

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.377 & 378/Bang/2019

Assessment year : 2014-15 & 2015-16

Sri Krishnappa Narayanappa Gopal, #519, 10 th Main Road, MC Layout, Vijayanagar, Bengaluru-560 040. PAN – ABVPG 7067 M.	Vs.	The Asst. Commissioner of Income-tax, Circle-3(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Shri R.N Siddappaji, Addl. CIT (DR)

Date of hearing	:	02.07.2019
Date of Pronouncement	:	10.07.2019

ORDER

Per B.R Baskaran, Accountant Member

Both the appeals filed by the assessee are directed against the order dated 27/12/2018 passed by Id CIT(A)-3, Bengaluru and they relate to asst. year 2014-15 and 2015-16.

2. We shall first take up the appeal filed by the assessee for asst. year 2014-15, wherein the assessee is challenging the addition of Rs.73.31 lakhs relating to profit from real estate activity made by the AO to the income returned by the assessee.

3. The facts relating to the above said issue are stated in brief.

The assessee is engaged in the business of purchase of land, converting it into various plots and selling them. The assessee has followed the method of offering income on completion of sale of each of the plots. The AO took the view that the assessee should have followed the percentage completion method as per the Accounting Standards and Guidance Notes issued by the Institute of Chartered Accountants of India. The AO noticed that the assessee has executed 2 projects namely Manganahalli Villeage (Gokul Layout) and Ramasandra Village (Nanda Gokula Layout). In respect of Manganahalli Villeage (Gokul Layout), the AO noticed that the assessee has developed 49 plots, out of which 45 plots have been sold in the earlier years. Out of the remaining unsold 4 plots, the assessee had taken advance in respect of 2 plots. The AO took the view that this project has been completed 100%. Accordingly he took the view that the assessee should have offered income from 2 plots against which advance was received by the assessee. He computed the income by adopting his own method at Rs.15.76 lakhs. By making similar kinds of calculations in respect of Ramasandra Village (Nanda Gokula Layout), the AO estimated that the above said project is complete by 96%. Accordingly, the AO took the view that the assessee should have offered 57.10 lakhs as income in respect of plots against which advance was received. Accordingly he made addition of Rs.73.31 lakhs to the income returned by the assessee. The Id CIT(A) confirmed the same.

4. The Id AR submitted that the assessee is an individual and is undertaking the plotting activity on small scale. Further the assessee has been offering income only on sale of plot, since the right and liabilities relating to the plot would get transferred to the buyer, only on completion of sale. The assessee has been following this methodology for the past

several years and the same has been accepted by the revenue. Accordingly he submitted that the AO was not justified in disturbing the same during the year under consideration. The Id AR further submitted that the AO has taken support of Guidance note issued by Institute of Chartered Accountants of India on accounting for real estate transaction. The Id AR submitted that the said Guidance Note may apply to large scale real estate activities. Accordingly he submitted that the AO was not justified in applying the same to the assessee.

5. The Id DR, submitted that the guidance note on accounting for real estate transactions issued by the Institute of Chartered Accountants of India in 2012 and its scope extent to sale of plots of land also. It would cover the projects of smallest group of units/plots which are linked with a common set of amenities. Accordingly he submitted that the AO was justified in taking support of the guidance note. He further submitted that the guidance note recommends adoption of percentage completion method for sale of developed plots. The Id DR further submitted that the Jaipur Bench of ITAT has held in the case of M/s Vastukar Township Pvt Ltd (ITA No.105/JP/2017 dated 22-12-2017 that in the case of a tax payer engaged in the development of township projects, the advance received from buyers on unregistered sale agreements should be recognized as income in the year in which advance is received. The Id DR submitted that the above said decision of the Tribunal supports the case of the AO.

6. We heard the rival contentions and perused the record. From the assessment order, we noticed that the assessee has sold 44 plots out of 49 plots in the Gokul Layout in the earlier years and the income there from has been offered only on completion of sale of each of the plots. In the case of Nandagopal Layout the assessee has sold 91 plots out of 219 plots

in the earlier year. In this case also the assessee has offered income on completion of sale of each of the plots. The methodology so adopted by the assessee has been accepted by the AO in the earlier years.

7. We noticed that the AO has taken support of guidance notes issued by the Institute of Chartered Accountants of India on real estate transactions in support of his view that the assessee should offer income under percentage completion method. However, a perusal of the Guidance Note of ICAI would show that the same is recommendary in nature. Further the said Guidance Note visualizes Projects wherein the development activities relating to sale of plot of land is significant and consists of common set of amenities. It is further provided that the plots cannot be put to intended effective use unless the common amenities are made available in the functional. Further developed plots referred to in the guidance note would involve land development, structural engineering, Architectural design, construction etc. Unless all these features are shown to exist in the present case, it may not be possible to apply the Guidance note to the instant case even though, as stated earlier, the guidance note is recommendary in nature. Admittedly, the AO has failed to show that the various conditions specified in the Guidance note were existing in the present case.

8. We have noticed that the assessee has been offering income on completion of sale of each of the plots. The reason given by the assessee is that the risk and liabilities attached to the plots would get transferred from the assessee to the buyer only on completion of sales. The Ld A.R further submitted that the possession of plots is given only after registering the conveyance deed. Under these circumstances, there is merit in the contentions of the assessee that the income shall accrue to him only on completion of sales.

9. It is settled proposition of law that the AO is entitled to change the method of accounting only if it is shown that the method of accounting adopted by the assessee does not result in computation of correct amount of total income. In the instant case the AO has failed to show that the method of accounting adopted by the assessee does not result in computation of correct amount of income. At the time of hearing, the Id AR submitted that the assessee has offered income in the subsequent years also on completion of sale of plots which would include the income relating to the plots assessed by the AO during the year under consideration. The above fact would show that the action of the AO is, in effect revenue neutral only. It is also not the case of the AO that the assessee would not declare income from sale of plots. His only case was that the income relating to a plot against which advance has been received should be assessed in the hands of the assessee even though the sale is not complete, which according to us is not justified.

10. The Ld D.R has placed reliance on the decision rendered by the Jaipur bench of Tribunal in the case of M/s Vastukar Township Pvt Ltd (supra). We have gone through the said decision and we notice that the assessee therein was developing a township and has followed "Percentage completion method" for declaring income for income tax purposes. The dispute was whether the assessee should offer income in respect of amount received from customers as advance. The terms of agreement entered between the parties specified that the buyer is bound to pay the instalments as per payment schedule. Accordingly the Tribunal took the view that the transaction is complete once the plot is booked in the name of buyer and hence income relating to advance amount should be assessed to tax under Percentage completion method. Hence the facts prevailing in

the above said case is different and hence the revenue, in our view, cannot take support of above decision.

11. In view of the foregoing discussions, we are of the view that there is no reason to tinker with the methodology adopted by the assessee for offering income. Accordingly we set aside the order passed by the Id CIT(A) and direct the AO to delete the addition made by him.

12. We shall now take up the appeal filed by the assessee for asst. year 2015-16.

13. At the time of hearing, the Id AR did not press ground Nos.2, 2.1 and 3. Accordingly these grounds are dismissed as not pressed. Ground No.1 and 6 are general in nature and ground No.5 is consequential.

14. The remaining ground relates to claim for reduction of income which was assessed by the AO in asst. year 2014-15. This ground shall become infructuous, as we have deleted the addition made by the AO in asst. Year 2014-15.

15. In the result, the appeal of the assessee for asst. year 2014-15 is allowed and appeal relating to asst. year 2015-16 is dismissed.

Order pronounced in the Open Court on **10th July, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 10th July, 2019.

Sd/-
(B.R Baskaran)
Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.