

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

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

ITA No.4/Bang/2023
Assessment Year: 2013-14

Vankadari Chinna Reddappa Chetty No.1014, Ground floor, Ramya Sadan, 11 th Main, 2 nd Stage, RPC Layout Vijayanagar Bengaluru 560 040. PAN NO : AAGPC1246C	Vs.	ACIT Circle-3(2)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharath L., A.R.
Respondent by	:	Dr. Shankar Ganesh K., D.R.

Date of Hearing	:	16.02.2023
Date of Pronouncement	:	16.02.2023

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 4.11.2022 for the assessment year 2013-14.

2. Facts of the case are that the assessee is an Individual primarily engaged in agricultural operations and other allied activities. The assessee is not required to maintain books of accounts as he is not engaged in any business activity. The assessee originally filed the return of income on 31.03.2015 declaring total income of Rs. 2,91,21,410/- and paying taxes of Rs. 71,36,593/-. The returned income included

Page 2 of 7

income from long term capital gains ('LTCG') of Rs. 2,90,26,991/- consisting of LTCG from sale of residential flats obtained under Joint development agreement ('JDA') of Rs. 2,74,43,009/- and LTCG from sale of agricultural plots of Rs. 15,83,982/-. The assessee also offered a sum of Rs. 23,45,270/- as Income from agricultural activities. The return of income was processed under section 143(1) of the Income-tax Act, 1961 ['the Act' for short] and the case was subsequently selected for scrutiny under CASS. Accordingly, a notice under section 143(2) of the Act, dated 31.08.2015 was issued and served on the assessee. Notices under section 142(1) of the Act were issued, calling for details. In response to the notices issued, the assessee's authorized representative appeared, produced details called for and made timely written submissions. The assessment under section 143(2) of the Act was concluded vide an order under section 143(3) of the Act dated 28.03.2016 by treating income from LTCG from sale of residential flats under JDA and LTCG from sale of agricultural plots as 'Income from Business'. In this regard, the Assessing Officer arrived at a taxable income of Rs. 3,85,29,300/- and a tax demand of Rs. 1,09,19,590/-. While treating the income as Business Income, the ld. AO has not examined or provided cogent reasoning as to whether the income arising from sale of asset (flats from JDA and land received from inheritance) was held as a 'capital asset' or as a 'stock in trade'. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) - 3 ('CIT-A') on 12.04.2016 by filing Form - 35 in physical form. Subject to this, the assessee was also subject to a search proceeding under section 132 of the Act carried out on 17.08.2016. Consequent to such search, an assessment under section 153C of the Act was carried out an order under section 143(3) of the Act was passed on 31.12.2018. The issue pertaining to taxability of sale of developed flats in the project 'Ramya Residency' was examined by the ld. AO during the course of the proceedings under section 153C of the Act and no addition therein was made. The assessee

Page 3 of 7

preferred an appeal before CIT(A)-Bangalore on certain other additions in relation to the order under section 153C r.w.s 143(3) of the Act. The said Appeal was withdrawn under the Vivad Se Vishwas scheme by discharging necessary taxes and Form 5 was received on 23.03.2021. Subsequently, the order dismissing the appeal filed under section 250 was received on 10.08.2021. Accordingly, the assessment in relation to the AY 2013-14 attained finality. An order under section 250 of the Act in relation to the assessment order dated 28.03.2016 was passed by CIT(A)-3, Bangalore on 07.11.2017 dismissing the appeal for the reason that the assessee had violated Rule 45 of the Income-tax Rules, 1962 which requires the Appeal to be filed in electronic mode. The assessee preferred an Appeal before the Tribunal on 15.12.2017. During the course of the proceedings before the Tribunal, the assessee was directed to file Form 35 in electronic mode. In compliance with the directions of the Tribunal, the assessee has duly filed Form 35 in electronic mode on 09.05.2019. Pursuant to this, Tribunal vide its orders on 17.05.2019 directed CIT-A to adjudicate the issues on merits. The matter was subsequently centralized the Appellate jurisdiction vested with the Commissioner of Income-tax (Appeals) - 11, Bangalore ('LAA'). Pursuant to the directions of the Tribunal, hearings were conducted by the Id. CIT(A) on various dates, detailed submissions and explanations were provided by the authorized representative of the assessee. The Id. CIT(A) however did not consider the submissions of the assessee and dismissed the appeal by passing the order under section 250 of the Act dated 04.11.2022 by treating the capital gains arising from sale of residential flats at Ramya Residency and sale of residential sites obtained by 'Will' as 'Business income'.

3. Ground Nos.1 & 2(a) of the assessee's appeal are reproduced as under:

Page 4 of 7

1. *The order of the LAO & the LAA is opposed to law and facts of the case, to the extent prejudicial to the Appellant.*

2.

a) *The order of the LAO is bad in law and ought to be quashed, in that, the said order no longer survives on account of its merger into the order passed under section 153C of the Act*

3.1 The ld. A.R. submitted that the characterization of the income as business income is contrary to the position adopted by the Revenue in the search proceedings. While in the search proceedings the said transactions have been considered as being exigible to capital gains tax, in the impugned appeal, the very same transactions have been considered as business income. The same approach was adopted for the same property / project for AY 2011-12. This is a contradiction to the Revenue's own position in the ld. AO's order under section 143(3) of the Act. The search assessment for AY 2013-14 has attained finality with the assessee accepting the assessed income therein under the Vivad se Vishwas Scheme. Hence, adopting a contrary position in the section 153C proceedings as against the section 143(3) proceedings on the income from the same property would be against the principal of estoppel and consistency which has been affirmed in the following rulings:

- a. Dalmia Promoters Developers (P.) Ltd. (151 Taxman 202) - refer page 1 of the CLC.
- b. NeoPoly Pack (P.) Ltd. (112 Taxman 363)-refer page 8 of the CLC.
- c. Man Mohan Kedia (50 taxmann.com 237) - refer page 10 of the CLC.
- d. Sunil Kumar Ganeriwal (16 taxmann.com 311)- refer page 15 of the CLC.

3.2 Hence, the ld. A.R. submitted that applying the above principles of estoppel and consistency given the identical facts, the consistent position as adopted in the subsequent proceedings as capital gains is the appropriate treatment.

Page 5 of 7

3.3 The Id. A.R. further submitted that if a contrary view is taken, it would result in the income of the same transaction being taxed as business income and capital gain for AY 2013-14 and as capital gain for AY 2011-12. AY 2011-12 is presently in appeal before the CIT(A) appeal for the limited purpose of manner of computation of the capital gain and not the characterization or taxability as capital gain. If in the impugned appeal, the business income characterization is affirmed, this would open a plea for characterization as business income for AY 2011-12 itself therefore rendering the Revenue's approach for the said year as invalid. Hence, he submitted that applying the principles of consistency and estoppel, the characterization as capital gain should be sustained.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, consequent to search action in the case of assessee on 17.8.2016 in the assessment order passed u/s 153C of the Act r.w.s. 143(3) r.w.s. 153D of the Act for the assessment year 2013-14 vide order dated 13.12.2018, the AO determined the income of the assessee as below:

COMPUTATION OF TOTAL INCOME		<i>(Amount in Rs.)</i>
Total income as per Return of Income dated 15.10.2018 in response to notice u/s. 153C of the Act		2,91,21,410/-
Add: Unaccounted Investment: 79,79,832/- Add: STCG : 83,60,000/- Add: Unaccounted Receipts : 2,39,32,000/- Add: Rent: 45,000/- Add: Unexplained expenditure 37,84,963/-		4,41,01,795/-
Less: Credit for capital gains already shown by the assessee as discussed in 7.21		(16,25,591)
Assessed Income		7,15,97,614/-
(A) Tax on above: 2,12,70,767/- Add: Surcharge: 0 Add: Education Cess: 6,38,123/-		2,19,08,890/-
Add: :	Interest u/s 234A 43,81,780 Interest u/s 234B 1,51,17,141 Interest u/s 234C : 2,20,059	1,97,18,980
Balance Payable		4,16,27,870
Less: Self Assessment Tax: 87,72,440		87,72,440
Balance Payable		3,28,55,43

4.1 This assessment has been settled by the assessee under VSVS Scheme, 2020 when it is pending before Id. CIT(A) vide order dated 23.3.2021 indicating full and final settlement of tax arrears u/s 5(2) r.w.s. 6 of Direct Tax Vivad Se Vishwas Act, 2020 in Form 5 has been passed by the Principal Commissioner of Income Tax (Central), Bengaluru confirming the payment of Rs.1,64,73,385/- under VSVS scheme, 2020. Thus, it means that assessment of income from “Ramya Residency” project has been accepted by the department as income from short term capital gain. Being so, lower authorities are not justified to treat the profit from same Ramya Residency as income from business instead of claim of assessee as income from short term capital gain/long term capital gain as the case may be in the assessment order passed u/s 143(3) of the Act dated 28.3.2016. Accordingly, we direct the AO to treat the income from profit earned from the sale of flat in Ramya Residency through JDA as income from short term capital gain/long term capital gain only instead of income from business. Ordered accordingly.

4.2 Since we have decided the impugned issue in ground Nos.2(b) and 3, other grounds become infructuous which do not require any adjudication.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16th Feb, 2023.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th Feb, 2023.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.