

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2494/Bang/2019
Assessment Year: 2014-15

Mr. Asif Khaleel (Individual) No.70, H. Siddaiah Road Opp. Nayadegula Bangalore-560 027.  <b>PAN NO : AMYPK6342N</b>	<b>Vs.</b>	ITO Ward-7(2)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.2495/Bang/2019
Assessment Year: 2014-15

Mr. Ismail Khaleel (Individual) No.70, H. Siddaiah Road Opp. Nayadegula Bangalore-560 027.  <b>PAN NO : AJXPK4935G</b>	<b>Vs.</b>	ITO Ward-7(2)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.2496/Bang/2019
Assessment Year: 2014-15

Mr. Mustafa Khaleel (Individual) No.70, H. Siddaiah Road Opp. Nayadegula Bangalore-560 027.  <b>PAN NO : AIDPM3523H</b>	<b>Vs.</b>	ITO Ward-7(2)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Rajeev C. Nulvi, A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

Date of Hearing	:	03.12.2020
Date of Pronouncement	:	03.12.2020

## **ORDER**

### **PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeals filed by the respective assesseees are directed against the orders passed by Ld. CIT(A)-10, Bengaluru in their respective hands and they relate to the assessment year 2014-15. Since the issues urged in these appeals are identical in nature, all these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The grounds urged by the assesseees give rise to a single issue, viz., “what will the cost of acquisition of flats sold by these assesseees?”

3. The facts relating to the issue are stated in brief. During the financial year 2005-06, the assesseees herein along with another brother and 2 sisters entered into a Joint development agreement (JDA) with M/s. Kuteer Builders to develop the land at Sy. No.14/A, Nobonagar, Bannerghatta Road, Bangalore – 560 076 and the project was named ‘Kuteer Bliss’. The JDA was registered on 6.1.2006. As per JDA, the assessee along with his brothers and sisters are entitled for 52,784.51 sq.ft. of super built up area. The assesseees had handed over his possession of the land on the date of entering into JDA. In return the assessee had received 5 flats individually and 4 flats jointly in the Financial year 2011-12.

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4. During the financial year 2008-09, these three assesseees along with one more brother entered into a JDA with M/s. Skylark Mansions Pvt. Ltd., to develop the land at Sy.No.41/1C of Chikkathoguru village, Begur Hobli, Bangalore South Taluk, naming the project as "Skylark Zenith". The JDA was registered on 16.12.2008. As per JDA the assesseees along with their brother are entitled for 37,537 sq.ft., of commercial super built up area and 36,301 sq.ft. of residential super built up area. The assessee had handed over his possession of the land on the date of entering into JDA. In return the assesseees had received 32 flats jointly with their brother by the February 2013 and the commercial property is yet to be handed over.

5. It is pertinent to note that the assesseees did not declare capital gains when they entered Joint Development Agreement in respect of two properties mentioned above, i.e. in FY 2005-06 and in FY 2008-09.

6. During the financial year 2013-14 relevant to AY 2014-15, all these assesseees sold 2 flats jointly in "Kuteer Bill" and four flats jointly in "Skylark Zenith". Besides the above, each of the assesseees sold one flat each individually in the F.Y. 2013-14 relevant to AY 2014-15.

7. The assesseees did not originally declared capital gains on sale of flats. During the course of hearing, the assesseees filed a Statement of total income declaring capital gain on sale of flats. The A.O. noticed that the assesseees have claimed deduction of cost of acquisition of flats ranging from Rs.13,67,100/- to Rs.15,90,300/- and also claimed cost of improvement of Rs.6.5 lakhs in respect of each of the flats.

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8. The A.O. asked the assesseees to furnish copies of "Agreement to sale" and also copies of "sale deed" executed in respect of flats sold by them. The A.O. noticed that sale consideration mentioned in the sale agreement was more than the sale consideration stated in the sale deed. Accordingly, for the purpose of computation of capital gain, the A.O. adopted the sale consideration mentioned in the "Agreement to sale".

9. With regard to the deduction towards cost of acquisition, the A.O. noticed that the assesseees have not disclosed capital gain in the year of entering Joint development agreement. Accordingly, the A.O. took the view that the cost of acquisition relating to the land alone can be deducted from the sale consideration. The A.O. also rejected claim of cost of improvement for want of evidences. Accordingly, the A.O. computed long term capital gain by adopting sale consideration mentioned in the "Agreement to sale" and deducting indexed cost of acquisition of land only.

10. Before Ld. CIT(A), the assesseees furnished evidences towards cost of improvement. Accordingly, the Ld. CIT(A) called for a remand report from the A.O. In the remand report, the AO submitted that the cost of improvement may be allowed to the extent of Rs.3 lakhs. The assesseees also agreed with the remand report. Accordingly, the Ld. CIT(A) directed the A.O. to allow deduction of cost of improvement to the extent of Rs.3 lakhs per flat.

11. With regard to the claim for deduction of cost of acquisition, the assesseees contended before Ld. CIT(A) that the capital gains in respect of joint development agreements have to be computed at two stages, viz.,

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(a) Firstly, at the time of entering into Joint development agreement as per the decision rendered by Hon'ble Karnataka High Court in the case of Dr. T.K. Dayalu (2011) 14 Taxmann.com 120

and

(b) Next at the time of sale of constructed property. Accordingly, it was contended that the cost of acquisition of the flat sold by the assessee during the year under consideration would be the value of consideration adopted for the flats while computing capital gain at the time of entering into Joint development agreement. The assessee also contended that merely because the assessee did not disclose capital gains at the time of entering joint development agreement due to their ignorance, the assessee should not be deprived of claiming right amount of cost of acquisition as deduction against sale consideration of flats.

12. The Ld. CIT(A) did not agree with the contentions of the assessee. He referred to the decision rendered by the coordinate bench in the case of M/s. Shankar Vittal Motor Company Ltd. {ITA No.35(Bang)2015} for the A.Y. 2010-11 and interpreted that the Tribunal has permitted deduction of cost of land only. Accordingly the Ld CIT(A) confirmed the order of AO with regard to cost of acquisition. The assessee is aggrieved.

13. We heard the parties and perused the record. There is no dispute with regard to the fact that the Capital gains liability would arise at the time of entering of Joint Development Agreement as per the decision rendered by the Hon'ble jurisdictional Karnataka High Court in the case of Dr. T.K. Dayalu (supra). For the purpose of computing capital gain at that point of time, the sale consideration has to be determined. Normally, the Sale consideration is determined by ascertaining the fair market value of constructed

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area that will be received by the assessee plus any other consideration that may be received as per JDA. In the case of M/s. Shankar Vittal Motor Company Ltd (supra), the co-ordinate bench has expressed following view at the end of its order on this aspect:-

“Therefore, in our final conclusion, valuation of the capital gain should be appropriate to adopt the FMV/asset as deemed consideration, but not the cost of construction.”

Though the final decision of the Tribunal is not happily worded, the co-ordinate bench has expressed the view that the fair market value of constructed area should be adopted as deemed consideration. Thus, we notice that the Ld CIT(A) has not correctly interpreted the decision rendered by co-ordinate bench in the above said case.

14. In the instant cases, the assessee herein have sold part of the constructed area received by them in the form of flats. When the capital gain is assessed/assessable at the time of entering the JDA, sale consideration has to be determined by taking Fair market value of the constructed area that will be received by the assessee. Since the fair market value so determined is liable for capital gains taxation, the said Fair Market Value shall become cost of the constructed area. When the constructed area in the form of flats are sold subsequently, the cost of acquisition/indexed cost of acquisition of flats are required to be deducted in order to ascertain the capital gain, which shall be the Fair market value, as discussed above.

15. We notice that the AO did not allow the deduction of cost of acquisition of flats solely for the reason that the assessee have not declared capital gains in the year in which JDA was entered. We have also noticed that the Ld CIT(A) has not correctly interpreted the decision rendered by the co-ordinate bench. It is well settled proposition of law that the income of a particular year is assessable

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in that year only. Hence the capital gain arising on entering JDA is assessable only in the year in which the JDA was entered. If the assessee has not declared capital gains in the appropriate year, the AO may take appropriate action to tax the same in accordance with the law. But, in our view, the failure of the assessee to offer capital gains in the appropriate year will not disentitle the assessee to claim cost of acquisition. Accordingly, we are of the view that the AO was also not right in law in rejecting the said claim of the assessee for deduction of correct amount of cost of acquisition/indexed cost of acquisition.

16. In view of the foregoing discussions, we are of the view that the issue of computation of capital gains, particularly the claim for deduction of cost of acquisition of flats, requires to be examined afresh by the AO. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue in the hands of all the three assessee here and restore the same to the file of the AO for examining it afresh.

17. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

18. In the result, all the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 3<sup>rd</sup> Dec, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 3<sup>rd</sup> Dec, 2020.  
VG/SPS

**Copy to:**

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

By order

Asst. Registrar, ITAT, Bangalore.