

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

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

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 165/Bang/2012	M/s. Siddivinayaka Property Developers, #10/1, Lakshminarayana Complex, Palace Road, Bangalore – 560 052. PAN: ABJFS2900B	The Deputy Commissioner of Income Tax, Central Circle – 1[1], Bangalore.	2006-07
ITA No. 207/Bang/2012	The Joint Commissioner of Income Tax (OSD), Central Range, Bangalore.	M/s. Siddivinayaka Property Developers, #10/1, Lakshminarayana Complex, Palace Road, Bangalore – 560 052. PAN: ABJFS2900B	
C.O. No. 79/Bang/2012 (in ITA No. 207/Bang/2012)	M/s. Siddivinayaka Property Developers, #10/1, Lakshminarayana Complex, Palace Road, Bangalore – 560 052. PAN: ABJFS2900B	The Joint Commissioner of Income Tax (OSD), Central Range, Bangalore.	
M.P. No. 213/Bang/2017 (in ITA No. 207/Bang/2012)		The Deputy Commissioner of Income Tax, Central Circle – 1[1], Bangalore.	

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Gudimella VP Pavan Kumar, JCIT DR

Date of Hearing	:	14-11-2022
Date of Pronouncement	:	30-11-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of the order dated 05/02/2021 passed by the *Hon'ble Karnataka High Court* in *ITA No. 01/2018 for A.Y. 2006-07*.

2. The Ld.AR submitted that, it is a remand from the *Hon'ble Karnataka High Court*, wherein the *Hon'ble High Court* remitted the matter to this *Tribunal* by observing as under:

"7. The Appeal is allowed. The Order passed by the Income Tax Appellate Tribunal, Bengaluru 'A' Bench in ITA No.165/Bang/2012, CO No.79/Bang/2012, ITA No.207/Bang/2012 dated 28.04.2017 and Misc. Petition in MP No.213/Bang/2013 [in ITA No.207/Bang/2012] dated 21.11.2017 for the assessment year 2006-07 is hereby set aside. The matter is remitted back to the Tribunal for fresh consideration in accordance with law.

8. The parties shall appear before the Tribunal on 22.02.2021 and are at liberty to canvass all such points available to them and the Tribunal is directed to dispose of the Misc. Petition filed by the assessee in accordance with law."

3. The question of law was raised before the *Hon'ble Karnataka High Court* was regarding the allowability of sum of Rs.2 crores treated as bad debts u/s. 36(1)(vii) of the Act by the assessee. The assessee had also challenged the validity of the order passed u/s. 153C without serving notice.

4. The brief facts for considering the above two issues are as under:

4.1 The assessee is a registered partnership firm carrying on business in real estate and developing including sale of immovable property. The assessee has filed its return of income for the assessment year 2006-07 on 15.04.2008 declaring nil

income. Subsequently revised return was filed on 31.03.2009 declaring total income as Rs. 1,41,37,910/, claiming Rs.2,00,00,000/- as bad debts receivable from Sri Byregowda. There was a search under Section 132 of the Act on 26.07.2007 on one Srinivasa Raju and others in order to discover receipt if any by Mr. Dayanand Pai, one of the partners of the assessee firm. The Assessing Officer disallowed the claim by an Order dated 29.12.2003 passed under Section 143(3) read with Section 153C of the Act.

4.2 An appeal was preferred before the Ld.Commissioner of Income Tax who dismissed the appeal in limine, vide order dated 30.09.2010.

4.3 Aggrieved by the said Order, appeal was also preferred before the Tribunal and by an order dated 28.09.2011 Tribunal remitted back the matter to the Commissioner of Income Tax.

4.4 In the remand proceedings, the Commissioner of Income Tax partly allowed the appeal with respect to the disallowance of bad debts and dismissed the appeal with respect to the levy of interest under Section 234A, 234B and 234C of the Act. Again, the assessee approached the Tribunal by raising legal grounds regarding the validity of the assessment under Section 153C of the Act. The Revenue also preferred an appeal against the order of the Commissioner of Income Tax, wherein the assessee filed cross objections.

4.5 The Tribunal considered both the appeals and by a common order dated 28.04.2017 allowing the appeal of the Revenue and dismissed the appeal of the assessee and its cross objections.

Thereafter, the appellant filed a Misc. Petition under Section 254(2) of the Income Tax Act which was also dismissed by the Tribunal on 21.11.2017.

4.6 The miscellaneous petition filed by the assessee was in respect of certain mistakes pointing out factual errors that have crept in the order of the *Tribunal* dated 21/11/2017. The *Tribunal* however dismissed the miscellaneous petition stating that the matter pertains to depreciation.

Against the miscellaneous petition also, assessee was before the *Hon'ble Karnataka High Court*.

5. Based on the facts as narrated hereinabove, *Hon'ble Karnataka High Court*, passed the order wherein all the appeals and miscellaneous petition along with Cross Objection was remanded to this *Tribunal*.

5.1 Before us, in the remand proceedings by *Hon'ble High Court*, the assessee pressed on the additional ground which reads as under:

"1. The order of assessment made under the order dated 29/12/2009 which is appealed against is bad in law as there is no material belonging to the appellant which was seized in the course of the search action in the case of Sri Srinivasa Raju Et Others for validly assuming jurisdiction u/s.153C of the Act against the appellant, under the facts and in the circumstances of the appellant's case.

2. Without prejudice to the above, no notice u/s.153C rws 153A of the Act was issued on the appellant by the learned A.O. as mandatorily required to proceed and frame an assessment against the appellant."

5.2 Before us, the Ld.AR submitted that, the document seized does not belong to assessee, based on which he is challenging the validity of the order passed u/s. 153C.

In support, the Ld.AR relied on the decision of *Hon'ble Karnataka High Court* in case of *Pepsi Foods Pvt. Ltd. vs. ACIT* reported in 376 ITR 112.

For the sake of convenience, we reproduce the notice u/s. 153C placed in the paper book as under:



NOTICE UNDER SECTION 153C OF THE INCOME TAX ACT, 1961

No.ABJFS2900B/DCIT, CC-1(1)/09-10

Office of the
Dy. Commissioner of Income-tax,
Central Circle-1(1), Bangalore.
C.R.Building, Queen's Road,
Bangalore - 560-001.

Date: 14.5.2009

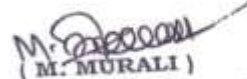
To:
M/s. Siddivinayaka Property Developers
10/1, Lakshminarayana Complex
Palace Road Bangalore.

Sir,

Action u/s. 132 of the Income tax Act, 1961 was initiated in your case on 26.7.2007 wherein certain books of accounts and documents have been seized. On the basis of the seized material, I have reason to believe that you have not disclosed the income chargeable to tax.

I therefore, propose to assess/reassess your income under section 153A/153C of the Income tax Act, for the assessment year 2006-07 and hereby require you to deliver to me a return in the prescribed form of your income for the said assessment year on or before 8.6.2009.




(M. MURALI)
Dy. Commissioner of Income-Tax,
Central Circle 1(1), Bangalore.

5.3 It is submitted that there was a search in case of Shri B.N. Byre Gowda and a loose sheet reflecting the transaction of land at Utthanahalli was found and seized as page 91 and marked as A/BNB/4. The extract of the seized document forms part of the assessment order. However for the sake of convenience, we are reproducing the same as under:

	01/04/2006
<u>UTTANAHALLI (NEW TRANSACTION)</u>	
<u>RECEIPT</u>	
Received from Sri. Byregowda, residing at No.289, Byatarayanapura, Bangalore Bellary Road, Bangalore-560092, the following amounts.	
a) On 08/03/2006 in cash	Rs.1.00 Cr.
b) By 2 cheques of Rs.25.00 Lakhs each	<u>Rs.0.50 Cr.</u>
Total	<u>Rs. 1.50 Cr.</u>
This sum is received on account of my agreeing to sell 13 Acres 06 Guntas of lands at Utthanahalli at the rate of Rs.34.50 Lakhs (Rupees Four Lakhs Fifty Thousand only) per Acre. The sale consideration amount comes to Rs.4.50 Crores (Rupees Four Crores Fifty Lakhs only).	
It is agreed that the remaining sum of Rs.3.00 Crores (Rupees Three Crores only) agreed to be paid in the following manner:	
a) On 08/04/2006	Rs.1.00 Cr.
b) On 08/05/2006	Rs.1.00Cr. Received on 10/05/2006
c) On 08/06/2006	<u>Rs.2.00 Cr</u> Sd/-
Total	<u>Rs.3.00 Cr.</u> (P.DAYANANDA PAI)
Sd/-	10/05/2006
(P.DAYANANDA PAI)	(B.N.BYRE GOWDA)*

5.4 The statement was recorded of Shri B.N. Byre Gowda relating to the above seized document, which is at question no. 28 of the statement recorded and the extract of the same is as under:

“Qn.28 I am showing you Pg. 90 & 91 of A/BNB/4. Pl go thorough this & explain the transaction.

Ans. Page 91 of seized material shown to me pertains to the land transactions I had with Dayanand Pai. Mr. Pai purchased lands from various landlords at Huthanahalli. On discussion with me, he gave me a GPA to sell the lands

for which I was to give him 4.5 crores. I agreed and sold 8 acres to one Mr. Prabhakar Reddy & Mr. Sridhar Reddy for which I received Rs. 1.25 crores in cash and Rs. 25 lakhs by cheque. Another 6 acres was sold to srinivasaraju who paid Rs. 50 lakhs in cash and Rs. 25 lakhs by cheque. For these transactions, I received margin money of Rs. 60 lakhs from Mr. Reddy and Rs. 50 lakhs from Srinivasaraju totally in cash. I have paid Rs. 2.5 crores to Mr. Dayanand Pai of which Rs. 2 crores was given in cash and Rs. 50 lakhs by cheque. My margin money amounting to 1.1 crores on these transactions, I am offering for taxation for A.Y. 2007-08. I also undertake to pay the taxes with it along with interest applicable and file the return of income accordingly. Survey nos. involved in these transactions are 106/2, 107/1, 107/2, 106/3, 73/9, 118 & 143, Huttanahalli.”

We also note that statement u/s. 131 was recorded of Shri Dayananda Pai, as per the submissions dated 30/03/2009 filed by the assessee placed in the paper book at page_____ which reads as under:

SIDDIVINAYAKA PROPERTY DEVELOPERS,
#10/1, LAKSMINARAYANA COMPLEX, Palace Road, BANGALORE - 560 052.

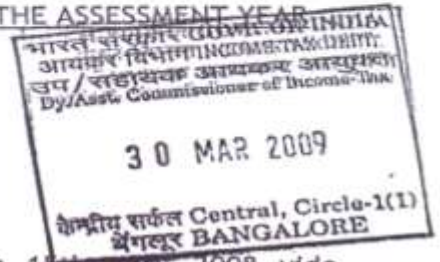
Date: 30th March, 2009

To
Dy. Commissioner of Income Tax,
Central Circle-1(1),
Bangalore.

Honorable Sir,

SUBJECT: REVISED STATEMENT OF TOTAL INCOME FOR THE ASSESSMENT YEAR
2007-08

STATUS : PARTNERSHIP FIRM
PREVIOUS YEAR : 2006-2007
PAN : ABJFS2900B



REASONS FOR FILING THE REVISED RETURN :

The assessee filed its original return of income on 15th April 2008 vide Ack.No.10.

The assessee, M/s Siddivinayaka Property Developers is a partnership firm constituted between Sri P.Dayanand Pai and Sri P.Satish Pai, as partners. The firm is constituted under the Instrument of Partnership dated 01/01/2004. A copy of the Instrument of Partnership has already been filed alongwith the returns filed for earlier years. The business of the firm is that of dealing in real estate properties. The two partners are partners in a flagship company of their group called CANARA HOUSING DEVELOPMENT COMPANY, which has been in this field for the past 30 years.

The firm wanted to deal with certain lands in Uttanahalli Villages area, which was being dealt with by one land agent called Sri Byre Gowda. When the investment for the acquisition of these lands was made, it was made by the firm, M/s. Canara Housing Development Company formerly known as M/s. P.DAYANANDA PAI, which was intended for the benefit of this partnership firm. However, the amounts defrayed for the acquisition of these properties on

behalf of this firm were not debited either to the accounts of the two partners of the firm viz., Sri P. Dayananda Pai or Sri P. Satish Pai or to the account of this firm itself in the books of M/s. Canara Housing Development Company. Be it what it may, of the accounting entries made, it was made very clear by one of the partners Sri P. Dayananda Pai by his letter dated 29/08/2007, who happened to have been examined u/s. 131 of the Act by the learned A.O. in connection with some search proceedings in the case of one Sri Byre Gowda, with reference to a receipt seized dated 01/04/2006 that the transactions relating to certain properties in Uttanahalli dealt with by Sri Byre Gowda were on account of this partnership firm and income therefrom would be offered to tax in the hands of this firm only. However, there was some error in appreciation of facts in as much as, under a mistaken impression he offered such income for the year under assessment whereas, the transactions on the basis of documents and evidence would reveal that they are related to the assessment year 2006-07. Therefore, the income, which was offered for the assessment year 2007-08 erroneously under above mentioned return of income is being revised excluding the income and the income so excluded is being offered for taxation for the previous year ended 31/03/2006 relevant to the assessment year 2006-07 in the hands of this firm as well as in the hands of Canara Housing Development Company. As a result of this revised return, the taxes which have been paid being Rs. 62,50,000/- requires to be refundable and, it is requested that the amount so refundable may kindly be adjusted towards the taxes payable for the assessment year 2006-07, for which also a revised return is similarly filed.

BUSINESS :

In the original P & L account for the year 2006-2007, Rs. 4,50,00,000/-, in Sales A/c, relates to the transfer of property at Uttanahalli rights and Rs. 1,28,70,000/- on the transfer of property at Chikkajala, which belongs to M/s Canara Housing Development Company. A sum of Rs. 1,08,62,089/- is taken as the cost of Uttanahalli property and a sum of Rs. 18,76,576/- is taken as the cost of Chikkajala property and the net profit of Rs. 4,64,95,461/- is

shown in the return as income from business. This is on the basis of the letter addressed to ADIT dated 29/08/2007 following and confirmed, the sworn statement dated 26/09/2007. In terms of the sworn statement, it was undertaken that the sale consideration of Rs.4.5 Crores will be booked in the assessee's case by deducting the proportionate cost of Rs.1,08,62,089/-, which is attributable to 13 Acres 6 guntas from out of the total consideration and a sum of RS.3,41,31,911/-, would be offered to tax in the assessee firm and reflected in its books and it was also stated that suitable entries would be made in the books of the assessee firm. The entire 13 Acres 6 guntas was sold to the following persons :

<u>Name of the Owner</u>	<u>Executed through GPA/ Agreement holder</u>	<u>Extent of land</u>	<u>Date of sale</u>	<u>Amount</u>
A.J.Venu Gopal	B.N.Byre Gowda	1 A. 20 guntas	04/03/2006	18,00,000
R.Srinivasa Raju	B.N.Byre Gowda	2 A. 6 guntas	18/03/2006	36,45,000
C.R.Suresh	B.N.Nanjundappa	.36 guntas	18/03/2006	16,20,000
R.Srinivasa Raju	B.N.Byre Gowda	.39 guntas	18/03/2006	12,00,000
R.Srinivasa Raju	B.N.Byre Gowda	1 A. 2 guntas	18/03/2006	12,60,000
B.Prabhakar Reddy	B.N.Nanjundappa	1 A. 1 gunta		
		1 A. 20 guntas	18/05/2005	9,52,000
L.Veera Reddy	B.N.Byre Gowda/ B.N.Nanjundappa	2 Acres	04/07/2005	5,00,000
L.Veera Reddy	B.N.Byre Gowda/ B.N.Nanjundappa	2 Acres	26/08/2005	5,65,000

It can be seen from the above that all the sale deeds were dated during the previous year 01/04/2005 to 31/03/2006 and, therefore, the income relating to these on the basis of the registered documents related to the previous year 31/03/2006 and the undertaken given under the statement on oath u/s.131 of the Act for filing the return on that basis is contrary to evidence and law as the income relating to the assessment year 2006-07 cannot be offered to tax for the assessment year 2007-08 and therefore, this income relating the sale of Utthanahalli transactions is to be excluded for the year ended 31/03/2007. While on this point it is submitted that such excluded income is being offered for the earlier assessment year 2006-07. In respect of Utthanahalli property the entire 7 Acres and 21 Guntas was sold to the following persons:

<u>Name of the Owner</u>	<u>Executed through GPA/ Agreement holder</u>	<u>Extent of land</u>	<u>Date of sale</u>	<u>Amount</u>
Muniyappa	B.N.Byre Gowda	39 Guntas	01/07/2006	1170000 ✓
B.N.Byre Gowda	B.N.Byre Gowda	24 Guntas	07/07/2006	1080000 ✓
B.N.Byre Gowda	B.N.Byre Gowda	2 A,2Guntas	05/01/2007	3690000 ✓
B.N.Byre Gowda	B.N.Byre Gowda	1 A,5Guntas	13/07/2006	1350000 ✓
B.N.Nanjundappa	B:N.Nanjundappa	2 A,31Guntas	13/07/2006	4995000 ✓

1,22,85,000

In so far as Chikkajala property is concerned it belonged to the firm of M/s.Canara Housing Development Company. Even the cost was incurred by the said firm and it was never intended for this firm and as Sri P.Dayananda Pai made it very clear that it is only with reference to Uttanhalli transaction with Sri Byregowda, he wanted to show it in the hands of this partnership firm. Therefore, the income offered is under the erroneous understanding of the very undertaking given and therefore, the income relating to Chikkajala Property is excluded here and at the same is offered to tax in the hands of Canara Housing Development Company by filing a revised return by offering the correct income in the right hands.

While filing the original returns, the financial statements viz., Profit & Loss account and Balance Sheets were prepared on an erroneous understanding clouded by confusion. Now the revised financial statements are prepared and the return filed through e-file mode, and a copy of the acknowledgement is attached with this letter.

Thanking you,
Yours faithfully

For Sri Siddivinayaka Property Developers



Partner

**Encl: Copies of the Sale Deeds of
Abovementioned properties**

5.5 On perusal of the totality of the facts, based on the admission by Shri Dayananda Pai regarding the income that arose out of the sale of Utthanahalli property, dealt with by Shri B.N. Byre Gowda, falls in the hands of the firm, and therefore the legal plea

that the document does not belong to assessee being the partnership firm in the style and name "Siddivinayaka Property Developers" does not hold in the eyes of law.

5.6 In respect of the taxability, all the amount in the reply scanned hereinabove dated 30/03/2009, it is submitted that the sale consideration of Rs. 4.5 crores is submitted to have been offered to tax by deducting the proportionate cost of Rs.1,08,62,089/- which is attributable to the sale of land at Utthanahalli admeasuring at 13 acres and 6 guntas. It has been submitted by the assessee in the reply dated 30/03/2009 that the amount has been offered to tax for A.Y. 2006-07.

6. Now coming to the claim of bad debts of Rs. 2 crores, the Ld.AR submitted that, Mr. Byre Gowda being the GPA holder of Utthanahalli properties and Chikkajala properties agreed to sell all the properties of Utthanahalli of 36 Acres 21 Guntas and Chikkajala of 20 Acres and had agreed to pay P. Dayananda Pai Rs.4.5 Crores as advance in this regard.

6.1 He submitted that, on the basis of this arrangement the sale of Utthanahalli properties has been recorded at Rs.4.5 Crores including the registered sales documents of Rs.1,15,42,000/- (the balance of Rs.3,34,58,000 as nomination fees) during the financial year 2005-06 on accrual basis. Admittedly, Shri B.K. Byre Gowda paid Rs.2 Crores in cash and Rs.50 Lakhs by two cheques of Rs.25 Lakhs each only, and remaining balance of Rs.2 Crores he has not yet paid, apart from several reminders.

6.2 It is submitted that, the reminders and follow ups are almost in an informal way, like telephone conversations and personal

meetings the proof of which cannot be produced. Mr. Byre Gowda was not systematic throughout in his conduct especially with regard to his responsibility to submit periodical statements of account and facts as he is from an agriculture background and not supposed to know the importance or impact of those procedures. The Ld.AR submitted that, due to these reasons the financial accounts were prepared for the financial year 2004-05 and 2005-06 by gathering whatever information available with much difficulty, only during financial year 2008-09. The Ld.AR submitted that by the time the assessee prepared the financial statements, nothing out of the outstanding balance of Rs.2 Crores could have been collected, and therefore the assessee claimed the same as bad debts keeping in view the considerable uncertainty from the conduct of the agent.

6.3 We note that, in the assessment order for the year under consideration, the receipt of Rs. 1 crore has been admitted and shows outstanding of Rs. 2 crores. The Ld.CIT(A) while granting relief to the assessee had relied on the decision of *Hon'ble Supreme Court* in case of *TRF Ltd. vs. CIT* reported in *323 ITR 397*. The settled proposition by *Hon'ble Supreme Court* is that it is not necessary for an assessee to establish that the debts infact has become irrecoverable.

6.4 In our view, as the debt is written off as irrecoverable in the accounts of the assessee. However, a verification has to be sought of having offered the amount claimed as bad debt to tax in any of the preceding assessment years as per sec. 36(1)(vii) r.w.sec. 36(2) of the Act as submitted by the assessee. As the

assessee in its reply dated 30/03/2009 has already submitted that the sale consideration of Rs.4.5 crores has been offered to tax, needs verification. We therefore remand the issue to the Ld.CIT(A) for a limited verification in respect of this issues and in the event if it is found that the amount has been offered to tax by assessee, no disallowance can be made in respect of the bad debts claimed and accordingly the same is upheld.

In the result, the appeal filed by revenue stands partly allowed for statistical purposes, the C.O. and M.P. filed by the assessee becomes infructuous and the appeal filed by assessee stands dismissed on legal issue.

Order pronounced in the open court on 30th November, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th November, 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