

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH, PANAJI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA NOS.	Assessment year	APPELLANT	RESPONDENT
241/Pan/2017	2008-09	Smt. Sunanda Anil Salve C.N. Hunnargikar & Co. Chartered Accountants, 204, Mahalaxmi Apart. College Road, Belgaum -590 001 PAN: AHCPS 1286 R	ITO, Ward-1, Nipani
242/Pan/2017	2008-09	Smt. Kalpana Ajit Salve PAN: ACBPA 7709 D	ITO, Ward-1, Nipani
243/Pan/2017	2008-09	Smt. Surekha Arun Salve PAN: AHCPS 1285NB	ITO, Ward-1, Nipani
244/Pan/2017	2008-09	Late Adarsh alias Abhijit Ajit Salve PAN: AWGPS 8638 C	ITO, Ward-1, Nipani

Appellant by	:	Shri Pramod Vaidya
Respondent by	:	Shri Y. V. Raviraj

Date of Hearing	:	13.11.2018
Date of Pronouncement	:	12.12.2018

ORDER

Per Shamim Yahya, A. M.:

These are appeals by four assessees against the respective orders of the learned Commissioner of Income Tax (Appeals)– Belagavi, for the assessment year 2008-09.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

3. The common grounds of appeal reads as under:–

1. The Learned Hon. CIT (Appeals) erred in law and on facts in partly allowing the appeal.
2. The Learned CIT (Appeals) erred in law and is not justified in confirming the taxing of entire Long-Term Capital Gain of Rs. 6,28,674/- for the A. Y. 2008-09 and only and ignoring the fact that the actual receipt of consideration in part in the A. Y. 2009-10 due to hurdles existing resulting into uncertainty.

3. The Learned CIT (Appeals) erred in law and is not justified in confirming the disallowance made by the assessing officer towards appellant's claim of additional cost of acquisition of Rs. 23.500/-

4. The Learned CIT (Appeals) erred in law and is not justified in confirming the disallowance made by the assessing officer towards appellant's claim of family settlement payments, development and other incidental expenses of Rs 29,73,126/-

5. The following are the details of the same:

a) Development Agreement Cost (Shri Annappa Kedari)	Rs.7,36,512/-
b) Family Settlement Payment (DD)	Rs.5,00,000/-
c) Family Settlement Payment (Cost of 3 Plots)	Rs.4,28,405/-
d) Cost for formation of Gutters, Culverts, roads etc.	Rs.13,08,209/-
Total	<u>Rs.29,73,126/-</u>

4. Brief facts of the case are as under:

The Assessing Officer (A.O. for short) in his assessment order elaborately discussed that Late Vishwanth Salve had purchased agricultural land bearing survey N0.181A for Rs.16,500/-. He prepared a will on 20.01.1986. He expired on 06.03.1986. As per will the following persons got ownership of the land viz 1) Smt. Surekha Arun Salve (Appellant), 2) Smt. Sunanda Anil Salve, 3) Shri Abhijit Ajit Salve, 4) Shri Sanjay Vishwanath Salve, 5) Shri Rajendra Vishwanath Salve and Smt. Kalpana Ajit Salve. These persons had sold the above said property on 10/03/2008 for sale consideration of Rs.64,00,000/-. Purchasers Shri Skharam Ganapati Redekar and Shri Pravin Sadashiv Dhable had given sale consideration amount through DD/Cheque to above said sellers as under:

SI. No	Name of family members Shri/ Smt.	By DD Rs.	By Cheque Rs	Total Rs
1	Surekha Arun Salve	6,00,000	6,80,000	12,80,000
2	Sunanda Anil Salve	6,00,000	6,80,000	12,80,000
3	Abhijit Ajit Salve	3,00,000	3,40,000	6,40,000
4	Sanjay Vishwanath Salve	6,00,000	6,80,000	12,80,000
5	Rajendra Vishwanath Salve	6,00,000	6,80,000	12,80,000
6	Kalpana Ajit Salve	3,00,000	3,40,000	6,40,000
			TOTAL Rs.	64,00,000

As per registered sale deed, the property was sold by all above said assessee's for Rs.64,00,000/- on 10/03/2008. As such the capital gains were to be offered for taxation in the assessment year 2008-09. The assessee had shown total sale consideration of Rs.30,00,000/-for the assessment year 2009-10 and various expenses were also claimed in relation to agriculture land. During the assessment proceedings AO was raised following three questions before the AR of the assessee and asked to explain/furnish documentary evidences.

- a) Explanation as to how capital gains are chargeable to Income-tax in AY: 2009-10 and not in AY 2008-09.
- b) Explanation as to why sale amount is shown at Rs.30 lakhs and not at Rs.64 lakhs and
- c) Explanation with documentary evidence in support of cost of land development expenses.

5. The Assessing Officer had stated that the AR of the assessee in support of his claim mentioned that "the sale proceedings were kept in abeyance". The assessee had furnished a copy of the "Sale deed - Rectification" dtd: 03/03/2009, wherein it is stated that, due to some unavoidable reasons the cheques amounting to Rs.34 lakhs have not been en-cashed by the seller (assessee's). Some relatives of the sellers objected to the execution of sale deed. AO had not accepted the AR's explanation. AO in his finding stated that returning of possession of half of the plots has not been documented by way of sale deed and has not been registered, it is also stated that said "Sale deed - Rectification" merely states that half of the plots but does not give any further details like which are the plots that have been returned, area of those plots etc. Further, AO pointed that the "Sale deed - Rectification" is executed nearly after one year of execution and registration of Sale Deed. The above said cumulative reasons AO concluded that the

actual possession of half of the plots was not returned to the sellers but remained with the purchasers. Even otherwise also this Sale deed- rectification can neither change the amount of total sale consideration from Rs.64 lakhs nor change the year of taxability from assessment year 2008-09. Accordingly, AO worked out the proportionate Long term Capital gain in the hands of assessee of Rs.12,57,348/- and brought to tax. AO also relied decisions of the various High Courts it is held that "Sale of immovable properties" can be said to have been taken place on the date of execution of Sale deed for working of Capital Gain tax.

6. AO noticed the claim of land development expenses from the computation of income from the AY 2009-10 :

a)	Cost of land in 1984-85	Rs. 40,000/-
b)	Non- Agricultural charges in 1986-87	Rs. 11,359/-
c)	Development charges in 1336-37	Rs. 1,70,912/-
d)	Development charges in 1988-89	Rs. 5,65,600/-
d)	Family settlement amount paid 2008-2009	Rs. 5,00,000/-
e)	Cost of plots	Rs. 4,28,405/-
f)	Formation of Gutters & roads 2006-07	Rs.13,08,209/-
g)	Stamp duty	<u>Rs. 3,03,403/-</u>
	Total	Rs.33,27,888/-

AO in his finding categorically mentioned that the AR of the assessee had not furnished any relevant documents in support of claim of above said expenses. Some of the details filed are shown to be highly unreasonable and not acceptable. Hence, all the expenses claimed by the assessee were not considered.

7. Against the above order, the assessee appealed before the Id. CIT(A).

8. Upon the assessee's appeal, the Id. CITT(A) principally considered the A.O.'s order to be in accordance with law. However, he made some directions for consideration

of certain items of expenditure in working out of the long term capital gain. Furthermore, the Id. CIT(A) rejected the assessee's claim of incurring various development expenses.

The Id. CIT(A) adjudicated on this issue which reads as under:

According to AO the land was transferred on 10/03/2008 for Rs.64 lakhs. AR's contention was that subsequent to registration, the purchasers held up encashment of the cheques, in consequence of few of the relatives of the seller raised objection for sale transaction and as such the transfer of the property sale was under dispute. Subsequently, the dispute got resolved after reaching amicable family settlement. The sale transaction finally went through on payment of balance amount of cheques in the financial year 2008-09 to 2009-10. One may refer to the provisions of section 2(47)(v), the importance of the word 'transfer' is due to the reason that under the charging section, viz., section 45, and the capital gain is taxable on 'transfer of a capital asset'. Precisely, this section prescribes that 'any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to tax under the head capital gains and shall be deemed to be the income of the previous year in which the transfer took place. It is noticed from the sale deed executed on 10/03/2008 for sale consideration is at Rs.64,00,000/-. It is from the above sale deed that the land R.S. No.181A, 08 Acre 19 Gunthas is barren and rocky land.

7.1 The point which deserves notice is that the amount or the consideration settled may not be fully received or may not technically accrue but if it arises from the agreement in question, then the deeming provisions shall come into operation. Another point is also equally noticeable that by the presence of the deeming provision, the income on account of accrual of the capital gain should be charged to tax in the same previous year in which the transfer was effected or deemed to have taken place. Due to the presence of this statutory fiction, the actual year in which the entire sale consideration is received, is beside the point but what needs to be judged is the point of time at which the transfer took place either by handing over of the possession or by allowing the entry into the premises or by making the constructive presence of the vendee nevertheless duly supported by a legal document.

7.3 In view of the above, the Assessing Officer's order considering the sale consideration of Rs.64,00,000/- for the assessment year 2008-09 is in accordance with law. Hence, sale consideration of Rs.64,00,000/- for working of Long term Capital gain is correct. The AO made an addition of Rs.12,57,348/- as Long term capital gain in the hands of assessee as proportionate LTCG. It is evidenced from the land purchase deed in the year 1984 at Rs.16,500/- plus Stamp duty of Rs.1160/- and registration charges of Rs.340/- totally it comes to Rs.18,000/-. While working of Index cost of plot AO considered only Rs.16,500/- as purchase of land cost. Therefore, AO is directed to consider purchase cost of land of Rs.18,000/- as against Rs.16,500/- in the year 1984 and re-workout Long term Capital gain. The appellant admitted Rs.37,329/- as Long term capital gain and declared it for the assessment year 2009-10 and filed return of income paying the

taxes due. As this part of capital gain is already taxed. Assessing Officer is directed to consider this amount of Rs.37,329/- for working of net capital gain for the assessment year 2008-09, to avoid double taxation.

7.3 In relation to addition of various development expenses claimed by the appellant, it is evidenced from the sale deed R.S. No.181A area 08 Acre 19 Gunthas is barren and rocky land. It is clear from the sale deed that neither any development nor improvement of land was taken place. It is also evidenced from the AR's submission that land is in family dispute, it was in the name of Late Shri Vishwanath Salve and expired on 06/03/1986. Appellant claimed various expenses and development, leveling etc. During the assessment proceedings no proof /evidences was provided. During the appellate proceedings also AR was unable to substantiate his claim by providing any reasonable evidence to show that land was developed. It was under family disputes. Many questions remain unanswered, who took initiate to develop it, when land belonged to many. What were the "sources" for such huge investment? Who monitored the activities etc were not answered. The "Will" of Shri Vishwanath Salve was not indicative of any such development of land. The sale deed was also not recognized any such development. Hence, considering the facts in totality looking at corroborative evidences, it is reasonably presumed that land owners sold their part of land which they got by virtue of "WILL" in the same position as and where. The AR could not brought any evidence in support of expenses were actually incurred. Hence, I feel that there is no reason to interfere with decision taken by the AO, in relation to disallowance of such expenditure. Hence, appeal of the appellant on this ground is dismissed.

9. Against the above order, the assessee are in appeal before us.

10. We have heard both the counsel and perused the records. We find that in this case there is registered sale deed, according to which the sale consideration is of Rs.64 lacs. Now the claim of the assessee is that there was some dispute among the family members as a result of which some of the cheques received had to be returned. There was subsequently a family settlement. This agreement has been said to be rectification deed. In our considered opinion, this is misleading nomenclatures. The said rectification was not registered. It was only a family arrangement, the veracity of which the authorities below have doubted. They have also held that the amount mentioned in the sale deed has accrued. In this regard, we note that some cheques are claimed to have been returned. This claim of the assessee has not been examined with reference to the bank statement.

11. In our considered opinion, if actually there was some dispute and some of the cheques received on account of sale had been returned, it cannot be said that the income to that extent has accrued. It is settled law that it is the real income that is to be taxed. The assessee's claims veracity can be examined by reference to the encashment of the subsequent cheque. Hence, in our considered opinion, interest of justice will be served if the issue is remitted to the file of the A.O. The A.O. is directed to examine the realization of cheques on account of sale proceeds. If the cheque have been returned and subsequently released later on, the assessee's claim would deserve to succeed.

12. As regards the claim of further expenditure is concerned, we find that the authorities below have disallowed the same on the ground that it has been only a claim of the assessee without any documentary evidence. Since we are remitting the issue to the file of the A.O., we direct the assessee to submit cogent evidence for this claim also before the A.O. The A.O. shall once again consider the same in accordance with the submission of the assessee and as per law.

13. In the result, this appeal by the assessee stands allowed for statistical purpose.

Order pronounced by listing the result on the Notice Board of the Bench under Rule 34(4) of the Appellate Tribunal Rules, 1963.

Sd/

**RAM LAL NEGI
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHYA
ACCOUNTANT MEMBER**

DATED: 12.12.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Panji City concerned;*
- (5) *The DR, ITAT, Panji;*
- (6) *Guard file.*

Roshani, Sr. PS

By Order

(Sr. P.S./P.S.)
ITAT