

5.2. We note that these issues have been decided by *Hon'ble Judicial Member* as under:

"19. As we have held that no transfer has taken place on 07.04.2005, therefore there was no justification for lower authorities to compute the capital gains arising out of the alleged transfer on 07.06.2005, yet for completeness for record. we would like to record, that the finding recorded by the Commissioner (Appeal) that on account of grant of licence to construct dated 06.03.2006. the position said to have been handed a work to the developer, was a incorrect tinding of fact by the local authority.

19.1 In our view no transfer can take place within the meaning of section 2(47) of the act on the basis of the construction agreement/development agreement. as the said agreement failure to comply the provisions of the Transfer of Property Act Registration Act And Stamp Duty Act further reliance of the revenue on the judgement of T.K Dayalu was misplaced in the present set of facts and after the pronouncement of the judgement by the Hon'ble Supreme Court in matter of Balbir Singh (supra), as no possession was given for the purposes of Transfer Of Property Act in the assessment year under consideration. Therefore there was no justification for the authorities below to compute the capital gain by assuming that the transfer has taken place on 7 of June 2005. Further, the AO, in respect to 1TA.1270/Bang/2016, had relied upon the letter dt. 17.01.2013 addressed by the developer from which the AO had inferred that the sale consideration of the assessee's land was Rs.18,32,31,000/- and not Rs.17,55,35,000/-. In our view the reliance of the AO on the said letter was premised on the fact that a transfer has taken place on 07.06.2005 and thereafter the cost has been arrived at. As we have held no transfer has taken place in the eyes of law on 7.06.2005, therefore, there was no occasion to revise the cost of land as Rs.18,32,31,000/- instead of Rs. 17,55,35,000/-. Further the letter was dated. 17.01.2013 and the said letter mentioned the cost of land of the assessee as per MOU dt.07.03.2308 and not 07.062005. Therefore also the cost of land if required to LA- taken as on 07.03.2008 was Rs.18,32,31,000/-, whereas the present proceedings pertains to asst. year 2006-07 and not for the asst. Year 2009-10. It is an admitted position in law that the tax is to be charged in the year it accrued. Therefore the finding of the lower authorities is devoid of merit. In the result these grounds No 9, 9.1 and 11 of ITA No. 1269/Bang/16 & Ground No.6. 6.1 of ITA No.1270/Bang/2016 of the assessee are allowed."

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