

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.77/Bang/2017
Assessment Years : 2006-07

Bangalore Pharmaceutical & Research Laboratory Pvt. Ltd., No.163, Reservoir Street, Bengaluru-560 004. PAN - AAACB 5712 H	Vs.	The Dy. Commissioner of Income-tax, Circle-1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

ITA No.200/Bang/2017
Assessment Years : 2006-07

The Dy. Commissioner of Income-tax, Circle-1(1)(2), Bengaluru.	Vs.	Bangalore Pharmaceutical & Research Laboratory Pvt. Ltd., No.163, Reservoir Street, Bengaluru-560 004. PAN - AAACB 5712 H
APPELLANT		RESPONDENT

Assessee by	:	Shri Anil Kumar, C.A
Revenue by	:	Shri Manjeet Singh, Addl. CIT

Date of Hearing	:	28-07-2020
Date of Pronouncement	:	21-08-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals has been filed by assessee as well as revenue against order dated 29/09/2016 passed by Ld. CIT (A)-1, Bangalore for assessment year 2006-07 on following grounds of appeal:

ITA No.77/Bang/2017

1. *The order of the Commissioner of Income Tax (A), in so far as it is against the appellant is against law, facts of the case and weight of evidence.*

2. *The Learned Appellate Officer has erred in not deciding the various other issues raised under Ground No 4, and as also 6 and Additional Ground regarding claim u/s 54G. And the said grounds are mentioned here in below*

for the sake of clarity.

a) *Ground No 4*

The learned AO has erred in computing the "indexed cost of sale at Rs.41,23,270/ as against Rs.1,90,41,525/- as claimed by appellant and accepted by AO earlier.

b) *Ground No 6*

The learned AO ought to have deleted LTCG income of Rs.86,85,618/- as the same is not assessable for AN 2006-07 but AN 2004-05 as per the decision of the High Court of Karnataka.

c) *Additional Grounds*

The AO be directed to allow deduction u/s 54G in respect of new unit setup at Nelamanagala, costing Rs. 15 Crores.

3. *The Appellate officer has erred in concluding interest u/s 234B amounting to Rs.66, 29,369/- has been properly levied and the interest u/s 234B shall have effect as per tax levied when interest u/s 234B cannot be charged at all under clause (3) of section 243B as the income computed u/s 143(1) is a loss.*

4. *The appellant prays it may be permitted to adduce any further evidence at the time of hearing of this appeal."*

ITA No.200/Bang/2017

"1. The order of the Learned CIT(Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. The Ld.CIT(A) erred in holding that for the purpose of capital gain computation, value of land as on the date of JDA i.e., 5/10/2005 is to be taken and not the cost of construction of super built-up area to be received, as the Hon'ble ITAT Bangalore Bench

'A' in the case of N.S Nagaraj (JTA No. 676 (BANG) of 2011 and CO No. 45 (BANG) of 2013 dtd.1/12/2014 has held that section 48 nowhere talks of FMV and it talks of full consideration. It is further held in the case supra that full consideration is the cost of construction incurred by the builder on the assessee's share of constructed area, because the assessee would receive constructed area in lieu of the land share,

3. The Ld.CIT(A) erred in holding that for the purpose of capital gain computation, value of land as on the date of JDA i.e., 5/10/2005 is to be taken and not the cost of construction of super built-up area to be received, as the Hon'ble High Court of Delhi in the case of So/am International Lid. (386 1TR 580) (lid. 13105/2016 has held that the expression 'accruing' as used in section 48 is synonymous to entitlement and if the assessee is entitled to the consideration, then the same must be taken into account for the purposes of computation of capital gains in terms of section 48.

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld.CIT(A) be reversed and that of the Assessing Officer be restored.

5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal."

Brief facts of the case are as under:

2. Assessee is a company and filed its return of income for year under consideration declaring a loss of Rs.12,06,272/-.

Assessee is in the business of manufacture and sale of allopathy medicines.

3. Ld.AO observed that, during the previous year relevant to assessment year under consideration, assessee entered into joint development agreement with M/s Pratibha Realtors Pvt.Ltd., vide agreement dated 05/10/2005 and also executed a supplementary agreement dated 28/07/2008. Assessee accordingly handed over the possession of factory building duly converted into vacant land administering 84980 m². As per the agreement assessee was entitled to 1 lakh square feet of constructive commercial

space in lieu of exchange of land at 50% and also additional space that assessee had agreed upon for reimbursing to the developer for seeking additional space area of 36% which was worked out to 42,000 ft.².

4. Ld.AO was of the opinion that, capital gain arose to assessee during the previous year when JDA was executed and the possession of land was handed over to the developer. Ld.AO relied upon decision of *Hon'ble Karnataka High Court* in case of Dr.D.K.Dayalu and also decision of *Hon'ble Bombay High Court* in case of Sh.Chaturbhuj Dwarkadas Kapadia, reported in 260 ITR.

5. It was noticed by Ld.AO that assessee had not declared any capital gains pursuant to such JDA and accordingly, notice under section 148 was issued and served upon assessee, in response to which, assessee vide letter dated 13/02/2013 informed that, return of income filed on 29/11/2006 to be treated as return filed in response to notice under section 148.

6. Assessee was thereafter intimated reasons recorded for initiating proceedings under 147, vide letter dated 14/02/2013 and subsequently, notices under section 142 (1) was issued to assessee calling for various details. In response to statutory notices, representatives of assessee appeared before Ld.AO from time to time and case was discussed.

7. Assessee was called upon by Ld.AO to show cause, as to why, capital gain should not be worked out, taking into account cost of construction attributable to the developer, as

reflected in their books of account, as sale consideration received, for purposes of computing capital gains. Ld.AO also called upon the developer to provide the cost of construction of property developed by the. The developer thereafter informed Ld.AO that, cost of construction has been accounted at Rs.1700/- per square feet, and construction was stated to have been spread over for a period of 3 years.

8. Assessee filed various details and submitted vide letter dated 2/09/2013, stating manner in which, the developer handed over physical possession of constructed premises to assessee, and transferred 50% undivided interest in the land during accounting year ended on 31/03/2010 and as per section 50 C of the Act, the value of undivided right must be determined as per the guidance value fixed by the registration authority as the JDA entered was registered.

9. Ld.AO after going through the detailed submissions filed by assessee, vide letter dated 24/09/2013 intimated assessee the reasons for rejection of the claim. In response to this letter issued by Ld.AO assessee again replied vide letter dated 20/12/2013 which has been more particularly reproduced in the assessment order. Assessee had placed reliance upon decision by *Hon'ble Karnataka High Court* in case of *Ved Prakash Rakhra*.

10. Ld.AO after considering submissions, was of opinion that, facts in case of *Ved Prakash Rakhra* was distinguishable, and their by, rejected claim of assessee. Ld.AO thus, computed capital gains in hands of assessee

amounting to Rs.4,08,13,070/- for year under consideration.

11. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) assessee raised additional ground to allow deduction under section 54G in respect of new unit set up at Nelamangala, costing Rs.15crores. Ld.CIT(A) held that, for purposes of capital gain computation, value of land as on the rate of JDA that is 05/10/2005 is to be taken and not the cost of construction of super built a period to be received. For in support Ld.CIT(A) relied upon decision of coordinate bench of tribunal in case of N.S Nagaraj in ITA No.676/Bang/2011 CO No.45/Bang /2013 dated 01/12/2014. Reliance is also placed on decision of *Hon'ble Delhi High Court* in case of *Salora International Ltd.*, reported in 386 ITR 580.

12. Aggrieved by order passed by Ld.CIT(A), both assessee as well as revenue are in appeal.

13. Ld.AR at the outset, submitted that Ld.CIT(A) has not decided issues in Ground 4, 6 and additional grounds raised before Ld.CIT(A). He thus requested for the issues to be sent back to Ld.CIT(A) for adjudication.

14. Ld.Sr.DR though objected for the request, however could not controvert that, these issues have not been decided by Ld.CIT (A).

15. In view of the above, and in interest of natural Justice, we direct Ld.CIT(A) to decide these issue on merits having regard to evidences filed by assessee.

16. Needless to say that, proper opportunity of being heard should be granted to assessee in accordance with law.

17. **Ground No.3** raised by assessee is against the interest levied under section 234B of the Act. In our view this issue becomes consequential and also should be sent back to learn CIT (A).

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Revenue's appeal:

18. Only issue raised by revenue is regarding the value of land to be considered for purposes of computing capital gains.

19. Ld.Sr.DR placed reliance on the orders passed by Ld.AO.

20. Ld.AR submitted that, written submission has been filed wherein reliance was placed on decision of *Hon'ble Karnataka High Court* in case of *CIT vs. Ved Prakash Rakhra*, reported in (2012) 210 *Taxman* 605, It was submitted that there is substantial difference between cost of construction adopted for purpose of computing capital gains on sale of capital assets and expenditure booked by the developer in the course of construction activity.

We have perused decision of *Hon'ble Jurisdiction High Court* in case of *CIT vs. Ved Prakash Rakhra(supra)* and note that, it squarely applies to present facts.

20. Based upon the above observations by *Hon'ble Karnataka High Court*, we do not find any merits in the issue raised by revenue.

Accordingly they are dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 21st August, 2020

Sd/-
(A.K GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st August, 2020.
/Vms/

Copy to:

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

By order

Assistant Registrar,
Income-Tax Appellate Tribunal.
Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-08-2020		Sr.PS
3.	Draft proposed & placed before the second member	-08-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-08-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-08-2020		Sr.PS/PS
6.	Kept for pronouncement on	-08-2020		Sr.PS
7.	Date of uploading the order on Website	-08-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-08-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS