

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| <b>ITA Nos. 284 to 289/Bang/2022</b>             |
| <b>Assessment Years : 2011-12 to<br/>2014-15</b> |

|   |            |   |
|---|------------|---|
| M/s. Vasavi Housing Co-operative Society,<br>108, Sri Chakra, 2 <sup>nd</sup> Floor,<br>East Park road opp to<br>Vasavi Mahal,<br>Malleshwaram,<br>Bengaluru – 560 003.<br><b>PAN: AABAV4661L</b> | <b>Vs.</b> | The Income Tax<br>Officer (TDS),<br>Ward 3 (4),<br>Bengaluru. |
| <b>APPELLANT</b>  |            | <b>RESPONDENT</b>   |

|             |   |                                       |
|-------------|---|---------------------------------------|
| Assessee by | : | Shri Sandeep Chalapathy, CA           |
| Revenue by  | : | Shri Srinivas Rao Bandaru,<br>JCIT DR |

|                       |   |            |
|-----------------------|---|------------|
| Date of Hearing       | : | 12-07-2022 |
| Date of Pronouncement | : | 22-07-2022 |

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals arises out of separate orders passed by Ld.CIT(A)-11, Bangalore all dated 25/02/2022 for A.Ys. 2011-12 to 2014-15.

2. The Ld.CIT(A) held assessee to be in default u/s. 201(1) of the Act and levying interest u/s. 201(1A) of the act for the years under consideration, the details of which are as under:

| A.Y.    | 201(1) | 201(1A) |
|---------|--------|---------|
| 2011-12 | ✓      | Nil     |
| 2012-13 | ✓      | Nil     |
| 2013-14 | ✓      | ✓       |
| 2014-15 | ✓      | ✓       |

### **3. Brief facts of the case are as under:**

3.1 Assessee is a cooperative housing society with main object to provide residential sites to its members. Assessee entered into an agreement with M/s. Shree Sai Associates for procurement and development of sites and transfer the same to the assessee for purposes of allotting the sites to its members. It is a submission of assessee that the agreement was entered into between M/s. Shree Sai Associates vide MoU dated 21/09/2010 for purchases of developed land and therefore TDS was not liable to be deducted. Revenue however treated assessee to be 'assessee in default' for not deducting at source u/s. 194C of the Act on the payments made to M/s. Shree Sai Associates towards the works contract. The Ld.AO held that the payment made by assessee was towards works contract on which TDS was liable to be made and the MoU between assessee and M/s. Shree Sai Associates is in the nature of contract. The Ld.AO made addition in the hands of the assessee as under:

| A.Y.    | 201(1)<br>(Rs.) | 201(1A)<br>(Rs.) |
|---------|-----------------|------------------|
| 2011-12 | 2,52,300        | Nil              |
| 2012-13 | 76,85,535       | Nil              |
| 2013-14 | 11,14,620       | 8,43,302         |
| 2014-15 | 5,03,137        | 3,36,836         |

3.2 Aggrieved by the disallowance or addition made, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the order of Ld.AO and held that assessee was liable to deduct TDS on the payments made in relation to the development work.

3.3 Aggrieved by the orders of Ld.CIT(A), assessee has been preferred appeals before this *Tribunal* independently challenging the disallowance u/s. 201(1) of the Act and levy of interest u/s. 201(1A) of the Act for A.Ys. 2013-14 and 2014-15.

4. Before us, the Ld.AR primarily submitted that, the work carried out by M/s. Shree Sai Associates are not in the nature of works contract and therefore assessee was not liable to deduct TDS. He submitted that the assessee proposed to purchase the developed land in a suitable location by transferring the documents from such land owners and the developed land would be transferred to its members, against which an agreed price was payable by the assessee. For this activity, assessee authorised M/s. Shree Sai Associates to develop the land and transfer the same to the society. He submitted that various clauses in the MoU categorically stipulates that M/s. Shree Sai Associates would procure the land and convey the developed society to the assessee. Referring to clause (4) of the MoU, the Ld.AR submitted that M/s. Shree Sai Associates has entered into purchase of lands from the respective owners in order to develop them. He thus submitted that assessee was in the bonafide belief that TDS was not liable to be deducted.

5. The Ld.AR submitted that assessee on completion of the layout work was to pay the remuneration at Rs. 387/- per sq.ft. of the developed premises which includes the cost of the land, various charges paid by M/s. Shree Sai Associates to the Government for obtaining necessary permissions, payment of conversion charges etc. He thus submitted that assessee cannot be held to be an assessee in default.

6. On the contrary, the Ld.DR submitted that this is a clear case of works contract between assessee and M/s. Shree Sai Developers wherein all the development activities are carried out according to the assessee. The various stages at which the payment are being made by assessee to M/s. Shree Sai Developers clearly indicates that it is a works contract that was executed and therefore liable for TDS to be deducted.

7. We have perused the submissions advanced by both sides in the light of records placed before us.

8. On perusal of the MoU between assessee and M/s. Shree Sai Associates dated 21/09/2010, we note that M/s. Shree Sai Associates is a developer cum contractor who has procured the land for the purposes of construction of residential houses at the request of the assessee on behalf of all its members. Upon purchases of land, confirmation of the site by the developer / contractor. It is also noted in clause (7) of the MoU that all necessary permission for registration of the project land was in the name of assessee and that the developer / contractor would be developing the layout as agreed with assessee. Clause (16) of the agreement mentions that the developer / contractor would be liable to pay sales tax on the works contract, VAT / service tax or any other applicable taxes leviable on or during the course of the development of the project land. The clause (17) further refers to the name that shall be adopted for the entire project that would be decided by the assessee alone. The obligation clause no. (22) of the MoU reveals that the work carried out by the developer / contractor was as per the requirements of the assessee. Assessee could have approached various government officials for necessary permission and therefore approach the developer/contractor to

carry out the development of residential layout in all respects over the project land. For sake of clarity, we reproduce clause (22) herewith as under:



respects generally and in particular as and when its assistance is necessary and essential.

22. It is agreed that the Second party shall undertake to take up the following other works apart from the works mentioned above and carry out the same as hereunder.

a). That the Second Party has agreed and undertakes to carry out the project work formation of roads, side drains, culvert, storm water drains, providing water supply lines (Distribution of water supply lines from over-head tank to the residential sites) rising lines from bore wells and sump tanks to the over-head tanks and underground drainages work (UGD), electrification to the layout including installing street lights installing transformers in required numbers, required number of over-head tanks, sewerage sumps, septic tanks and disposal, Sewerage, digging of required number of bore wells, construction of pump house in the layout, tree-plantation, fixing of boundary stones, cross boards, layout plan boards, numbering the sites as per approved layout plan, required to be carried out in the layout.

b). That the Second Party has agreed and undertakes to execute the above works diligently and to the best satisfaction of the First Party.

c). That the Second Party has agreed and undertakes to complete the entire formation of layout works for the benefit of the 1<sup>st</sup> party and its members,

For M/s. Shree Sai Associates

*[Handwritten signature]*  
Partner

*[Handwritten signature]*

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ  
Government of Karnataka

ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ  
Registration and Stamps Department

ಈ ಪಾಳೆಯನ್ನು ಯಾವುದೇ ದಾಖಲೆಗಾಗಿ ಬಳಸಬಹುದು  
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within a period of 12 months from the date of securing the plan sanction from NPA subject to any other unforeseen natural instances such as natural calamities which are beyond the control of the parties, however upon mutual consent the time limitation may be extended. The 2<sup>nd</sup> party shall transfer the property by way of sale deed in favour of the 1<sup>st</sup> party society as soon as NA conversion is complete, subject to all clearances, encumbrances and at the cost and expenses of the 2<sup>nd</sup> party herein.

d). That the Second Party has agreed that after the formation of the entire Residential layout in all respects shall hand over the "Project Land" to the First party and get relinquishment deed done in favor of Competent Authority, The cost of relinquishment deed will be borne by Second Party.

e). That the First Party has agreed to pay the Second Party on the completion of the layout work the amount calculated at Rs. 387 /- per sq. feet (Rupees three hundred and eighty seven Only) ( per sft ) on the actual sital area carried out by the second party for the benefit of the first party. The said area carried out by the second party for the benefit of the first party's members. The said sum of Rs. 387 /- per sq. feet (Rupees three hundred and eighty seven Only) , per Sq. ft. which includes cost of "Project Land" the charges payable to the Government for getting necessary permission, payment of conversion charges, charges payable to Competent Authority, KPTCL,

For M/s. Shree Sai Associates

*[Signature]*  
Partner

For SAJESH HOUSING CO-OP SOCIETY LTD.

*[Signature]*

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ಈ ದಾಖಲೆಯು ಹಾಲಿಯನ್ನು ಕರ್ನಾಟಕ ಸರ್ಕಾರದ  
ಆರ್ಟಿಕಲ್ 192 ಮತ್ತು 193 ನಡವಳಿಯಡಿ 2003  
ದಿನಾಂಕ 09-05-2003ರ ಪ್ರಕಾರ ಮುದ್ರಿಸಲಾಗಿದೆ.

**ಕರ್ನಾಟಕ ಸರ್ಕಾರ**  
**Government of Karnataka**

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**Registration and Stamps Department**

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Total stamp duty paid Rs.

BWSSB, and any other Authorities /Corporations /Agencies / Board, VAT, cess etc.and such other layout charges and civil works as staed above 1 (a).

f). The First Party has paid a sum of Rs.50,00,000/- (Rupees fifty lakhs only) by way of cheque no.834977 dated 21/09/2010 drawn on Bank of Maharashtra, Malleshwaram Branch Bangalore as advance to the Second Party towards the project.

g). It has been expressly agreed by both the parties that the First Party shall pay the the Secobd Party the following amount at these stages.

1. for procuring of c<sup>h</sup>arges of land use for the project land. Society will pay Rs.75,00,000/--(Rupees seventy five lakhs only) within 45 days from ther date of this MOU.
2. for procuring change of land use from agriculture belt to Yellow belt, and official memorandum for having concervion from Agricultural purpose into Non-Agricultural Residential purpose from the competent authority for the project land, Society will pay at Rs.06,00,00,000/- (rupees six crores only)
3. On or before procuring of project land conversion and registration in favour of Society. Society will pay full land cost at the time of registration at the rate of Rs.60,00,000/- per acre, by deducting the above said & all payments made by the 1<sup>st</sup> party to the 2<sup>nd</sup> party, before the last acre registration

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*[Handwritten signature]*

For VASAVI HOUSING CO-OPERATIVE SOCIETY LTD.

*[Handwritten signature]*

President

9. On perusal of the above clauses, we do not hesitate to agree with the view taken by the revenue authorities that, the agreement between assessee and M/s.Shree Sai Associates is in the nature of works contract.

10. Before us, assessee alternatively argued that, the amount made towards the cost of the land and expenditure towards various permission, should be kept outside the purview of TDS provision as these are expenses, which does not fall within the ambit of works contract. In any event, purchase of immovable property, by an assessee from a developer, was otherwise for TDS at 1%. We therefore agree Ld.CIT(A) that the assessee was liable to deduct TDS. Assessee therefore cannot be exonerated from the charge of being 'assessee in default'.

11. The alternative argument advanced by the assessee deserves to be accepted as the cost of the land cannot be considered to be liable for TDS along with the expenses incurred towards various permissions from the State Government.

12. Therefore the levy of interest u/s. 201(1A) of the Act, computed by the Ld.AO for A.Ys. 2013-14 and 2014-15 should exclude the payment made towards cost of the land and various approvals. We therefore do not find any infirmity in the view taken by Ld.CIT(A) in the appeals filed before us.

**In the result, all the appeals filed by the assessee stands dismissed.**

Order pronounced in open court on 22<sup>nd</sup> July, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 22<sup>nd</sup> July, 2022.  
/MS /

**Copy to:**

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

By order

Assistant Registrar,  
ITAT, Bangalore