

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

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.127/Bang/2018
(Assessment Year: 2007-08)

Shri P. Krishnappa,
No.385, Near Akruity Amity Apartment,
Kammasandra, Sampigenagar Main Road,
Bangalore-560 100

...Appellant.

Vs.

Income Tax Officer,
Ward 5(3)(1), Bangalore.

.....Respondent.

ITA. No.2661/Bang/2017
(Assessment Year: 2007-08)
(By Revenue)

Assessee By: Shri H. Guruswamy, ITP.
Revenue By: Dr. P. V. Pradeep Kumar, Addl. CIT (D.R)

Date of Hearing :	11.07.2019
Date of Pronouncement :	24.07.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

These are the Cross appeals filed by the assessee and revenue against the order of Commissioner of Income Tax (appeals)-5, Bangalore passed under Section 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961. For the sake of convenience, we shall take up the assessee's appeal and facts narrated and following grounds of appeal are as under :

1. The impugned Appellate order dated 01-08-2017 passed by the Learned CIT(A), Bangalore - 5 is opposed to law, facts and circumstances of the case in so far as it is prejudicial to the interest of Assessee.
2. The Ld. CIT(A) has erred in issuing a direction to the AO for consideration of the chargeability of Capital Gain Tax for the A.Y 2008-09 in the Appeal relating to the A.Y 2007-08.
3. The Ld. CIT(A) has erred in issuing the directions for the A.Y 2008-09 while adjudicating the Appeal for the A.Y 2007-08 in the absence of any proceedings before him for the A.Y 2008-09.
4. The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.

On these grounds and also the grounds that may be urged at the time of hearing, the Appellant prays that your Hon'ble Authority be pleased to pass orders to hold that the directions issued for the A.Y 2008-09 while adjudicating the Appeal for A.Y 2007-08 are opposed to the law and facts of the case in as much as that the Ld. CIT(A) is not entitled to issue such directions for the A.Y 2008-09 for which no proceedings were not there before him in the interest of Justice and Equity.

2. The assessee is an individual and has income from Capital Gains. There is a delay in filing assessee's appeal and therefore the assessee has filed an application of condonation of delay. We considering the submissions in the petition are satisfied that the delay is reasonable and the Id. DR has no specific serious objection. Accordingly, we condone the delay and admit the appeal. The Brief facts that the assessee has entered into a Joint Development Agreement (JDA) on 22.4.2006 with developer M/s. Akruti Realtors for construction of Residential Apartments on land of 1 Acre 17 Guntas in Attibele Hobli and as per the terms of Agreement the assessee has transferred 65% of undivided interest of property to developer in consideration which is equal to 35% of developed area. Since the assessee has not filed the Return of Income, Notice under Section 148 of the Act was issued, in compliance the assessee has disclosed Capital Gains in the Return of Income as NIL. Subsequently, the Assessing Officer issued Notices under Section 143(2) and 142(1) of the Act and after considering the documents / details filed by the assessee in the course of assessment and the assessee has claimed exemption under Section 54F of the Act. The Assessing Officer has made an addition by disallowing the claim under Section 54F and taxed Long Term Capital Gains (LTCG) under JDA Rs.3,29,04,570 and assessed the total income of Rs.3,30,06,680 and passed the order under Section 143(3) of the Act Dt.31.07.2015. Aggrieved by the order, the assessee has filed an appeal with the

CIT(Appeals). The CIT(Appeals) considering the grounds of appeal, assessee's submissions and the provisions of law, judicial decisions observed that in the current assessment year there is no transfer of property and gave specific direction, at para 5.6 to 5.10. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal with the Tribunal on the ground that the direction of CIT(Appeals) to charge Capital Gains in the Assessment Year 2008-09 is against the law.

3. We heard the rival contentions and perused the material on record. The sole disputed issue is in respect of directions of the CIT(Appeals) to charge the capital gains chargeable in the Assessment Year 2008-09 as against Assessment Year 2007-08. We found that the CIT(Appeals) having considered assessee's submission, legal position of law and transfer of property dealt on the disputed issue applying the provisions and has only directed the Assessing Officer to calculate the capital gains in the year of final JDA. We find the CIT (Appeals) has passed a speaking order which cannot be interfered and accordingly we uphold the same and dismiss the appeal of the assessee.

4. The Revenue has filed an appeal against the order of CIT(Appeals).

5. At the time of hearing, the Id. DR could not controvert the findings of the CIT(Appeals) on the directions to A.O. with any new or cogent material. We find that the CIT(Appeals) considered the grounds of appeal, submissions and findings of the Assessing Officer has passed a reasonable order and we are not inclined to interfere with the order and dismiss the grounds of appeal of the revenue.

6. In the result, the appeal of the assessee and revenue are dismissed.

Order pronounced in the open court on 24th July, 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 24.07.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore