

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

**श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं एस जयरामन, लेखा सदस्य**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.Nos.1968 & 1969/Chny/2017
निर्धारण वर्ष /Assessment years : 2010-11 & 2012-13

Ms. D. Kantabai
No.13, South Usman Road,
T. Nagar
Chennai – 600 017

Vs. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 1,
Chennai

[PAN AAGPK 8590D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Mr. Banusekar, Advocate
: Mr. A.R.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.09.2019

घोषणा की तारीख /Date of Pronouncement

: 13.11.2019

आदेश / ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The Assessee filed these appeals against the orders of the CIT(Appeals)-2, Chennai in ITA Nos.31/CIT(A)-2/2016-17 & 79/CIT(A)-2/2015-16; dated 30.06.2017 for the Assessment Years 2010-11 and 2012-13, respectively.

2. Ms. D. Kantabai, the assessee along with four other co-owners entered into an agreement for Joint Venture Development of vacant land admeasuring 2.02

acres located at Unamanchery Village, Chengelputtu Taluk, Kancheepuram District on 12.12.2019 for construction of 97000/98000 Sq.ft of built up area on the said land. A supplementary agreement was also entered into on 01.02.2012 between the five co-owners and the Developer, M/s. Green Avenue Homes and Gardens clarifying certain issues. Supplementary sale deed mentioned that the developer had paid more than half of the total consideration agreed upon, i.e. ₹4,36,01,500/- (out of the total value of the villas inclusive of UDS of land of ₹7,48,80,000/-) to the co-owners, till the date of the Supplementary Agreement. The developer took possession of the vacant land then and there on entering into the JDA, with the Power of Attorney in its favour. The Assessee admitted the capital gains during the period relevant to the assessment years 2011-12, 2012-13 and 2013-14, respectively. The Assessing Officer while assessing the income for the Assessment Year 2012-13, accepted the computation of capital gains as admitted by the assessee. However, the learned Assessing Officer refused to allow the deduction claimed u/s.54F. Subsequently, the Assessing Officer reopened the assessment for the year 2010-11 and brought to tax the consideration of ₹2,35,20,000/- received on handing over the possession of the assessee's share of 21,991 Sq.ft of the land to the developer on 12.12.2009 and assessed the long term capital gain at ₹2,29,50,000/-.

3. Aggrieved against these orders, the assessee filed the appeals before the CIT(A). The CIT(A) dismissed the appeals. Aggrieved against those orders, the assessee filed these appeals with the following grounds of appeals:

Assessment Year 2010-11:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the assessee and is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of capitals gains of ₹2,29,50,000/- to tax in the assessment year 2010-11.
4. For that the Commissioner of Income Tax (Appeals) erred in concluding that the transfer has taken place in the year in which the joint development agreement was entered into.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the transaction of entering into Joint Development Agreement is not a transaction in the nature referred to in section 53A of the Transfer of Property Act, 1882 and hence is not deemed to be transfer u/s.2(47)(v).
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the impugned Joint Development Agreement was not registered in accordance with Section 17A of Registration Act, 1908 and hence would not fall within the ambit of section 53A of the Transfer of Property Act, 1882.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that only a limited purpose Power of Attorney was executed in favour of the developer in order to enable him to complete the legal formalities and construction activity.
8. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) erred in not allowing the claim of exemption u/s.54F against the long term capital gains.
9. For that the appellant objects to the levy of interest u/s.234B.

Thereafter, the assessee filed the following additional grounds also:

Ground No.4 : For that the Commissioner of Income Tax (Appeals) ought to have appreciated that the year of transfer has not been disputed by the Revenue in the other three co-owners' case.

Ground No.5: For that the capital gains admitted by the appellant in the assessment years 2011-12 and 2013-14 has been accepted and not disturbed by the revenue.

The existing ground nos.4 & 9 may be renumbered as ground nos.6 to 11.

Assessment Year 2012-13:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent

prejudicial to the interest of the assessee and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in concluding that the transfer has taken place in the year in which the joint development agreement was entered into i.e. in the assessment year 2010-11.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the transaction of entering into Joint Development Agreement is not a transaction in the nature referred to in section 53A of the Transfer of Property Act, 1882 and hence is not deemed to be transfer u/s.2(47)(v).

5. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the impugned Joint Development Agreement was not registered in accordance with Section 17A of Registration Act, 1908 and hence would not fall within the ambit of section 53A of the Transfer of Property Act, 1882.

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that only a limited purpose power of Attorney was executed in favour of the developer in order to enable him to complete the legal formalities and construction activity.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the capital gain on transfer arises only in the year of sale of flats.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant has rightly offered the capital gains in the year of sale of flats and that the appellant is eligible for claiming exemption u/s.54F on the reinvestment in new residential property in the impugned year against the long term capital gains.

9. For that the appellant objects to the levy of interest under sections 234AS and 234B.

Thereafter, the assessee filed the following additional grounds also:

Ground No:4 : For that the Commissioner of Income Tax (Appeals) ought to have appreciated that the year of transfer has not been disputed by the Revenue in the other three co-owners' case.

Ground No.5 : For that the capital gains admitted by the appellant in the assessment years 2011-12 and 2013-14 has been accepted and not disturbed by the revenue.

The existing ground nos.4 to 9 may be renumbered as ground nos.6 to 11.

4. The learned Authorized Representative submitted that the assessee was a co-owner of the property in Unmanchery along with four people. The assessee along with the other co-owners had entered into an agreement on 12.12.2009 for jointly developing the said property with M/s. Green Avenue Homes and Gardens. Based on the sale deeds executed by the assessee and the prospective buyers during assessment years 2011-12, 2012-13 and 2013-14, the assessee offered capital gains to tax in the said years respectively. The Assessing Officer completed the assessment for the assessment year 2012-13 on 30.03.2015, assessing the capital gains admitted by the assessee. However, he refused to allow the deduction claimed u/s.54F stating that the transfer or sale of the impugned property took place on 12.12.2009 i.e. at the time when the assessee entered into a joint agreement, therefore, the Assessing Officer concluded that the time limit for claiming the exemption u/s.54 had lapsed. Thereafter, the Assessing Officer reopened the assessment for the assessment year 2010-11 and assessed the assessee's share of capital gains in that Assessment Year for the reason that the transfer took place on the date of agreement for joint venture.

4.1 The learned Authorized Representative submitted that the lower authorities failed to appreciate that the transaction of entering into the joint development agreement with M/s. Green Avenue Homes and Gardens is not a transaction in the nature referred to u/s.53A of the Transfer of Property Act, 1882 and hence it is not deemed to be transfer in terms of section 2(47)(v). Further, the lower authorities have failed to appreciate the fact that the impugned joint development agreement was not registered in accordance with Section 17A of

the Registration Act, 1908 and hence would not fall within the ambit of section 53A of the Transfer of Property Act, 1882. The power of attorney was executed in favour of the developer in order to enable the legal formalities of construction activity. Relying on the Supreme Court decision of the case of Commissioner of Income Tax Vs. Balbir Singh Maini, 398 ITR 531 (SC), the learned Authorized Representative inviting our attention to the paragraph 20 of the decision and submitted that it is held therein that "there is no contract in the eye of law in Force u/s.53A after 2001 unless the said contract is registered. This being the case, and it being clear that the said JDA was never registered. Since the JDA has no efficacy in the eye of law, obviously no "transfer' can be said to have taken place." Therefore, the learned Authorized Representative pleaded that the assessee's appeals may be allowed as the assessee has admitted the capital gains in the respective assessment year in which they were registered. He further submitted that the Revenue has accepted the transactions of the other three co-owners and has not disputed the year of transfer in the other three co-owners cases also. The capital gains admitted by the assessee in the Assessment Years 2011-12 and 2013-14 have also been accepted and not disturbed by the Revenue. Therefore, he pleaded that the impugned appeals may be allowed in the assessee's favour.

5. Per contra, the learned Departmental Representative supported the orders of the lower authorities.

6. We have heard the rival submissions and gone through the relevant materials. In accordance with the Apex Court decision, supra, the capital gains arising from the sale of immovable property in this case can be assessed in the year in which the registration of the impugned property is executed. Therefore, we direct the Assessing Officer to assess the capital gains in the respective year in which the registration was executed and consider the claim of the assessee's deduction u/s.54F also in accordance with law. Therefore, we allow the assessee's appeal to the above extent.

7. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the court on 13th November, 2019, at Chennai.

Sd/-

(जॉर्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)
(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai

दिनांक/Dated: 13th November, 2019.

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF