

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.661/Bang/2014 : Asst.Year 2010-2011

M/s.Karnataka Industrial Areas Development Board, No.14/3, 2 nd Floor R.P.Building Nrupathunga Road Bangalore - 560 001. PAN : AAATK1305J.	v.	The Dy.Director of Income-tax (Exemption) Circle 17(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Padamchand Khincha, CA
Respondent by : Sri.Muzaffar Hussain, CIT-DR

Date of Hearing : 25.03.2021	Date of Pronouncement : 30.03.2021
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ORDER

Per George George K, JM :

The Tribunal vide its order dated 20.04.2016 had disposed of the above appeal. The Hon'ble High Court of Karnataka on appeal filed by the Revenue in ITA No.2 of 2017 (judgment dated 07.12.2020) had set aside the above Tribunal order and directed the ITAT to consider the substantial question of law afresh.

2. The brief facts of the case are as follow:

The A.O. during the course of assessment proceedings, noticed that the Auditor had pointed out understatement of income to the tune of Rs.5.81 crore by the assessee. It was submitted before the A.O. that the observation of the audit report is basically in respect of lease transaction and the lease transaction has not been accounted as they were not sale transaction. The contention of the assessee that the lease

deposits collected was disclosed as receipts over the period of lease, was rejected by the A.O. The A.O. after giving benefit of cost and other development expenditure of land, arrived at a figure of Rs.1.74 crore being the excess / surplus amount. The A.O. held that the excess amount of deposit collected should be added to net profit shown by the assessee in the Profit & Loss account. Accordingly, an addition of Rs.1.74 crore was made by the A.O. for the A.Y. 2010-2011 on this account. On appeal, the CIT(A) confirmed the addition made by the Assessing Officer. On further appeal, the Tribunal allowed the appeal of the assessee and deleted the addition of Rs.1.74 crore. The relevant finding of the ITAT reads as follow:-

“7.5 We have heard the rival submissions as well as considered the relevant material on record. There is no dispute that the amount in question which has been added by the Assessing Officer on account of under statement of income pertains to the lease rentals received by the assessee for allotment of land on lease. The assessee contended that this is not a sale of land but it is a transaction of lease of land and therefore only proportionate rental amount has been accounted by the assessee as a receipt for the year under consideration. The Assessing Officer did not accept the contention of the assessee and observed that the lease is for a long period which amounts to transfer of the land to the allottee and therefore the entire lump-sum lease rental received by the assessee during the year was considered as revenue receipt of the assessee. It is pertinent to note that the land allotted on lease is not a outright sale giving absolute title and ownership to the allottee. Only when a conveyance deed is executed on payment of unearned premium the allottee gets absolute legal title of ownership of the land. The lease transaction does not give an absolute ownership or title as it can be cancelled and reentered. Further the assessee has been consistently following the accounting policy of recognizing the lease rental proportionate to the lease period and therefore the consistent accounting method followed by the assessee for a consideration long time cannot be disturbed when there is nothing on record to suggest that the accounting method followed by the assessee resulted avoidance of tax. Accordingly, we set aside the orders of the

authorities below qua this issue and delete the additions made by the Assessing Officer.”

3. Aggrieved, the Revenue filed an appeal before the Hon'ble High Court of Karnataka u/s 260A of the I.T.Act. The Hon'ble High Court vide its judgment dated 7th December, 2020 in ITA No.2 of 2017, set aside the Tribunal order and restored the case to the ITAT. The judgment of the Hon'ble High Court read as follows:-

“2. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the revenue. The subject matter of the appeal pertains to the Assessment Year 2010-11. The appeal was admitted by a Bench of this Court vide order dated 09.08.2017 on the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting addition of Rs.1.74 crores on account of lumpsum leasing charges received by the assessee even though the Auditor has pointed out under-statement of the income to the tune of Rs.5.81 crores by the assessee and, as such, claim of Rs.1.74 crores is not substantiated by assessee with any material?

2. From perusal of the order passed by the Tribunal, we find that the Tribunal has decided the aforesaid issue in favour of the assessee on the basis that the lease rentals have been consistently offered to tax and the revenue cannot take any inconsistent stand. It is submitted by the learned Counsel for the revenue that the aforesaid lease on which reliance has been placed by the Tribunal is unregistered. However, the same has not been taken into consideration by the Tribunal. Therefore, the matter needs to be remitted to the Tribunal to consider the substantial question of law involved in this appeal afresh.

3. To the aforesaid extent, the order passed by the Tribunal is hereby quashed. The matter is remitted to the Tribunal to consider the substantial question of law involved in this appeal afresh, in accordance with law.

It is made clear that all the contentions are kept open to be raised by both the parties.”

4. Subsequent to the restoration of the case by the Hon'ble High Court, the matter was heard by the ITAT on 25.03.2021. The learned AR relied on the judgment of the Hon'ble Kerala High Court in the case of CIT v. C.F.Raju reported in (2007) 158 taxman 310 (Ker.) for the proposition that merely because the lease deed is unregistered one, would not stand in the way of the Court to determine the true nature of transaction whether it is lease transaction or not.

5. The learned Departmental Representative relied on the assessment order and the order of the CIT(A).

6. We have heard rival submissions and perused the material on record. The limited issue for our consideration subsequent to the remand by the Hon'ble jurisdictional High Court is the efficacy of registration of lease deed and the impact of the same when it is unregistered one. In this context, the Hon'ble Kerala High Court in the case of CIT v. C.F.Raju (supra) had followed the judgment of the Hon'ble Apex Court in the case of Anthony v. K.C.Ittoop & Sons (2000) (6) SCC 394 and held that even though the lease deed is unregistered, the same would not stand in the way to determine whether there is in fact a lease. The relevant finding of the Hon'ble Kerala High Court reads as follow:-

"7. Even under the general law, merely, because the instrument is a compulsorily registrable one by virtue of section 17(1)(d) of the Registration Act and section 107 of the Transfer of Property Act, the transaction in question does not become anything other than a lease transaction. The Apex Court had occasion to consider this aspect of the matter in Anthony v. K.C.Ittoop & Sons 2000 (6) SCC 394. There also the instrument

in question was an unregistered one purporting to create a lease for 5 years and, therefore, compulsorily registrable. Although the Supreme Court held that the instrument as such could not be looked into for holding that the execute thereunder was a lessee, it was observed as follows:-

“When lease is a transfer of a right to enjoy the property and such transaction can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.” ”

6.1 In the instant case, the assessee is a statutory body constituted u/s 5 of Karnataka Industrial Areas Development (IIADB Act), 1966. The KIADB Act, 1966 is a special Act, which provides for expeditious acquisition of land for industrial and infrastructure purposes. The Income Tax Authorities has not doubted the legal effect of the lease deed (being unregistered one). When the lease is transfer of right to enjoy the property, such transfer can be made expressly or by implication. The mere fact that it is an unregistered lease deed would not stand in the way to determine whether in fact it was a transfer of property under lease. In this context, we rely on the judgment of the Hon’ble Apex Court in the case of Anthony v. K.C.Ittoop & Sons (supra), and the judgment of the Hon’ble Kerala High Court in the case of CIT v. C.F.Raju (supra).

6.2 The other issues decided by the ITAT in its order dated 20.04.2016 has not been set aside by the Hon’ble Karnataka High Court in its judgment dated 07.12.2020. Therefore, we hold that since the assessee was consistently declaring the lease rentals / deposits as income on proportionate basis in accordance with the lease period, the Income Tax Authorities

was not justified in disturbing the same. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 30th day of March, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 30th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Mysore.
4. The Director of Income-tax (Exemption), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore