

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No. 261/Bang/2020
Assessment year : 2015-16

The Assistant Commissioner of Income Tax, Circle 4(3)(1), Bengaluru.	Vs.	Shri. Govinda Reddy Dayananda Reddy (HUF), 205 Behind Trinity Woods, Sarjapura Road, Ambalipura, Bengaluru – 560 034. PAN: AAAHG 6308 M
APPELLANT		RESPONDENT

Appellant by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri S. V. Ravishankar, Advocate

Date of hearing	:	06.07.2021
Date of Pronouncement	:	07.07.2021

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the Revenue is directed against the order dated 25.10.2019 of CIT(Appeals)-4, Bengaluru relating to assessment year 2015-16.

2. The issue sought to be raised in this appeal is, whether the CIT(Appeals) was justified in deleting the addition on account of capital gains to the extent of Rs.6,66,90,852 made in the hands of assessee on protective basis for the AY 2015-16, the substantive addition having been made in the year 2011-12. The grievance of the revenue as projected in grounds of appeal is that

the assessee has not accepted the assessment of capital gains in AY 2011-12 and therefore the assessment of capital gains made on a substantive basis in AY 2011-12 is not conclusive.

3. The brief facts are that the assessee along with his brother, Shri G. Jayarama Reddy (HUF) entered into a Joint Development Agreement (JDA) on 20.10.2010 with SJR Enterprises, Bangalore in respect of lands situated in Kaikonrahalli Village, Varthur Hobli, Bangalore East Taluk. The assessee filed return of income for AY 2015-16 on 8.10.2016 declaring long term capital gain of Rs. 6,66,90,852 under the JDA. It was the plea of assessee that capital gains accrues or arises only on completion of the development by the developer under the JDA and when the assessee receives its share of built-up area.

4. The AO issued a notice u/s. 148 dated 9.2.2015 for AY 2011-12 taking a view that transfer of the property under the JDA took place on the date of agreement dated 20.10.2010 and therefore capital gain is to be assessed in AY 2011-12. Accordingly, the AO assessed the capital gain on the JDA for AY 2011-12 by an order u/s. 143(3) r.w.s. 147 of the Act dated 29.3.2016. As far as AY 2015-16 is concerned, the AO made a protective assessment of the capital gain because substantive addition was made in the AY 2011-12.

5. The assessee filed appeal against the order of assessment dated 29.3.2016 for AY 2011-12 and also against the order of assessment for AY 2015-16 dated 28.12.2017 making a protective assessment. The CIT(Appeals) confirmed the substantive assessment in AY 2011-12 and deleted the protective assessment in AY 2015-16.

6. The assessee filed appeal against the order of CIT(Appeals) for AY 2011-12 before the Tribunal in ITA No.2539/Bang/2019. The assessee, however, opted for settlement of the dispute under the Direct Taxes - Vivad Se Vishwas Scheme Act, 2020 [VSVS] and accordingly withdrew the appeal filed before the Tribunal. Thus, the substantive assessment of capital gain in AY 2011-12 has become final.

7. Since the capital gain has been assessed substantively in the AY 2011-12, the same capital gain cannot be protectively assessed in AY 2015-16. Therefore, the order of CIT(Appeals) deleting the protective assessment of capital gain in AY 2015-16 is in order. The grievance of the revenue as projected in ground No.1 of the grounds of appeal to the effect that substantive assessment for AY 2011-12 has not attained finality is no longer valid in view of the substantive assessment of the capital gain in AY 2011-12 having become final. In these circumstances, we are of the view that there is no merit in this appeal by the revenue. Accordingly, the appeal by the revenue is dismissed.

8. In the result, appeal by the revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 7th July, 2021.

/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.