

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1264/Bang/2019
Assessment year: 2007-08

The Deputy Commissioner of Income Tax, Central Circle 2(2), Bengaluru.	Vs.	M/s. Canara Housing Development Company, 10/1, Lakshminarayana Complex, Palace Road, Bengaluru – 560 052. PAN: AACFC 2037M
APPELLANT		RESPONDENT

ITA No.1324/Bang/2019 & CO 60/Bang/2019 [in ITA No.1264/Bang/2019]
Assessment year: 2007-08

M/s. Canara Housing Development Company, Bengaluru – 560 052. PAN: AACFC 2037M	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(2), Bengaluru.
APPELLANT / CROSS OBJECTOR		RESPONDENT

Revenue by	:	Smt. R. Premi, Jt.CIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri R. Ramakrishna, CA

Date of hearing	:	02.03.2020
Date of Pronouncement	:	06.03.2020

ORDER

Per N.V. Vasudevan, Vice President

ITA No.1264/Bang/2019 is an appeal by the revenue while ITA No.1324/Bang/2019 is an appeal by the Assessee. Both these appeals are directed against the order of the CIT(Appeals)-11, Bangalore dated 22.3.2019. The Assessee has also filed Cross Objection in CO No. 60/Bang/2019 in revenue's appeal and the said CO is purely supportive of the order of the CIT(A) in relation to the grievance of the revenue in its appeal. The appeals and CO relate to assessment year 2007-08.

2. The appeals arise out of order imposing penalty on the Assessee u/s.271(1)(c) of the Income Tax Act, 1961 (Act). The Assessee is real estate and property developer. The Assessee filed return of income for AY 2007-08 on 31.10.2007 declaring nil income after setting off business loss. The Assessee filed revised return of income on 29.3.2009 in which he declared income of Rs.1,23,57,550/- with reference to income from sale of property at a place called Chikkajala, hereinafter referred to as "Chikkajala property". The return so filed was within the time limit permitted for filing revised return of income u/s.139(5) of the Act. Later on an order u/s.154 of the Act was passed dated 17.3.2010 whereby the business loss set off in the return of income was disallowed and total income was quantified at Rs.18,00,36,023/-.

3. Subsequently the Assessment for AY 2007-08 was reopened by issue of a notice u/s.148 of the Act dated 26.8.2009 and the reasons for initiating reassessment proceedings were on the basis that in a search conducted in the case of one Srinivasa Raju and others it came to light that the Assessee sold Chikkajala Property for a consideration of Rs.1,23,57,550/- on 27.7.2006 and the same was not disclosed to the

department and hence proceedings were being initiated u/s.147 of the Act for bringing to tax income that escaped assessment.

4. In the Assessment concluded pursuant to the notice issued u/s.148 of the Act, the AO in his order of assessment u/s.147 read with section 143(3) of the Act brought to tax a sum of Rs.2,04,00,000/- (comprising of bogus and non-existing liability of Rs.2,02,00,000 from M/S.Sheriff Construction and an amount of Rs.2,00,000 from M/S.Sheriff Centre. Another addition that was made by the AO was of an addition of Rs.22,50,000/- which was shown as outstanding liability payable to one M/S.Jyothi Naraindas. The sum was shown as Advance for sale of property at Brindavan Apartments, Hosur Road, Bangalore, but the property was already sold to M/S.Jyothi Naraindas and therefore the sum ought to have been shown as sales and since the same was not declared as part of the sale, the AO brought to tax the sum of Rs.22,50,000/- and did not allow the benefit of deduction on account of cost because no cost was recorded in the books of accounts of the Assessee. The AO in the computation of total income commenced the computation of total income with the total income determined in the order dated 17.3.2010 u/s.154 of the Act of a sum of Rs.18,00,36,023/-. He did not consider the revised return of income filed by the Assessee on 29.3.2009 in which he declared income of Rs.1,23,57,550/- with reference to income from sale of Chikkajala property.

5. In the appellate proceedings the CIT(A) in exercise of his powers of enhancement added a sum of Rs.1,23,57,550/- being income from sale of Chikkajala property.

6. In respect of the aforesaid three additions, the AO initiated penalty proceedings u/s.271(1)(c) of the Act and imposed penalty on the Assessee. The CIT(A) cancelled the penalty imposed in respect of the

addition on account of non-existing liability of Rs.2,04,00,000/- because he found that the said addition was deleted by the ITAT in the appeal filed against the order of the CIT(A) in the quantum proceedings in ITA No.1381/Bang/2013 dated 7.6.2017. Against that part of the CIT(A) the revenue has filed ITA No. 1264/Bang/2019. The ground raised by the revenue is that the order of the ITAT deleting the addition of Rs.2,04,00,000 has not been accepted by the Department and an appeal has been filed before the Hon'ble Karnataka High Court. The learned counsel for the Assessee however brought to our notice that the appeal of the revenue so filed in ITA No.873/2017 has been withdrawn by the revenue because of tax effect being less than the limits laid down by CBDT Circular No.17 of 2019 dated 8.8.2019 for filing appeals to High Court. In view of the above, the revenues appeal against the order of the CIT(A) cancelling the order imposing penalty in so far as it relates to addition of Rs.2,04,00,000 which was deleted by the Tribunal has to be confirmed and the revenue's appeal is dismissed as the very basis of addition for which penalty was imposed no longer survives. Consequently, the CO No.60/Bang/2019 filed by the revenue in the appeal by the revenue which is supportive of the order of the CIT(A) in so far as the addition of Rs.2,04,00,000 is concerned, is also dismissed.

7. As far as the appeal of the Assessee is concerned, the same is in relation to the action of the CIT(A) in confirming the order of the AO imposing penalty on the Assessee u/s.271(1)(c) of the Act in so far as it relates to addition on account of income from Chikkajala property and addition on account of undisclosed income from sale of property to M/S.Jyothi Naraindas. As far as income from sale of Chikkajala Property is concerned, the Assessee disclosed the income prior to issue of notice u/s.148 of the Act on 26.8.2009 in a revised return of income filed u/s.139(5) of the Act on 29.3.2009. The sale of the Chikkajala property

was on 27.7.2006 i.e., in the previous year relevant to AY 2007-08. The reason for non-disclosure of income from sale of Chikkajala property in the original return of income filed on 31.10.2007 was explained by the Assessee in a letter dated 30.3.2009 filed before the AO as follows:-

“The assessee filed its original return of income on 31st October 2007 vide Ack.No.7535901311007 reporting NIL income. On the scrutiny of the returns and the financial statements and comparing the same with the returns filed of M/s.Siddivinayaka Property Developers, one of our group firms, it came to light that certain amounts received on behalf of the said firm were credited in the accounts of the persons from whom they were received instead of the account of M/s.Siddivinayaka Property Developers and similarly, the amount invested on behalf of M/s.Siddivinayaka Property Developers was debited and shown as an asset instead of debiting it to the said firm or the partners of the said firm viz., Sri P.Dayananda Pai and Sri P.Satish Pai. This arose consequent to the fact, the accounts of the said firm of M/s.Siddivinayaka Property Developers were not finalised on account of a nebular situation created by the land agent by name Sri Byre Gowda, who has not rendered the accounts and was avoiding the settlement of account for one reason or other. In that process, certain income relating to another one property at Chikkajala belonging to the assessee firm, which was sold was not considered for income in as much as, it was tied up on account of confusion with the properties at Uttanahalli. A property at Chikkajala was sold under the document dated 27/07/2006 for a sum of Rs.1,28,70,000/-. The cost of the property is Rs. 5,12,450/-. Therefore, the income on the sale of this property amounts to Rs. 1,23,57,550 and this was omitted to be offered to tax in the hands of the assessee firm for this assessment year. Instead of offering in the hands of the assessee firm, it came to be offered in the hands of M/s.Siddivinayaka Property Developers erroneously. Similarly in respect of Utthanahalli property to the extent of 7Acres 21Guntas accounted in "Miscellaneous Property" is now identified and cost of Rs.1,22,85,000 is transferred to Siddivinayaka Property Developers. The error is regretted. After noticing this mistake, which arose consequent to the confusion, the same is excluded in the revised return filed in the hands of M/s.Siddivinayaka

Property Developers and the same is offered to tax in the hands of the assessee firm, where it is rightly assessable. Accordingly, this revised return. It is filed through e-file mode and a copy of the Acknowledgement is attached to this letter.”

8. The AO imposed penalty on the Assessee holding that the Assessee did not disclose income from sale of Chikkajala property in the return of income and the CIT(A) confirmed the order of the AO. The submission of the learned counsel for the Assessee was that there was no concealment of income because the income had been declared much prior to any detection by the AO and the proceedings u/s.148 were initiated only based on the revised return filed by the Assessee and hence there is no concealment of particulars of income as is the case sought to be made out by the revenue. The learned DR relied on the order of the revenue authorities.

9. We are of the view that there has been a disclosure of income from sale of Chikkajala property in a revised return of income filed on 29.3.2009 much prior to the initiation of proceedings u/s.148 of the Act by issue of notice on 26.8.2009. Even in the return filed in response to the notice u/s.148 of the Act, which is the same as the revised return filed on 29.3.2009, income from sale of Chikkajala property was disclosed. The AO started computation of total income in the order u/s.148 of the Act not on the basis of the original return filed by the Assessee on 31.10.2007 or the revised return filed on 29.3.2009 but on the basis of his computation of total income u/s.154 of the Act dated 17.3.2010. Hence he omitted to take cognizance of the revised return of income. The CIT(A) at the instance of the AO in the appellate proceedings brought this sum to tax and did not initiate any penalty proceedings on this addition but merely observed that the addition will be taken into consideration while finalizing penal proceedings u/s.271(1)(c) of the Act. It is doubtful whether such

observation would amount to initiating penalty proceedings u/s.271(1)(c) of the Act. It can also be said that there is no recording of satisfaction for initiating penalty proceedings for imposition of penalty especially when there has been a disclosure of income by the Assessee in the return of income filed prior to initiating proceedings u/s.148 of the Act. Therefore imposition of penalty on the said addition (which cannot be said to be addition at all) cannot be sustained and the same is directed to be deleted.

10. As far as imposition of penalty on the addition of Rs.22,50,000 being sale transaction not disclosed on sale of the Brindavan flat to M/S.Jyothi Naraindas is concerned, the explanation of the Assessee was that the said sum was offered to tax in AY 2009-10 as the sale took place on 31.3.2007. It was also submitted that when the AO confronted the Assessee on the aspect of sale, the Assessee agreed for the addition and did not raise any issue except pointing out that the income has been shown in AY 2009-10. We are of the view that the penalty imposed on this addition should be deleted but subject to verification by the AO as to whether this sum of offered to tax in AY 2009-10. Thus the penalty levied in respect of this addition is set aside to the AO.

11. In the result, while appeal by the revenue and the CO by the Assessee is dismissed, the appeal by the Assessee is partly allowed.

Pronounced in the open court on this 6th day of March, 2020.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 6th March, 2020.

/Desai S Murthy /

Copy to:

1. Revenue
2. Assessee
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.