

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

S.No	Appeal in ITA No	Assessee	Revenue	A.Y
1	538/Hyd/2018	Smt. Cheruvu Madhavi, L/R of Smt.Sumitrabai Gundavarapu, Hyderabad PAN:ATHPG1018L	Income Tax Officer Ward 9(2) Hyderabad	2009-10
2	8/Hyd/2021	Smt, Yashoda Gundavarapu, R.R Distt PAN:APKPG0183M	Income Tax Officer Ward-1 Vikarabad	2009-10
3	14/Hyd/2019	Shri M Hanmanth Reddy, Hyderabad PAN:ACHPH0874L	ACIT, Circle 4(1) Hyderabad	2009-10

Assessee by:	Shri K.A. Sai Prasad, CA (S.No.1 & 2) <i>None appeared for S.No.3</i>
Revenue by:	Shri Kumar Aditya, DR
Date of hearing:	26/07/2023
Date of pronouncement:	28/07/2023

ORDER

Per Laliet Kumar, J.M

ITA No.538/Hyd/2018 filed by the assessee is directed against the order dated 14.02.2018 of the learned CIT (A)-7, Hyderabad relating to A.Y.2009-10 on the following grounds:

“1. The learned Commissioner of Income Tax(Appeals) is not justified, both on facts and in law, in dismissing the appeal.

2. The learned First Appellate Authority failed to appreciate the fact that in the year under consideration the appellant did not transfer any property and hence is not liable to pay tax on capital gain.

3. The learned First Appellate Authority failed to appreciate the fact that as per sale deed dt.11.12.2008 referred to by Assessing Officer, the transfer is by the agreement holder and not by the appellant.

4. *The learned First Appellate Authority failed to appreciate the fact that the appellant had already transferred her property vide doc.dt.04.02.2008.*

5. *Without prejudice to the above.*

The learned Commissioner of Income Tax (Appeals) did not adjudicate the Ground (3)(a) and (b) in regard to the consideration and indexed cost of acquisition.

6. *The appellant reserves her right to add, amend, delete or substitute any ground or grounds during the course of hearing.”*

2. At the outset the learned AR for the assessee submitted that the assessee filed an application for accepting the petition for admission of additional evidence/documents wherein it has submitted as under:

“In the above case, before the lower authorities the appellant claimed that her share along with other owners in the property in question was sold as per registered agreement of sale doc no 1331/08 executed on 04/02/2008 and thus the transfer was completed in the assessment year 2008-09 and not in A.Y 2009-10 as assessed by the assessing officer. In support of this claim the assessee now wishes to file the confirmation letter from the purchaser regarding the handing over of the possession of the said property.

Since some of the executants of the document passed away, and since the purchasers are highly influential persons, the legal heirs, and the other ladies who joined the agreement as legal heirs are not able to get this confirmation earlier. This letter is now filed as additional evidence and since this additional evidence goes to the root of the issue, it is prayed that the Hon'ble Income Tax Appellate Tribunal be pleased to admit the same in the interest of justice.”

3. The learned Counsel for the assessee drew the attention of the Bench to the certificate issued by the Developer wherein the Developer had stated that the possession of the property has been taken by it from the assessee at the time of entering into agreement i.e. on 4.2.2008.

4. Copy of the letter dated “N I L” by Walden Properties Pvt. Ltd, read as under:

“Walden Properties Pvt. Ltd

To whomsoever it may concern

This is to certify that we have entered into agreement of sale of purchase of land admeasuring Ac 2.35 guntas (out of total extent of land of Ac 05.15 guntas) in Survey No.86,87, 90 and 92 of Raidurga Panmaktha, Serilingampally Mandal, Ranga Reddy District from Shri B Ranga Reddy& 10 others on 04.02.2008 and paid a consideration of Rs.10,07,50,000/- (Rupees Ten Crore Seven Lakhs and Fifty Thousand only) being 25% of the estimated sale value which is acknowledged by all the owners. We have also taken possession of the said land on 04.02.2008.

We further certify that the same is part of the books of account of the company and have been reported in the return of income filed before Income Tax Department.

*Thanking you,
For Walden Properties Pvt Ltd
Sd/-
Authorised Signatory”*

5. The learned DR, on the other hand, submitted that the above documents filed by the assessee are contrary to the findings recorded by the learned CIT (A) on the assessment order and further it was submitted that the document now filed by the assessee is undated and unauthenticated hence the document cannot be admitted at this stage. Further it is submitted that in the case of the co-owner in ITA No.1598/Hyd/2018 and 638/Hyd/2018 which are pending before the Tribunal, the assessee was part of the same agreement and the said assessees have admitted to have handed over the possession at the time of sale dated 11.12.2008 therefore, the present letter of the assessee cannot be accepted.

6. We have perused the material available on record. For the purpose of admitting any additional documents after a period

of 12 years, it is necessary to substantiate that the assessee was prevented by any reasonable cause from filing the above documents before the Tribunal. The assessee was having adequate opportunities before the Assessing Officer to file and demonstrate that the possession of the property was taken on 4.2.2008 and not on 11.12.2008. However, the assessee failed to make out a case that the assessee was unable to produce the said document at the time of the assesment proceedings/appellate proceedings. In the present case, the Assessing Officer had passed the assessment order on 30.12.2016 after granting number of opportunities to the assessee. The assessee in fact has filed various documents at the time of assesment proceedings. However, the assessee failed to prove based on the said document that the possession was given on 4.2.2008. Furthermore, the assessee was having opportunities to prove her case before the appellate commissioner, however despite adequate opportunities were granted to the assessee, she failed to prove the same. Now after passing of the order by the learned CIT (A) way back on 13.2.2018, now filed application for admission of additional evidence which is neither supported by any affidavit nor any averment was made as to why the additional evidence was not produced during the proceedings before the lower authorities and it should be accepted. In our view, the assessee is required to demonstrate as per Rule 29 of ITAT rules that the lower authorities have not granted sufficient opportunity to the assessee to adduce the evidence on the point of reference or the evidence was not in possession of the assessee despite best efforts made by the assessee. In the present case nothing has been brought to our notice to prove the same by the assessee, therefore, we do not find any reason to admit the documents now filed by the assessee which is undated and unstamped and a self-serving in nature. In

the light of the above, the additional evidence filed by the assessee is rejected.

7. Now coming to the merit of the case, the brief facts of the case are that the assessee is an individual and along with others sold immovable property vide document No.224 of 2009 admeasuring 2.35 acres in Survey No.86, 87, 90 and 92 Raidurg Panmaktha Village, Serilingampally Mandal, RR District, registered at SRO, Ranga Reddy on 11.12.2008 to M/s. Asara Theme Projects (P) Ltd. The said property was sold for a total consideration of Rs.38,92,05,000/- and the then assessee Smt. G. Sumitra Devi has received Rs.3,09,95,500/- as part of her share. The Assessing Officer observed from the records that the assessee has not filed her return of income for the A.Y 2009-10 offering the capital gains for taxation on sale of property. Since the income chargeable to tax has escaped assessment, reopening proceeding u/s 147 of the I.T. Act were initiated and notice u/s 148 of the Act was issued on 24.3.2016 with the prior approval of the PCIT-7 to which there was no response from the assessee.

8. The learned Counsel for the assessee drew our attention to the orders passed by the lower authorities which are without any basis and the transfer within the meaning of section 2(47) has taken place on the date of entering into agreement on 4.2.2008. For the purpose of the above, the learned Counsel for the assessee drew our attention to various clauses of the sale-cum-GPA dated 4.2.2008 through which he submitted that the assessee in fact has parted with the possession by the registered agreement to the agreement holder/developer. It was the contention of the learned AR that after receiving 25% of the estimated sale consideration, the remaining sale consideration

was required to be paid within a period of 90 days from the date of agreement and the assessee was left with no right to specifically enforce the agreement, therefore, save and accept to claim remaining amount along with interest. It was submitted that the sale deed dated 11.12.2008 is nothing but continuation of the original agreement dated 4.2.2008 which is clear from the various conditions mentioned in the sale deed dated 11.12.2008 and for that purpose he drew the attention of various clauses of the sale deed. The learned AR submitted that once the possession has been handed over by the assessee to the third party, then for all the purposes, the transfer within the meaning of section 2(47) has taken place on 4.2.2008 and hence, the capital gain, if any, would be arise on the date of the execution of the said agreement and not at the time of sale of agreement dated 11.12.2008. He also relied on the decision of the Tribunal in the case of Dy.CIT vs. Shri Nimish Kalyanbhai Vasa in ITA No.1215/Ahd/2016 dated 19.12.2018 for the A.Y 2010-11 that the transfer has taken place.

9. The assessee further relied on the following case law:
- i) Hon'ble Madras High Court decision in the case of S. Muthukarupan, dated 11.09.2006.
 - ii) ITAT Hyderabad in the case of Vedula Venkata Ramana L/R of Late Smt. V. Rajyalakshmi, dated 12.6.2023
 - iii) ITAT Ahmedabad in the case of Sri Nimish Kalayanbhai, order dated 19.12.2018.
10. The following is the analysis of the paper book submitted by the assessee, Smt. Cheruvu Madhavi L/R Smt. Gundavarapu Sumitra Devi:

S.No	Page Nos.	Particulars
1	1 to 51	Copy of sale cum development cum General Power of Attorney dated 4.2.2008
1.1	3	S.No.3/17 – appellant as owner (A)
1.2	6 & 10	Walden Property Pvt. Ltd – agreement holder (C) of owners 1 to 11 for Ac. 2.35 Guntas paid Rs.10,07,50,000/-.
1.3	9	Services of D.K. Ramarao – to be paid Rs.5,00,00,000 in all to him
1.4	11 & 12	Schedule of payment to 1 to 11 – Balance to be paid within 90 days from 4.2.2008
1.5	14	a) Owner 10 to 17 (B) retained ownership of balance land Acres 2.20 gts (B)
		b) all the owners and agent holder approached developer for the development of entire land
1.6	15	Clause-1 – The developer (D) shall deliver the built up areas to owner 10 to 17 (B) and the agreement (D)
1.7	17	Clause-4 – delivery of built up area to owners 10 to 17 (B) and agreement holder (C). Built up area of (B) and (C) is as per schedule B and built up area of (D) is at Schedule (C)
1.8	18	Clause – 6 – The developer D shall be entitled to deal with his share of built-up area without further reference to owners & Agreement holder (Owners implies 10-17)
9	19	Clause – Reg delivery of built up area to (B) & (C)
1.10	20	Clause – 9 Owner 1 to 10A – shall execute sale deed in favour of agreement holder (C) after receipt of balance consideration.
		Developer (D) shall ensure the balance payment by C to A – In case of failure by C, the developer shall arrange alternate person – In case of delay the owner 1 to 10 (A) shall get interest 15% p.a
1.11	22	Nominees on behalf of owners 10 to 17 (B) to deal with developer (D)
1.12	23	Clause – 23 appointment of lawful attorney on behalf of owners & Agreement holder
Schedules to agreement		
1.13	31	A – Total land Ac 5.15 gts
	32	B – share of owners 10 to 17 (B) and agreement holder (C) in built up area
	33	C – share of developer (D) in built up area
2	52 to 60	Supplementary agreement dated 5.5.2008
2.1	58	Clause 1 – Interest free refundable deposit of Rs.3,48,75,000/- to owner 10 to 17 (B)
3	61 to 90	Sale deed dt.11.12.2008
		a) Owner 1 to 11 (A) Vendors
		b) agreement holder (C)
		c) Developer (D)
		d) Asian Theknes Projects (P) Ltd – Purchaser (E)
3.1	64	Agreement holder (C) nominated purchaser (E) for the purpose of execution of sale deed
3.2	64	Clause – 1 – in consideration of amount received

		from Agreement holder.... Agreement holder discharged
3.3	65	Schedule balance payment – Total Rs.38,92,05,000 only
		Clause – 2 (a) Vendors and agreement holder induct purchaser into joint possession
		b) Purchaser shall be entitled to all benefits of agreement holder as per terms of agreement
		Without any further reference to vendors/and agreement holder
		c) Developer agrees for the change.

11. Per contra, the learned DR vehemently argued that no transfer took place within the meaning of section 2(47) as on 4.2.2008 has not crystallised either by way of transfer of property or possession or receipt of consideration have arisen on 4.2.2008. To buttress his argument, he drew the attention to page 5, 6, 10, 12, 13, 17, 21, 22, 23, 26 and 64 of the Paper Book. It was the contention of the learned DR that as per the sale document, the possession was handed over by the assessee along with others only on 11.12.2008 and not on 4.2.2008 therefore, there is no question of any transfer on 4.2.2008. Further, it was submitted by the DR that only 25% of the total sale consideration was received by the assessee on 4.2.2008 at the time of entering into agreement. However, the balance consideration was paid at the time of registration of sale deed on 11.12.2008. It was submitted that the initial contract was between 3 parties namely group of 7 individuals including the assessee, Walden Properties and Welbit properties. The sale deed dated 11.12.2008 was executed by the assessee along with the Walden and Welbit properties in favour of M/s. Asara Themes Projects (P)Ltd. It was submitted that the first agreement dated 4.2.2008 was substituted by a new agreement dated 11.12.2008, therefore, the original agreement ceases to exist. Further it was submitted that the possession was given by

the assessee to Asara Themes Projects (P)Ltd on 11.12.2008 and not on 4.2.2008.

12. We have heard the rival arguments made by both the sides and perused the available material on record. The learned CIT (A) in para 5.1 to 5.4 held as under:

"I have considered the submissions of the appellant and findings of the Assessing Officer in the assessment order carefully. I have also perused the Memorandum of Sale cum Development Agreement cum General Power of Attorney executed on 4-2-2008 and Memorandum of Supplementary Agreement executed on 5-2-2008 and Final Sale Deed executed on 11-12-2008 placed on record. The contention of the AR of the appellant that the appellant had transferred all the rights and possession of the property through Memorandum of Sale cum Development Agreement Cum General Power of Attorney executed on 4-2-2008 and Memorandum of Supplementary Agreement executed on 5-2-2008 and thereby the assessee is liable for capital gains tax only in the A.Y.2008-09 and not in A.Y.2009-10 is factually incorrect. The document executed on 4-2-2008 is merely a Memorandum of Agreement to develop the property entered between 17 parties including the assessee referred as owners and agreement holder namely Walden Properties Pvt. Ltd. and developer namely Welbilt Properties Ltd, and according to this tri-party agreement dated 4-2-2008 only right to construction was sought to be given to the Developer and fixing entitlements of share of the built up area of the property, fixing the date of payment of consideration to the vendors including the assessee, subject to fulfillment of several other conditions in future. The opening words of the document dated 4.2.2008 starts as under:

"This Memorandum of Cum-General Power of Attorney Sale-cum-Development is made Agreement and Fourth day of executed on this February, 2008, at Hyderabad, by and between-

5.1 According to this agreement dated 4-2-2008, assessee has received Rs.74,68,750/- on 4-2-2008 as 1st installment being appellant's share of 25% of the estimated sale consideration value of Rs.10,07,50,000/- from agreement holder and balance 75% of the value of appellant's share of sale consideration amounting to deducting Rs.2,49,06,250/- after certain expenses which was required to be paid by holder within 90 days agreement from the date of the agreement. The total number of owners as per the Memorandum of Agreement dated 4-2-2008 was 17 including assessee. Regarding the payment schedule the clause 9 of the agreement 4.2.2008 states as under:

"9. The Owners No.1 to 11 shall execute sale deed(s) in favour of the agreement holder in respect of Ac 2.35 Gnts out of a schedule land

(subject to measurements and after excluding Ac 0.11 Gnts likely to be affected by road widening) on receipt of the balance of sale consideration of RS.30,22,50,000/ within (Rupees Thirty Crores Twenty Two Lakh Fifty thousand only), ninety days from the date of this Agreement.

It is the responsibility of the Developer to ensure that the Agreement Holder complies with his obligations of completing the sale transaction within the 90day period. In the event of default by the Agreement Holder, the Developer shall arrange an alternate person/ company to fulfill the purchase obligation of the Agreement Holder within a period of 30 days from such a default. And under Such circumstances, the Owners No.1 to 11 shall be paid an interest of 15% per annum for the delayed period.

The share of the Agreement Holder in the built-up areas is tentatively fixed as set out in Schedule B annexed hereto. On the payment of the balance of consideration as above, Developer is authorized to executed sale deed or sale deeds in favour of the Agreement Holder or its nominee or nominees in respect of item No.2 of the Schedule B, to be specified in the Supplementary Agreement to be executed among the Owners No.10 to 17, Agreement Holder shall be treated as "Owners" and all references to the Owner in this Agreement, to the extent possible, shall apply to the Agreement Holder."

5.2 It is clear from the various clauses mentioned in the Agreement dated 4-2-2008 that the appellant has only entered a tri partite agreement for selling the property and only part of the money was received during the F.Y.2007-08 relevant to A.Y.2008-09. Thereafter, the appellant along with the other owners have executed a sale deed dated 11-12-2008 after receiving balance consideration of Rs.28,84,55,000/- on 3-5-2008 and the appellant's share of consideration was Rs.2,35,26,750/ vide cheque dated 3-5-2008 and these details were also mentioned in the Final Sale Deed dated 11-12-2008. The total number of owners mentioned in the sale deed dated 11-12-2008 was 11 including assessee."

13. From a perusal of the above, it is abundantly clear that in the sale deed 11.12.2008 that for the first time the possession was handed over by the assessee to the purchaser namely Asara Themes Projects (P) Ltd. For the above said purposes, we may reproduce para 2 of the sale deed at page 12 of the CIT (A) order which mentioned as under:

"2. The vendors and the Agreement Holder have today inducted the Purchaser herein into joint possession of the Schedule Land and the Purchaser shall be entitled to enjoy the Schedule Land as per the terms of the Agreement and

shall be entitled to deal with the Developer as absolute owner in respect of the Schedule Land and receive all the benefits of the Agreement as per the terms of the Agreement without any further reference to the Vendors and the Agreement Holder. The Developer hereby acknowledges and agrees for the said change in favour of the purchaser”.

14. Section 54 of the Transfer of Property which defines the sale as under:

“Section 54 in The Transfer of Property Act, 1882:

54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. “

15. From a bare reading of the above definition, it is clear that if the transfer of immovable property is taken place in exchange of money coupled with possession, then it will be termed as sale in the eyes of law.

15.1 From the above, it is crystal clear that the possession of the property was handed over by the vendor to the vendees at the time of execution of the sale deed. The above said sale deed not only signed by the assessee but was also signed by the

agreement holder and developer. Both of them had not raised any objection that the possession of the property has been handed over by the assessee along with others to the vendee on 11.12.2008. In the light of the above, we do not have any confusion that the possession of the property was handed over to the vendee on 11.12.2008 after receiving the consideration. In our view the transfer within the meaning of section 2(47) took place if the property is transferred either by exchange or sale or by relinquishment. In the instant case, the sale has taken place within the meaning of transfer of property on 11.12.2018, therefore, the transfer took place only on 11.12.2018. The contention of the learned Counsel for the assessee that the possession of the property was handed over by the assessee to the Developer on 4.2.2008 is without any basis as the contents of the registered document cannot be denied or disbelieved based on a specific undated document given by the Developer. As mentioned above, the Developer happens to be the signatory of the sale deed, therefore, the Developer cannot issue a document contrary to the contents of the registered document to which he is a signatory. Undoubtedly, the possession has been given only on 11.12.2008 and therefore, it was taken place only on 11.12.2008 and hence we do not find any merit in the appeal of the assessee. Accordingly, the same is dismissed.

16 In the result, appeal filed by the assessee is dismissed.

ITA No.8/Hyd/2021 – Smt. Yashoda Gundavarapu -A.Y 2009-10

17. In the above appeal, the assessee raised similar issues as in ITA No.538/Hyd/2018 and we have already decided the issue

against the assessee. Following similar reasonings, these two appeals are also dismissed.

ITA No.14/Hyd/2019 Shri M. Hanmanth Reddy, – A.Y 2009-10

18. It is pertinent to mention here that none appeared on behalf of the assessee in this appeal despite number of opportunities granted. Since the grounds of appeal and the facts of the instant appeal are identical to the grounds raised by the assesseees in the above two appeals, therefore, the findings given in the above appeals will apply mutatis mutandis. Accordingly following similar reasonings appeal in Ita No.14/Hyd/2019 is also dismissed.

18. To sum up, all the appeals filed by the assesseees are dismissed.

Order pronounced in the Open Court on 28th July, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th July, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Smt.Chervu Madhavi L/R of late Smt. Sumitra Bai Gundavarapu, C/o Ch. Parthasarathy & Co. 1-1-298/2/B/3, 1 st Floor, Sowbhagya Avenue, St. No.1 Ashok Nagar, Hyderabad 500020
2	Shri Hanmanth Reddy, C/o Aequitasjuris Law Firm, 6-3-883/5/ 6 th Floor, Venkat Plaza, Panjagutta, Hyderabad
3	Income Tax Officer Ward 9(2) IT Towers, Masab Tank, Hyderabad
4	Pr.CIT-7 Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order