of the view that the assesseees herein succeed in the additional ground urged by them. Accordingly, we hold that the capital gain arising on entering of development agreement is not taxable in the assessment year 2007-08, but taxable in AY 2003-04.

13. In view of the above, we set aside the assessment of capital gains made in AY 2007-08 and hence all the grounds urged by both the parties before us become infructuous.

14. In the result, the appeals filed by the assesseees are treated as allowed and the appeals of the revenue are dismissed."

8. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the cross-objection raised by the assessee and dismiss the appeal filed by the revenue.

**Order pronounced in the open Court on 31/07/2018.**

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/07/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**