

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND  
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.2786/Bang/2017
Assessment year : 2011-12

Sri Dinesh Devraj Ranka (Decd.) by Shri Nishant Dinesh Ranka No.31, Ranka Chambers, Cunningham Road, Bengaluru – 560 052. <b>PAN: ABHPR 8430M</b>	Vs.	The Additional Commissioner of Income Tax, Range 8, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Parthasarathi, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)

Date of hearing	:	01.03.2023
Date of Pronouncement	:	13.03.2023

**ORDER**

*Per Padmavathy S., Accountant Member*

This appeal is against the order of the CIT(Appeals)-1, Bengaluru dated 26.9.2017 for the assessment year 2011-12.

2. The assessee is an individual and filed the return of income for AY 2011-12 on 19.9.2011 declaring a total income of Rs.17,34,34,391. The case was selected for scrutiny under CASS and statutory notices were duly served on the assessee.

3. The AO completed the assessment by making the following additions:-

- (i) Bad debts - Rs.24,20,000
- (ii) Professional charges – Rs.2 crores
- (iii) Capital gain – Rs.5,65,24,370
- (iv) Disallowance u/s. 14A – Rs.4,97,089

4. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) upheld the additions/disallowances, except for giving a marginal relief with regard to the disallowance made u/s. 14A. The assessee is in appeal before the Tribunal, aggrieved by the order of the CIT(a). The assessee raised the following grounds of appeal:-

“1. The learned CIT(A) erred in passing the order in the manner he did.

2. On the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the disallowance of bad debt as made by the AO, as the conditions specified under Section 36(1)(vi) were not fulfilled by the Appellant.

3. Even otherwise, the learned CIT (A) ought to have appreciated that the claim of the Appellant was liable to be allowed, in the alternative under Section 28 or 37 of the Act as business loss/expenditure.

4. The learned CIT (A) ought to have appreciated the explanation as offered by the Appellant with regard to the business expenditure under the head of professional and consultancy charges to the tune of Rs.2,00,00,000/- when the supporting evidence of payment is duly filed and explained the same completely.

5. The learned CIT (A) grossly erred in treating the property in transfer in respect of JDA as capital asset whereas the Appellant had all along treated the same as his stock-in-trade and

accordingly the same does not come within the purview of definition of "transfer" under Section 2(47)(v) of the Act and hence adding the above as capital gain to the total income is unjust in the eye of law.

6. The learned CIT (A) wrongly confirmed the addition of Rs.4,85,831/- by invoking the provisions of Rule 8D(2)(iii) of the Rules.

7. The learned CIT (A) erred in relying on the decision of Bangalore Tribunal in the case of M/s.John Distilleries in ITA No.1429/Bang/2014 dt. 24.02.2016 (AY: 2011-12) which is not related to the present facts of the case and distinguishable.

8. Without prejudice, the disallowances as confirmed by the learned CIT (A) are arbitrary, excessive and ought to be deleted.

9. The learned CIT (A) ought not to have confirmed the levy of interest under Sections 234B, 234C and 234D of the Act.

10. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.”

### **Bad Debts – Ground No: 2 & 3**

5. The assessee is in the business of property development. During the year under consideration, the assessee has debited a sum of Rs.24,20,000 as bad debts the break-up of which is as given below:-

Name of party	Amount Written Off	Remarks
(i) Mr. Anbuvel Ranjan	13,00,000	Paid towards property advances. Party was unable to return the advances and hence written off in the books of accounts.
(ii) Mr. Girish Ramakrishnan	11,20,000	Salary advance given to My Staff Mr. Girish Ramakrishnan, who left the office. I was not able

		to trace that person, hence the same has been written off in the books of accounts.
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6. The assessee submitted that the amount given to Mr. Anbuvel Ranjan was towards purchase of a property which is in the regular course of business that could not be recovered and hence written off as bad debts. With regard to the sum of Rs.11,20,000, the assessee submitted that the said amount was given as salary advance to Mr. Girish Ramakrishnan who was getting trained under the assessee, who left the services and is not traceable. Therefore, the amount being not recoverable is written off in the books of accounts. The assessee submitted that both these advances are in the nature of business losses and therefore should be allowed as a deduction.

7. The AO did not accept the submissions of the assessee and disallowed the bad debts with the following observation:-

“3.2 The assessee has made the said claim of expenses without any documentary evidence. Primary facts like address of the above persons, date on which the money was given, the mode of payment description of the property for which the amount was paid in advance etc. have not been furnished with documentary proof. Hence the authenticity that these expenses have been incurred has not been proved. Under the said circumstances of facts, claiming these as bad debts is factually incorrect.

a) The claim that sum of Rs. 13,00,000/- was paid to Mr. Anbuvel Ranjan towards property advance is only a mere statement and is not supported by any documentary evidence. There is no document which evidences that the assessee has

entered into land transaction deal with the said person and payment has been made of the said amount for the purpose of buying the land. As matter of fact, there is no disclosure of even the primary facts such as the identity of the person and his address of abode, time, date and year when the deal was struck, description of the property proposed to be purchased in terms of size and location of the land for which the said advance money is claimed to have been paid, agreement to sell etc. The transaction does not qualify to be taken or treated as revenue expenditure because the happening of such transactions have not been proved. Therefore this cannot be considered as business expenditure u/s 37.

(b) With regard to the claim that Rs. 11,20,000/- has been given to Mr. Girish Ramakrishnan as salary advance going by the explanation given in the earlier submission of the assessee in his letter dated 29.09.2013, no supporting documents such as Recruitment/Appointing letter, Attendance register, Pay Roll register etc. are produced/furnished to establish the fact that Sri. Girish Ramakrishnan was assessee's employee. The facts have undergone change in the later submissions made in the letter dated 19-02-2014 wherein it is stated that Sri. Girish Ramkrishnan was a trainee under him and that these amounts were given to him to meet his day to day expenses and for medical expenses of his father. The assessee is not running a training institute. Ore genuineness of the transaction has not been proved to be considered as business expenditure. The onus is on the assessee to establish the factual correctness of the claim made.

3.3 In both the cases, even though the money involved is huge, it appears that assessee has made any efforts to recover the money as there is no document such as FIR which is one of the .egal recourse for tracking a defaulter, culprit, law breaker etc. to evidence that there was reed pecuniary loss to the assessee and that he has made all attempts to recover the loss. The details BUS furnished, intensely divulge that these expenses have not been incurred wholly and exclusively for the business of the assessee and are consequently not eligible to be allowed as business expenditure under section 37. On the other hand, the above expenses claimed par-take :tee nature of personal and capital

expenditure and therefore are definitely not allowable expenses under section 37 of the Income-tax Act, 1961.

3.3 Going by the facts discussed above, the said persons have no business transaction with the assessee at any point of time neither during the financial year relevant to the assessment year under consideration nor in any other earlier or subsequent year. Therefore in the hands of the assessee it is clear that it is a personal loss and cannot be considered as business loss under Section 28 of the Income-tax Act, 1961.

The fact that these expenses cannot be considered as business expenses, render them ineligible to be treated as bad debts. The nature of the above expenses as explained is such that these would have not been taken into account in computing the income of the assessee.

The conditions stipulated in subsection 2 of section 36 have not been fulfilled. For ready reference the relevant portion of the said subsection is reproduced below.

In making any deduction for a bad debt or part thereof; the following provisions shall apply - no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money — lending which is carried on by the assessee."

Under the said circumstances of facts, claiming these as bad debts is factually and legally incorrect and is hence the claim thereof as bad debts written off is rejected. The same is added to the total income of the assessee."

8. The CIT(A) upheld the disallowance made by the AO. Before us, the ld. AR reiterated the submissions made before the lower authorities. The ld DR supported the order of the CIT(A).

9. We heard the parties and perused the material on record. We notice that the main ground on which the bad debts claimed by the

assessee is disallowed by the AO is that the assessee did not produce any documentary evidences in support of the claim. We also notice that the claim of the assessee that the amount to Mr. Ranjan is paid towards property advance is not supported by any documents which the AO called for during the assessment proceedings and the assessee also failed to provide details with respect to the identity of the person, his address, etc. It is further noticed that the amount written off against the salary advance was also not substantiated and that the assessee could not even submit the basic details to support whether Mr. Girish was actually in employment with the assessee. Given the facts of the case, in our considered view, the claim of bad debts is rightly denied by the lower authorities on the ground that the assessee has not substantiated the claim with proper documentary evidence to prove that it is incurred in the regular course of business and that the amount could not be recovered. Accordingly, we see no reason to interfere with the decision of the CIT(Appeals).

**Professional and consultancy charges – Ground 4**

10. The assessee had claimed a sum of Rs.2,06,86,652 towards professional and consultancy charges. During the course of assessment proceedings, the AO noticed that out of the above, a sum of Rs.2 crores was paid to one Mr. Sheetal V. Ranka and the AO called on the assessee to produce the necessary details in this regard. The assessee submitted that the amount was paid to Mr. Sheetal Ranka who had facilitated the transaction of the joint development agreement with M/s. Kolte Patil Developers Ltd. The assessee further submitted that

he happened to meet Mr. Sheetal in Pune and he agreed to identify a party for the property development and accordingly the charges were paid. The assessee also submitted that since the assessee is engaged in the business of real estate and property development, the said expenditure is incurred in the due course of business and tax has been deducted on the said payment.

11. The AO did not accept the submissions of the assessee and disallowed the same by making the following observations on the facts of the issue:-

“4.2 A careful study of the above explanation purported by the assessee reveals the following discrepancies.

(ii) The explanation given by the assessee in this regard is very vague and lacks clarity of facts. The assessee's version that Ms. Sheetal Ranka is working in Ranka Jewellers and during her tenure of working she had come in contact with the director of M/s Kolte Patil Developers Limited and that Ms. Sheetal Ranka agreed to identify a party and brokered the deal with M/s Kolte Patil Developers Ltd. which resulted in the Joint Development Agreement appears to be just a mere narration in the absence of any documentary evidence. Generally speaking it is not in practice that a person employed in an establishment of trading in jewellery showroom will negotiate with another party for real estate business in the course of her work is not conceivable. In other words, the feasibility that Ms. Sheetal Ranka will discuss with the director of M/s. Kotle Patil Developers Ltd on behalf of the assessee during her work in the said establishment is very remote.

(ii) Till date, the information about the educational qualifications of Ms. Sheetal Ranka has not been furnished, though the assessee was requested in the course of hearing and also vide letters dated 04.10.2013 and 03.01.2014 of this office. This is required to ascertain her capabilities of conducting a

business deal and getting suitably rewarded. In the absence of this vital information, the credibility of the explanation given by the assessee is doubtful. The onus of proof is on the assessee to testify the correctness of the plea taken by him.

(iii) The assessee himself has admitted that he is engaged in the business of real estate and property development. M/s Kolte Patil Developers Ltd, has their corporate office at No.22/11, 1st Floor, Park West, Vittal Malaya Road, Bangalore itself where the business activities of the assessee is based. That the assessee is not aware of this popular developers being in the business of real estate for several years is very unlikely. The manner in which the said expenses is introduced into the accounts of the assessee, strongly indicates that the assessee has used a colourable device to book expenses of such magnitude to reduce the profits of his business and accordingly minimize his taxable income.

(iv) The contention that the name of the middleman who completes the transaction is never mentioned in the joint development agreement as he/she will have no role to play in the execution of the work is unfounded. If an expenditure of such huge magnitude of 2crores of Rupees has been incurred claiming it as direct expenses relating to the Joint Development Agreement, the other party to the JDA ought to be informed as the said party has every right to know and it is very crucial that this is done with concurrence of the effecting party. In fact, it is of utmost importance that this is incorporated in the Joint Development Agreement itself to avoid all disputes in future. That this has not been done cannot be construed to be a mistake and legitimacy of the claim that the amount of Rs. 2 crores has been given to Ms. Sheetal Ranka for the purpose is questionable.

(v) The Joint Development Agreement contains every detail of who will bear which cost of the construction activity of the residential apartment. However this particular transaction is not found in the said JDA. The claim of 2 crores of Rupees as an expenditure is not a small amount that can be submerged or ignored and be excluded from being part of the Joint Development Agreement.

(vi) As a matter of fact, it is to be noted that when details of expenses connected/linked to the Joint Development Agreement

was called for u/s 133(6) of the Income-tax Act, 1961 vide this office letter dated 08.01.2014, M/s Kolte Patil Developers in their letter dated 24.01.2014, vide annexure 2, has given a statement of only two expenditures Viz. one of Rs. 5 crores paid on 24.02.2010 to the assessee and another of Rs. 1 crore also paid to the assessee on 08.10.2010 at the instance of the Supplementary Agreement. However the payment made to Ms. Sheetal Ranka is not mentioned.

(vii) As can be seen from the above, M/s Kolte Patil Developers have paid to the assessee Rs. 5 Crores on 24.02.2010 which falls in the Financial Year 2009-10. This is reflected in the balance sheet under loans (Liability) of the assessee filed with the return of income for A. Y. 2010-11. According to the assessee he has met Ms. Sheetal Ranka during the Financial Year 2010-11 and requested her to identify a good developer for entering into joint development agreement. The above shows that the association of the assessee with M/S Kolte Patil Developers have already taken place way back most probably before February, 2010. This means that before Ms. Sheetal Ranka could introduce the assessee to M/s Kolte Patil Developers, the two parties have already met and negotiation for the joint development was already in the pipeline. This is evident from the fact that caution money of Rs.5 crores have been paid on 24.02.2010 before the assessee could even meet Ms. Sheetal V. Ranka in Pune. This obviously shows that Ms. Sheetal Ranka did not render any service to the assessee in terms of bringing the two parties together to execute the joint development agreement between the assessee and M/s Kolte Patil Developers Ltd and consequently no payment is required to be made to Ms. Sheetal Ranka. So the payment made to Ms. Sheetal Ranka is definitely not for the work purported by the assessee.

(viii) In the wake of the above discovery of facts, the payment made to Ms. Sheetal Ranka of Rs. 2 crores on 08-03-2011 vide RTGS from Standard Chartered Bank definitely is not for introducing the assessee to M/s Kolte Patil Developers to get the JDA through. It could be for any other reasons but certainly not for the purpose professed by the assessee.

(ix) On page 5 of the Joint Development Agreement dated 03.04.2010 in the second paragraph, it is stated that with a view to formalizing the negotiations between the parties, the developer

had taken out public notices dated 23.06.2009 in the 'Times of India' and 'Prajavani' Newspapers inviting for objections to the proposed Agreement and /or Joint Development of the Schedule Property and whereas the Developer is now fully satisfied with the title of the schedule property. This justifiably proves that the assessee and the developer have known each other and started negotiating with each other earlier than June, 2009 much before Ms. Sheetal Ranka could meet the assessee and the director of M/s Kolte Patil Developers Ltd during the financial year, 2010-2011 in the course of her work in the Ranka Jewellery showroom; at Pune. Hence assessee's claim that for the purpose of referring to a good developer, assessee paid Ms. Sheetal Ranka Rs. 2 crores is absolutely mistaken and proved wrong.

(x) Another factor material for attention is that when the scheduled land property itself cost Rs. 2 crores 50 lakhs as per the sale deed dated 05<sup>th</sup> December, 2006, it is not plausible to spend Rs. 2 crores just for referring the assessee to the Developer. It can only be visualized as an act of sheer absurdity and no business man logically will commit such a folly to reduce his profit by such an extent.

(xi) In the balance sheet, payment claimed to have made to Sheetal V. Ranka is shown under "loans and advances (Asset)". How can this accounted in this manner when the assessee is claiming it as expenses under professional charges.

(xii) It is also found from the travelling expenses details furnished by the assessee that no expenditure has been claimed for any travel made to Pune during the period 01.04.2010 to 03.04.2010 when the JDA was made. Hence it is skeptical as to whether the assessee met Ms. Sheetal Ranka in Pune in connection with the JDA as claimed.

The above factors, coupled with the fact that there is not a single document to substantiate effectively the genuineness and audacity of the claim that such an expenditure has been wholly and exclusively incurred for the business of the assessee, the said amount of Rs.2 crores cannot be allowed as business expenses. Without establishing with documentary evidence any sort of linkage, one cannot attribute the payment made to Sheetal Ranka as having paid for the JDA. The onus is on the assessee to

conclusively prove beyond doubt that it is an authentic business expenditure intricately connected to the Joint Development Agreement. In view of the deficiencies pointed out above, this amount of Rs.2,00,00,000/- is hereby disallowed as expenses in computing the income of the assessee and added to the total income of the assessee.

4.3 In the course of hearing, the Authorised Representative submitted that this should be allowed as expenditure relating to transfer of an asset and should be allowed for deduction in computing capital gains tax. The above facts show that the claim of the assessee is not supported by any befitting document and therefore in the absence of evidence, it cannot be held that this amount have been incurred wholly and exclusively for transfer of the capital asset. Therefore, though Sheetal Ranka has declared this as income in her return filed with DCIT Central Circle, Pune and tax has been deducted at source, the point here is that it has not been proved beyond doubt that this is incurred for the said business purpose. It cannot be considered as expenditure incurred wholly and exclusively for the sale/transfer of the capital asset in the absence of any documentary testimony. Accordingly this plea of the assessee is hereby rejected.”

12. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) upheld the disallowance by stating that even before the CIT(A) the assessee could not submit any detail to support that Mr. Sheetal Ranka is technically and professional competent to render the said professional services since the person was already in employment with Ranka Jewellers. Considering the amount paid, the CIT(A) held that the assessee should have established by proper supporting evidences that Mr. Sheetal was regularly employed in rendering of such services and is qualified to carry out such services. Aggrieved, the assessee is in appeal before the Tribunal.

13. The Id AR submitted that the findings of the AO that the assessee is based out of Bangalore and would not have utilised the services of a person based in Pune is not factually correct since the business of the assessee is situated in Pune. The Id. AR further submitted that the AO's observation that for a transaction of Rs.2.5 crores, a brokerage of Rs.2 crores would not have been paid is not correct since the value of the joint development agreement is very high and the value quoted by the AO is only with regard to the land. The Id. AR further submitted that the amount is paid in accordance with the invoice raised by Mr. Sheetal Ranka on which the assessee has deducted tax at source. It is also submitted that Mr. Sheetal Ranka has filed the return of income declaring the professional charges received as part of the income for the AY 2011-12. Therefore, the Id AR submitted that the payment of professional charges is incurred wholly for the purpose of business and the lower authorities are not correct in disallowing the same.

14. We heard the parties and perused the material on record. We notice that the AO has disallowed the claim of the assessee based on analysing various facts as can be seen from the relevant observations extracted in the earlier part of this order. In order to claim deduction under section 37(1) the conditions to be satisfied are that an item of expenditure should not be an item of expenditure described in sections 30 to 36 and should not be described as capital expenditure or personal expenses of the assessee. It should be laid out or expended wholly and exclusively for the purpose of business or profession. Needless to

mention, all the three conditions should be cumulatively satisfied. There is no dispute as to satisfaction of the first two conditions mentioned supra. The only dispute with regard to the impugned disallowance is that whether the expenditure was incurred wholly and exclusively for the purpose of business. Word 'wholly' refers to quantum of expenditure and word 'exclusively' refers to motive, object and purpose of the expenditure. Personal expenses or money spend for private purpose is not deductible as they fail the business expediency test. Further, whether the expenditure was incurred wholly and fully for the purpose of business has to be established and proven by the assessee. These facts are within the exclusive knowledge of the assessee and therefore he is under an obligation to place all facts and circumstances before the authorities and that the onus of proving the commercial expediency lies with the assessee in order to avail the deduction under Section 37(1). Further for the purpose of allowability of expenditure u/s.37(1), it is essential to establish the nexus between the business and the expenditure. A mere assertion that the expenditure was incurred for promoting business cannot be accepted without establishing the nexus between expenditure and business. Though it is an accepted principle that the businessman is the best judge of business expediency, the same does not affect the right, any duty, of the assessing authority to know whether the expense was incurred for business purpose and not for other extraneous considerations. On perusal of records we notice that the assessee could not satisfy the lower authorities with necessary evidences to prove the nexus and the

commercial expediency. It is also notices that the assessee did not furnish details to counter the various contention of the AO based on factual findings such as when the AO has questioned the nexus and the commercial expediency for payment of the professional fees to Mr.Sheetal claimed to have been paid for the services rendered to identify the developer when the assessee has already taken the advance towards the JDA from the developer before coming to contact with Mr.Sheetal

15. The alternate contention of the Id AR is that there is no loss to the revenue since Mr.Sheetal has offered the said professional charges to tax and that disallowing the same in the hands of the assessee would amount to taxing the same income twice. In this regard we notice that the Hon'ble Supreme Court has considered the similar issue in case of ITO vs. Ch. Atchaiah [TS-5044-SC-1995-O], has held that

“In our opinion, the contention urged by Dr. Gauri Shanker merits acceptance. We are of the opinion that under the present Act, the Income Tax Officer has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By “right person”, we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression “wrong person” is obviously used as the opposite of the expression “right person”. **Merely because a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right person with respect to that income.** This is so irrespective of the fact which course is more beneficial to the Revenue. In our opinion, the language of the relevant provisions of the present Act is quite clear and unambiguous. Section 183 shows that where the Parliament intended to provide an option, it provided so expressly. Where a person is taxed wrongfully, he is no doubt entitled to be

relieved of it in accordance with law\* but that is a different matter altogether. The person lawfully liable to be taxed can claim no immunity because the Assessing Officer [Income Tax Officer] has taxed the said income in the hands of another person contrary to law”.

16. Further on perusal of return of income filed by Mr. Sheetal, we notice that the said income of Rs.2 crore has been offered as “Compensation received” under the head “Income from Other Sources” and not as professional fees. As already stated the main ground on which the expenditure is disallowed by the AO and CIT(A) is that the assessee could not substantiate the claim in terms of commercial expediency to incur the expenditure and the nexus between the expenditure and the business. We therefore in the interest of justice remit the issue back to the CIT(A) to examine the issue afresh based on evidences that the assessee may submit in this regard. The assessee is directed to furnish the necessary documents to substantiate the claim and cooperate with the proceedings. It is ordered accordingly.

#### **Capital gains – Ground No: 5**

17. The AO during the course of assessment noticed that the assessee had entered into a joint development agreement (JDA) with M/s. Kolte Patil Developers Ltd. dated 3.4.2010. The AO further noticed that the assessee had shown the amount received as advances in the financials as “property advances” in the books of accounts. Based on the various terms of the joint development agreement, the AO held that capital gain arises in the hands of the assessee and computed the short term capital gain by considering the sale

consideration at Rs.8,17,75,000 and the cost of acquisition at Rs.2,52,50,630 to arrive at a taxable gain of Rs.5,65,24,370.

18. Aggrieved, the assessee filed appeal before the CIT(A), who upheld the computation of capital gain.

19. The ld AR submitted that –

“6. The assessing authority has brought to tax the capital gains on account of Joint Development Agreement executed with the Developer. The capital gain was determined as short term capital gain to the tune of Rs.5,65,24,370/-. The assessing authority had observed that the JDA was executed on 3.4.2010 between the appellant and the Developer for the development of 7 acres and 39 guntas located in Survey No.71, Horamavu Agara Village, K.R.Puram Hobli, Bangalore East Taluk. The assessing authority applied the provisions of Sec.53A of the Transfer of Property Act rws 2(47)(v) of the IT Act to hold that there was transfer amenable to capital gains tax. The property in question was acquired by Sri.Dharmesh Ranka vide Sale Deed dt.5.12.2006 through a registered document from one Mr.Venkataswarny Muniyellappa and Munirajappa, all being the sons of Dodda Yamanna. Mr.Dharmesh Ranka had also obtained an order dated 13.2.2009 from the Tahasildar, K.R.Puram bearing No.024/08-09 permitting alienation of the Schedule Property. Sri.Dharmesh Ranka obtained confirmation from Bangalore Development Authority and KIADB that the property in question was not been notified for acquisition. Sri.Dharmesh Ranka with a view to develop the property for residential. purpose had obtained NOC from various statutory authorities such as Karnataka Telecom, Airport Authority, Karnataka Geospatial Data Center etc., and the property in question had fallen within the administrative control and jurisdiction of Bruhath Bangalore Mahanagara Palike and consequently all the taxes upto the dare 30.4.2009 had been remitted and the encumbrance certificates had also been obtained, Thereafter, Sri.Dharmesh Ranka has executed a registered General Power of Attorney dt.16.5.2007 in favour of his father, the appellant and through that registered GPA he authorized him

to carry out the various procedures for the purpose of development of the Schedule Property. The said GPA stood cancelled vide Deed of Revocation dt.24.2.2010 and subsequently a Release Deed in favour of Sri.Dinesh D. Ranka was executed and registered on 24.2.2010 by Sri Dharmesh Ranka. Accordingly, the appellant had become the absolute owner and proceeded to develop the property with the help of the developer mentioned hereinabove in the course Of his business. Thus, all the details are available in the JDA executed between the appellant and the Developer referred to hereinabove. A copy of the Joint Development Agreement is enclosed.

7. From -the facts narrated it may be noticed that the property held in question was held only as stock-in-trade and the property was given for development in the course of business activity of the appellant. Consequently, the property in question - cannot be held to be capital asset u/s.2(14) of the Act and the transfer definition as provided u/s.2(47)(v) rws.53A of the TP. Act has no application. In fact when the property in question was handed over for development to the Developer there was no transfer as contemplated and question of bringing the income to tax as capital gains would not arise. The profit from the project would arise if and when the assessee able to get his share as per the development agreement, in pursuance of which the developer Was entitled to his share. Until then no income is determinable. Even the. non-refundable advance received by the appellant would required to be treated as an advance, which is required to be appropriated towards the sale consideration if and when the transfer occurs. Thus, no income has accrued to the appellant in the relevant year which is subject to tax. The impugned addition-of capital gains as made by the assessing authority is accordingly opposed to law and the impugned addition is liable to be deleted.”

20. The ld DR supported the orders of lower authorities.

21. We heard the parties and perused the material on record. We notice that the assessee has entered into a joint development agreement (JDA) on 3.4.2010 with Kolte Patil Developers Ltd. for development

of a property at K.R. Puram measuring 7 acres 39 guntas. It is further noticed that the assessee has received a sum of Rs. 5 crores on 24.2.2010 as a refundable deposit and a sum of Rs.1 crore as non-refundable deposit on 8.10.2010. It is also noticed that the AO has computed the capital gain by considering the guideline value of Rs.7,17,75,000 and the non-refundable deposit of Rs.1 crore as the full value of consideration. In this regard, it is important to peruse the terms of the JDA, the relevant clauses are extracted as under:-

### “3. LICENCE

Upon execution and registration of this Agreement, the Owner hereby permits the Developers to enter into the Schedule Property under the Agreement with a right to construct on the Schedule Property and to do all such acts and deeds necessary for the completing the construction of the buildings in terms of the Agreement. It is specifically understood between the parties that the authority so granted under this clause is not being given or intended to be given by the Owner in part performance of any agreement as stipulated in Section 53A of the Transfer of Property Act or the Section 2(47)(v) of the Income Tax Act, 1961;

### 6. CONVEYANCE OF UNDIVIDED RIGHT IN LAND

6.1. The Owner hereby agrees and confirm that he shall proportionately convey to the Developer or its nominees or assigns 70 % of the undivided interest in the Schedule Property only after Developer proportionately delivering the possession of the Owner's built-up area along with occupancy certificate as envisaged hereunder (the aforesaid 70% of the undivided interest in the schedule property for short hereinafter referred to as the Developer's Allocation) as hereinafter defined by executing one or more Sale Deed/s in favour of the Developer or its nominees or assigns and also appear before the Sub-Registrar and admit execution of the Sale Deed or Deeds either personally or through the General Power of Attorney duly to be executed in favour of

the nominee/s or Director/s of the Developer herein as per the Developer's preference.

9.2. The Developer agrees to deliver possession of the land owners share of built an area along with Occupancy Certificate from the relevant authority within 60 months from the date of obtaining sanction plan but however excluding the delays caused by the riots, transporters strike, Government restrictions shortage in supply of materials/labour, or change in policy by any statutory or other authority there by affecting the construction of the project, Court proceedings and / or injunctions or any other acts beyond the contemplation of the parties to which the Developer is not responsible and / or the existence / pendency of any litigation with respect to the schedule property which in the opinion of the Developer, would not be in the interests to continue with the development of the project.

#### 11. TRANSFER OF DEVELOPER'S SHARE

11.1 The Owner shall convey and transfer proportionate of the undivided share in the land comprised in the Schedule Property to the Developer or its nominee or nominees simultaneously with the Developer handing over the proportionate built area falling to the share of the Owner along with Occupancy Certificate.”

22. From the perusal of above clauses, it becomes clear that the assessee has given only the permissible possession of the land to the developer at the time of executing the JDA and the ownership is not transferred. We also see merit in the submission of the Id. AR that the assessee has offered the capital gains to tax as and when the developer handed over the flat as per cl. 6.1 of the JDA. In our view, no taxable event happened during the year under consideration and the basis on which the capital gain is computed by the AO is not tenable. We therefore hold that the capital gain computed by the AO is to be deleted. This ground is allowed in favour of assessee.

23. During the course of hearing, the Id. AR did not press for ground No.6 pertaining to disallowance u/s. 14A and hence the same is dismissed as not pressed. Ground 1 & 10 are general and Ground 9 is consequential not warranting separate adjudication.

24. In the result, the appeal is partly allowed.

Pronounced in the open court on this 13<sup>th</sup> day of March, 2023.

Sd/-

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

( PADMAVATHY S. )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 13<sup>th</sup> March, 2023.

*/Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.