

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.292/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2012-13

The Asst. Commissioner –  
of Income Tax,  
Non-Corporate Circle-15,  
Chennai.

v. Mr.Gopinath Ramakrishnan,  
D-309, Srishti Apartments,  
14, Sri Ramnagar,  
First Cross,  
Thiruvanmiyur,  
Chennai-600 041.

(अपीलार्थी/Appellant)

[PAN: AADPG 9081 E]  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.293/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2012-13

The Asst. Commissioner –  
of Income Tax,  
Non-Corporate Circle-15,  
Chennai.

v. Smt.Madhu Parasuram,  
No.24, New No.50,  
1<sup>st</sup> Avenue, Shastri Nagar,  
Chennai-600 020.

(अपीलार्थी/Appellant)

[PAN: AALPP 8729 J]  
(प्रत्यर्थी/Respondent)

Department by

: Mr.P.Sajit Kumar, JCIT

Assessee by

: Mr.R.Vijayaraghavan, Adv.

सुनवाई की तारीख/Date of Hearing

: 02.03.2023

घोषणा की तारीख /Date of Pronouncement

: 08.03.2023

:: 2 ::

आदेश / ORDER

**PER MANJUNATHA.G, AM:**

These two appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-15, Chennai, both dated 28.10.2016 and pertains to assessment year 2012-13. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

**2.** We find that appeals filed by Revenue are barred by limitation for which necessary petition for condonation of delay explaining reasons for delay has been filed, for which, the Id.Counsel for the assessee did not raise any objection. Having heard both sides and considered petition filed by the Revenue for condonation of delay, we are of the considered view that reasons given by Revenue for not filing the appeals within the time allowed under the Act, comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeals are condoned and appeals filed by the Revenue are admitted for adjudication.

**3.** The Revenue has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed in ITA No.292/Chny/2017 for the AY 2012-13, are re-produced as under:

:: 3 ::

1. The order of the commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.

2. The Ld.CIT (A) erred in directing the AO to delete the disallowance u/s 54F of the IT Act.

2.1 The Ld.CIT (A) failed to appreciate that the assessee has not disclosed the full consideration receivable by him as per the development agreement.

2.2 The Ld.CIT (A) failed to appreciate that the assessee is one of the co-owner of a land with equal rights along with Mrs.Maduu Parusaram and Mrs Kalyani Subash. All the owners of the land have executed a IDA on 18/06/2011 with M/s.Adroit Urban Developers Pvt Ltd and Mrs Siddharthan Apparels Pvt Ltd.

2.3 The Ld.CIT (A) failed to appreciate that the sale consideration as estimated by the original agreement dated 18/06/2011 Rs.7,76,27,999/- was the market value for the 1/3rd share of the assessee's sister Madhu Parusuram & Mrs Kalyani Subash (other co-owners). Considering market value of Rs.7,76,27,999/- as sale consideration received to the assessee.

2.4 The Ld CIT (A) ought to have appreciated that the decision of Karnataka HC in the case of CIT Vs T.K.Dayalau (114 Taxman 120 Kar) where in it was clearly ruled that in cases of JD agreements the transfer is complete, the moment the possession of the property is handed over to the developers.

2.5 The Ld CIT (A) failed to appreciate that -

Section 54F of the IT Act 1961

"" As per the provisions of section 54F the assessee is entitled to claim exemption on the cost of a residential house either purchased within a period of one year before or two years after the date on which the transfer took place or has within period of three years after than constructed residential house""

The above exemption is available only in respect of one residential house and not two houses that too situated at different location. In this case flats are situated at difference places one at Sholinganallur and another at Adayar.

2.6 The Ld CIT (A) has erred in accepting a fresh claim by the assessee instead of following the cardinal principle laid by the Honorable SC in the case of Goetz (India) Ltd where and which it is held that new claim shall not accepted by the AO when made by the assessee through a letter if the same is not claimed in the RO or revised ROI filed as per the law.

2.7 The Ld CIT (A) failed to appreciate that the Honorable SC in the case of Goetz (India) Ltd., has observed that

"The decision in Question is that the power of the Tribunal u/s.254 of the IT Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before of the Tribunal. The decision does not in any way related to the power of the AO to entertain claim for deduction otherwise than by filing a revised return. In this circumstance of the case we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of ITAT u/s.254 of the IT Act

**:: 4 ::**

*1961. Hence, it is clear CIT(A) does not have power to entertain a new claim, further even the Tribunal has power to entertain the fresh claim of law only if the facts are already available before the ITAT.*

*2.8 Without prejudice to the aforesaid, the Ld.CIT(A) has also violated the principles of natural justice enshrined in Rule 46A by not remanding the matter to the AO for examining fresh evidence.*

*3. Hence, it is clear that CIT(A) does not have power to entertain a new claim, further even the Tribunal has the power to entertain the fresh claim of law only if the facts are already available before the ITAT.*

*4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may set aside and that of the Assessing Officer restored.*

**4.** The brief facts of the case are that the assessee is an individual filed her return of income for the AY 2012-13 on 31.08.2012 admitting total income of Rs.2,18,80,850/-, which includes a sum of Rs.2 Crs. offered under the head 'long term capital gains'. During the Financial Year relevant to the AY 2012-13, the assessee along with his siblings entered into agreement for joint development of property with M/s.Adroit Urban Developers Pvt. Ltd., and M/s.Siddhartha Apparels Pvt. Ltd., vide agreement dated 18.06.2011. As per said agreement, the first land owner, Mrs. Madhu Parsuram, shall receive the monetary consideration and the second land owner, Mr.Gopinath Ramakrishnan, shall receive 15000 Sq.ft of super built up area and the third land owner, Mrs.Kalyani Subash, shall exchange the flats equivalent to super built up area of 5778 sq.ft. at the project 'THE ORIGIN'. A Supplementary Agreement was entered on 01.11.2011 and as per said agreement, the land owners agreed to sell 13243 sq.ft. for a consideration of Rs.5.76 Crs. Further, they agreed to convert 706 sq.ft. of land in exchange of flat of area of 2000 sq.ft. and also retain 571 sq.ft. proportionate to area of flat to be converted. The parties

**:: 5 ::**

have also entered into a revised agreement for joint development of property dated 06.10.2015.

**5.** The cases were selected for scrutiny and during the course of assessment proceedings, the AO by taking into account, the Joint Development Agreement (in short "JDA") dated 18.06.2011, computed 'long term capital gains' derived from sale of property of Rs.7,76,27,999/- after disallowing the claim of exemption u/s.54F of the Act. The assessee carried the matter in appeal before the First Appellate Authority and before the Ld.CIT(A), the assessee argued the issue in light of JDA dated 18.06.2011, and subsequent Supplementary Agreement dated 01.11.2011, and submitted that the assessee has rightly computed 'long term capital gains' derived from transfer of property in pursuant to JDA. The assessee had also substantiated with necessary evidences to prove the claim of deduction u/s.54F of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents opined that the AO is erred in computing 'long term capital gains' by taking into account JDA, because, requirement of part performance as envisaged u/s.53A of Transfer of Property Act, have not been fulfilled. Therefore, directed the AO to accept computation of 'long term capital gains' declared by the assessee in her return of income. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeals before us.

**:: 6 ::**

**6.** The Ld.DR, referring to grounds of appeal filed by the AO, submitted that the issue involved in Revenue appeals is with regard to computation of 'long term capital gains' in pursuant to JDA dated 18.06.2011 and also claim of deduction u/s.54F of the Act. The Ld.DR further submitted that as per settled position of law before amendment to sec.45(5A) of the Act, 'capital gains' should be levied when the JDA is entered. Therefore, the AO taking into account the JDA dated 18.06.2011 has rightly computed 'capital gains' and also rejected deduction u/s.54F of the Act, because, the assessee could not satisfy the conditions prescribed therein. However, the Ld.CIT(A) without appreciating the facts simply deleted the additions made by the AO.

**7.** The Ld.Counsel for the assessee, on the other hand, submitted that the AO has computed 'long term capital gains' from transfer of property in pursuant to JDA dated 18.06.2011, whereas, the Ld.CIT(A) has allowed relief by taking into account only JDA dated 18.06.2011, and subsequently Supplementary Agreement dated 01.11.2011. But, facts remain that the assessee had entered into a revised JDA on 06.10.2015 and the gain arising out of said agreement has been offered to tax for the AY 2016-17. Since, there are three agreements in respect of one property at different assessment years, the matter requires to be re-examined by the AO to verify the year in which 'capital gains' from said agreement is taxable. Therefore, submitted that the appeals may be set aside to the file of the AO for de-novo consideration of the issue.

**:: 7 ::**

**8.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee had entered into a JDA with builders on 18.06.2011 and said agreement has been revised by way of Supplementary Agreement dated 01.11.2011. The assessee has computed 'long term capital gains' from transfer of property on the basis of agreement dated 18.06.2011 & 01.11.2011. Further, there is one more agreement dated 06.10.2015, where the parties have entered into revised JDA specifying certain terms and conditions and said agreement was neither with AO at the time of assessment proceedings nor with the Ld.CIT(A) at the time of appellate proceedings. It was the arguments of the Ld.Counsel for the assessee that because of subsequent development by way of revised JDA dated 06.10.2015, the issue of computation of 'long term capital gains' from transfer of property in pursuant to JDA dated 18.06.2011 & 01.11.2011, needs to be re-examined by the AO to ascertain correct facts with regard to year in which such 'capital gains' is assessable to tax, more particularly, keeping in mind, the assessee being offered 'capital gains' for the AY 2016-17 pursuance to subsequent revised JDA dated 06.10.2015. The Ld.DR present for Revenue fairly agreed that the matter may be set aside to the file of the AO for de-novo consideration in light of subsequent development. Therefore, we are of the considered view that the issue needs further examination from the AO in light of all three agreements, including revised JDA on 06.10.2015 and thus, we set aside the order of the Ld.CIT(A) in both cases and restore

:: 8 ::

the issue to the file of the AO and direct the AO to re-do the assessment de-novo in accordance with law after considering all three agreements entered into by the assessee with the developer dated 18.06.2011, 01.11.2011 & 06.10.2015. The AO is also directed to take into account 'capital gains' offered by the assessee in pursuant to revised JDA on 06.10.2015 while considering the issue.

9. In the result, both appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on the 08<sup>th</sup> day of March, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08<sup>th</sup> March, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF