

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2318, 2319 & 2320/Bang/2016
Assessment Year : 2007-08

1. Sri K.G Subbarama Setty (ITA No.2318), ACGPS 0517 G 2. Sri K.S Akhilesh Babu (ITA No.2319) PAN –ACNPA 3743 K 3. Sri K.A Sujit Chandan (ITA No.2320) PAN – AJGPS 8502 G No.172, Kavi Lakshmeesha Road, V.V Puram, Bengaluru-560 004.	Vs.	The Asst. Commissioner of Income-tax, Circle-5(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal, Advocate
Revenue by	:	Shri Priyadarshi Mishra, JCIT

Date of Hearing	:	26-08-2020
Date of Pronouncement	:	28-08-2020

ORDER

PER BENCH :

Present appeals have been filed by assessee's against order dated 19/09/2016 passed by Ld.CIT (A)-5, Bangalore for assessment year 2007-08.

2. Ld.AR submitted that assessee is an individual and filed the return of income for year under consideration. A notice under section 148 of the act was issued to the assessee is before us. Ld. AO noted that assessee had executed joint development agreement along with the co-owners of property on 01/03/2007. On the same date of power of attorney was executed in favour of the developer company and the land was given for development in which each co-owner had a particular share of the developed structure and the total was fixed at 38.50% with the developer share being 61.50%. Following decision of Hon'ble Karnataka High Court in case of CIT vs T.K Dayalu, reported in 202 taxman 531 Ld.AO was of the opinion that the transfer took place during the financial year relevant to assessment year under consideration and that chargeability to capital gains arises during the year under consideration. He also relied upon decision of Hon'ble Bombay high Court in case of Chaturbhuj Dwarkadas Kapadia vs CIT reported in 260 ITR 491.

3. Ld. AO thus computed the capital gains under the head short term in the hands of assessee is before us in proportionate to the share in developed construction. Ld. AO also considered the rate fixed by government of Karnataka at Rs.760 per square feet as sale consideration received in exchange of 61.50% undivided share of land with the developer.

4. Aggrieved by the additions made by Ld.AO assessee is before us filed appeal before Ld.CIT(A) before Ld.CIT(A)

assessee has challenged the short term capital gain computed by Ld.AO as excessive and unreasonable.

5. Ld.CIT (A) however rejected all the contentions of assessee.

6. Aggrieved by order of Ld. CIT (A) assessee is are in appeal before us.

7. We note that all the assessee's are co-owners of the same joint development agreement and issues alleged by them are similar and on identical facts.

8. Ground 1-2,6 are general in nature and therefore do not require adjudication

9. Ground 3-5: Ld.AR submitted that, submitted that, Ld.CIT(A) failed to adjudicate additions challenged by assessee. It has also been submitted that even before us assessee do not challenge the year of taxability it has been submitted by Ld.AR that, nature of capital gains whether short-term or long-term as well as the rate of construction applied by Ld.AO that was subject matter of challenge before Ld.CIT(A) in Ground No.9.

10. Ld.Sr.DR relied on orders passed by authorities below. However, he could not contradict this account and advanced by Ld.AR that, quantum of additions challenged by assessee has not been adjudicated by Ld.CIT(A).

11. We have heard rival submissions advanced by both sides in light of records placed before us.

12. Ground No. 9 raised by assessee before Ld.CIT(A) reads as under:

“9, without prejudice, the short term capital gains as computed by Ld. assessing authority is excessive, arbitrary and unreasonable and liable to be reduced substantially”

13. On perusal of order passed by Ld.CIT(A) we note that this ground has not been adjudicated by Ld.CIT (A).

In the interest of Justice we are of opinion that this issue needs to be remanded to Ld.CIT(A) for adjudicating in accordance with law and in line with the ratio is laid down by *Hon'ble Karnataka High Court* in various cases. Needless to say that, proper opportunity of being heard shall be granted to assessee in accordance with law.

Accordingly, we set aside this appeal back to Ld.CIT(A) for determining the quantum of capital gains computed in the hands of assessee is before us.

Accordingly grounds 3-5 stands allowed for statistical purposes.

14. Ground No. 7-9 is in respect of levy of interest under section 234B.

15. Admittedly this issue is against assessee. However as we have set aside the quantum addition interest under section 234B will have to be recomputed in accordance with the addition that is computed in respect of chargeability to capital gains.

Accordingly, this ground is also set aside to Ld.CIT(A) for computing the interest under section 234B in accordance with law.

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

Order pronounced in the open court on 28th Aug, 2020.

Sd/-

(A.K GARODIA)
Accountant Member

Bangalore,

Dated, the 28th Aug, 2020.

/Vms/

Copy to:

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

Sd/-

(BEENA PILLAI)
Judicial Member

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