

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

**Before Shri George George K, JM & Ms.Padmavathy S, AM**

ITA No.6/Bang/2013 : Asst.Year 2008-2009

ITA No.7/Bang/2013 : Asst.Year 2009-2010

M/s.Shyamaraju & Company (India) Private Limited Divyasree Chambers, Wing-A #11, O'Shaugnessy Road Bangalore – 560 025. <b>PAN : AACCS6562L.</b>	v.	The Deputy Commissioner of Income-tax, Central Circle 2(2) Bengaluru.
(Appellant)		(Respondent)

ITA No.8/Bang/2013 : Asst.Year 2008-2009

Sri.P.Shyamaraju No.343, 4 <sup>th</sup> Main Uppr Palace Orchards Sadashivanagar Bangalore – 560 080. <b>PAN : AIOPP2600D.</b>	v.	The Asst.Commissioner of Income-tax, Central Circle 2(2) Bengaluru.
(Appellant)		(Respondent)

ITA No.9/Bang/2013 : Asst.Year 2008-2009

Sri.Umesh S.Raju No.343, 4 <sup>th</sup> Main Uppr Palace Orchards Sadashivanagar Bangalore – 560 080. <b>PAN : ARMPS9147H.</b>	v.	The Deputy Commissioner of Income-tax, Central Circle 2(2) Bengaluru.
(Appellant)		(Respondent)

ITA No.1650/Bang/2012 : Asst.Year 2008-2009

The Assistant Commissioner of Income-tax, Central Circle 2(3) Bengaluru.	v.	M/s.Shyamaraju & Company (India) Private Limited Divyasree Chambers, Wing-A #11, O'Shaugnessy Road Bangalore – 560 025.
(Appellant)		(Respondent)

Revenue by : Smt.S.Praveena, CIT-DR  
Assessee by : Sri.V.Chandrashekar, Advocate

<b>Date of Hearing : 03.03.2022</b>	<b>Date of Pronouncement : 04.03.2022</b>
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## **ORDER**

### **Per George George K, JM :**

These are group of five appeals. Four appeals at the instance of three assesseees, namely, M/s.Shyamaraju & Co. (India) Private Limited and two of its directors. (The company had filed two appeals, i.e., for assessment years 2008-2009 and 2009-2010. The two directors have filed appeal for A.Y.2008-2009) The Department has also filed appeal for assessment year 2008-2009.

2. Common issues are raised in these appeals. Hence, these appeals were heard together and are being disposed of by this consolidated order. We shall first adjudicate the assessee's appeal. The details of same are as under:-

Sl. No.	ITA No.	Name of the company	Asst.Year
1.	6/Bang/2013	M/s.Shyamaraju & Company (India) Private Limited	2008-2009
2.	7/Bang/2013	M/s.Shyamaraju & Company (India) Private Limited	2009-2010
3.	8/Bang/2013	M/s.Shyamaraju & Co. (India) Private Limited	2008-2009
4.	9/Bang/2013	Sri.Umesh S. Raju	2008-2009

3. The solitary issue raised in assessee's appeal is in whose hands capital gains is to be taxed, whether in the hands of the company or in the hands of individual directors.

4. The brief facts of the case in relation to assessee's appeal are as follows:

It is contended by the learned AR that the company, namely, M/s.Shyamaraju & Company (India) Private Limited had acquired certain lands in the year 2003 and 2004 through its directors (Sri.Umesh S.Raju and Sri.P.Shyama Raju) under Board Resolution dated 13.12.2001. It was stated that the aforesaid Board Resolution expressly envisaged and mandated land to be purchased by the two directors in their respective names, to be held wholly and exclusively for and on behalf of the company. It was submitted that this was done in view of certain restrictions in the Karnataka Land Reforms Act laid down u/s 79A and 79B of the said Act, which prohibits corporate entities from owning agricultural lands (such a restriction was repealed with effect from 2020).

5. It was stated that the payments for acquisition of the aforesaid agricultural land were paid through banking channels by the assessee-company. It was submitted that the land situated at Sy.No.106/2, 107/2 and 107/3 at Amani Bellandur Kane Village, Varthur Hobli, Bangalore, so acquired in the year 2004 were sold during the previous year relevant to the assessment year 2008-2009, by its directors, viz., Sri.P.Shyama Raju on 18.02.2008 to M/s.Chrysalis Trading Private Limited as per the instructions and directions of the company.

6. Similarly, it is stated that the land so acquired in the year 2004, situated at Sy.No.89 and 90/1 at Amani Bellndur Kane Village, Varthur Hobli, Bangalore, were sold by its other Director viz., Sri.Umesh S.Raju on 25.07.2007 to M/s.Vikram

Reddy and Madhusudan Reddy as per the instructions and directions of the company.

7. For the assessment year 2008-2009, the A.O. assessed the capital gains arising on sale of aforesaid lands substantially in the respective hands of the two directors and protectively in the hands of the company. The company aggrieved by the protective addition filed an appeal before the CIT(A). The two directors viz., Sri.P.Shyama Raju and Sri.Umesh S.Raju also challenged the assessment in their respective hands objecting to the substantive addition being made in their hands. The directors also claimed exemption u/s 54F of the Act. The appeals filed by the company and its two directors came to be dismissed by the CIT(A).

8. Insofar as the assessment year 2009-2010 is concerned, lands registered in the name of its director Sri.P.Shyama Raju was sold on 12.05.2008 to M/s.C.K.Baijee. The A.O. taking a divergent view, assessed the long term capital gains in the hands of the company, substantively and protectively in the hands of the directors. The company filed an appeal before the CIT(A) on the ground that the land sold was not a capital asset u/s 2(14) of the Act and hence not exigible to capital gains tax. The CIT(A) having confirmed the assessment order for the A.Y. 2008-2009, held that the long term capital gains arising out of the sale made in the A.Y. 2009-2010 also ought to be assessed substantively in the hands of the Director and protectively in the hands of the company, thus reversing the decision of the A.O., which was not subject matter of appeal.

The CIT(A) also held that the land sold was a capital asset u/s 2(14) of the Act.

9. Aggrieved by the orders for assessment years 2008-2009 and 2009-2010, the company is in appeal before the Tribunal by contending that the capital gains ought to be assessed substantively in its hands and also raised grounds that it is exempt from capital gains since it is a sale of agricultural land. The concerned directors are also in appeal for assessment year 2008-2009 before the ITAT contending that the capital gains has to be taxed in the hands of the company. Further, the directors have also claimed exemption u/s 54F of the I.T.Act if capital gains is taxable in their individual hands. The learned AR reiterated the submissions made before the Income Tax Authorities.

10. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

11. We have heard rival submissions and perused the material on record. The admitted facts are that certain lands were purchased in the name of two directors in the year 2004 and the same were sold during the assessment year 2008-2009 and 2009-2010, giving rise to income under the head capital gains. It is stated that the impugned lands were purchased and sold by the directors for and on behalf of the company. The question is in whose hands the capital gains is to be assessed. Whether in the hands of the company or in the hands of individual directors of the company? The company and the directors submit that income arising from

capital gains is to be substantially assessed in the hands of the company and not in the hands of the directors.

12. It is claimed that funds for acquisition of the impugned lands in the year 2004 was paid directly by the company to the sellers of the properties. The properties were purchased in the name of the directors only to circumvent the provisions of section 79A and 79B of the Karnataka Land Reforms Act (The said provision prohibited corporate entities from buying and owning agricultural land). Therefore, the contention is that the directors were only facilitator of the transactions and there is no direct or indirect benefit to them. In such a factual scenario, we have to determine who had the actual / de facto owner of the impugned properties. This fact can be determined only by examining who is actually funded the purchase of land and who is in receipt of the sale consideration when the land was sold during the assessment year 2008-2009 and 2009-2010. It is claimed that –

(i) the impugned properties were purchased in the year 2004 in the name of the directors and company had paid to the sellers directly through banking channel;

(ii) the cost incurred for conversion of land from agricultural land to non-agricultural land were expended by the company; and

(iii) though the sale consideration was credited in the capital accounts of the directors, the same was paid over to the company without any delay.

13. However, to verify the above claim, there is no material on record, except the Board's Resolution dated 13.12.2001, regarding the purchase of agricultural land (which has a

reference at page 2 and 3 of the assessment order in the case of the company for assessment years 2008-2009 and 2009-2010). The Board Resolution by itself cannot be the determinative factor to decide who is the de facto owner of the impugned lands. Therefore, we are not in a position to decide and is constrained to restore this issue to the files of the A.O. The A.O. is directed to examine whether the company had paid the purchase price in the year 2004 (as claimed) and company was in receipt of sale consideration when the lands were sold in the year 2008-2009 and 2009-2010 and the directors of the company are only facilitators of the said transactions. If the answer to the above questions are in the affirmative, prima facie, the capital gains of sale of land is to be assessed substantially in the hands of the company. With these observations, we dispose of the four appeal preferred by the assessee.

14. Before concluding, it is to be mentioned that in company's appeals, grounds are raised that sale of impugned land would not be exigible not give rise to capital gains, since it is agricultural land. However, during the course of hearing, the learned AR did not press this ground. Similarly, in directors appeal (Sri.P.Shyamaraju and Sri.Umesh S. Raju) grounds are raised with regard to the claim of deduction u/s 54F of the I.T.Act. This ground also the learned AR did not press during the course of hearing.

15. In the result, the assessee's appeals are partly allowed for statistical purposes.

**ITA No.1650/Bang/2012 (Revenue's appeal) (A.Y.2008-09)**

16. The solitary ground raised reads as follows:-

*“1. The learned CIT(A) in facts and in law erred in setting aside the issue of claim of deduction under section 80IA(4)(iii) of the Income Tax Act by ignoring the provisions of clause (a) of sub-section (1) of Section 251 of the Income Tax Act which empowers the CIT(A) to confirm, reduce, enhance or annul the assessment only (after amendment made through the Finance Act, 2001).”*

17. The assessee's claim for deduction u/s 80IA(4)(iii) of the I.T.Act was denied by the Assessing Officer by observing as under:-

*“Even after providing ample number of opportunities the assessee has not provided the break up of expenditures related to sold and owned persons of the Industrial park. The claim of the assessee that these incomes are only with respect to utility services of BESCO, BWSSB... etc., is without any evidence. In view of this, the deduction claimed u/s 80IA(4)(iii) is not granted, even for the owned portion. In the event of clear bifurcation being available, the deduction u/s 80IA(4)(iii) will be eligible for consideration.”*

18. On further appeal, the CIT(A) by following her predecessor's order for assessment year 2007-2008, directed the A.O. to procure the bifurcation as necessitated by the Assessing Officer in the course of assessment proceedings and grant deduction u/s 80IA(4)(iii) of the I.T.Act, as per law.

19. We have heard rival submissions and perused the material on record. The CIT(A) had directed the A.O. to verify the correctness of the claim and allow to the extent the claim is found to be correct. Pursuant to the CIT(A)'s order, the A.O. on verification had passed the order giving effect allowing the

claim in full after due verification. The CIT(A) only directed the A.O. to obtain bifurcation of expenditure between owned and sold portion of the properties (since the A.O. had sought for these details in the course of assessment). We fully endorse the directions of the CIT(A) and confirm the order as regards the claim of deduction u/s 80IA(4)(iii) of the I.T.Act. It is ordered accordingly.

20. In the result, the appeals filed by the assessee are partly allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

Order pronounced on this 04<sup>th</sup> day of March, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 04<sup>th</sup> March, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-VI, Bangalore.
4. The CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore