

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 133/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

Madhu Kumar Patel, ADIT (INT TAXN)-2,
Hyderabad Vs. Hyderabad
[PAN No. BVDPP3797G]

अपीलार्थी / Appellant

प्रत्यर्थी /
Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 11/10/2023
घोषणा की तारीख/Pronouncement on: 31/10/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 05/01/2023, passed by the Learned Assessing Officer ("Ld. AO") in the case of Madhu Kumar Patel, ("the assessee") for the assessment year 2014-15, under section 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act"), consequent to the directions of learned Dispute Resolution Panel, Bengaluru ("learned DRP"), assessee filed this appeal.

2. Brief facts of the case, as pleaded by the assessee are that, the assessee is an individual, an NRI and aged about 89 years is a resident of United Kingdom. He is the owner of a piece of land admeasuring 9680 square yards at Mansoorabad Village, Saroor Nagar Mandal, R.R District. As per registered Joint Development Agreement (JDA) vide Document 212/2012 dated 13/01/2012 entered into with M/s. SNR Nirman India Private Ltd. the assessee was entitled to receive 65190 sft. of built-up-area consisting of 52 constructed flats towards his share (35%). The assessee decided to sell of the built-up area to the builder itself and accordingly 52 flats were sold. Out of these 52 flats, 29 flats were sold in the assessment year 2014-15 for a consideration of Rs. 5,12,07,000/- and the balance 23 flats were sold in the assessment year 2016-17 for a consideration of Rs. 4,38,57,500/-. The consideration of Rs. 9,50,64,500/- in respect of the said transactions was received by the assessee @ Rs. 1,20,00,000/- in assessment year 2013-14, Rs. 1,20,25,000/- in assessment year 2014-15, Rs. 1,71,82,000/- in assessment year 2015-16, Rs. 1,98,71,603/- in assessment year 2016-17, Rs. 2,24,46,697/- in assessment year 2017-18 and Rs. 1,15,39,200/- in assessment year 2018-19. Accordingly, the entire land of 9680 sq.yards was sold partly through JDA and the balance through five Agreements mentioned above and the assessee received in all sum of Rs.9,50,64,500/-. The assessee filed his returns of income for the assessment years 2013-14 to 2016-17 admitting the sale proceeds of Rs. 1,20,00,000/-, Rs. 1,01,00,000/-, Rs. 2,91,07,000/- and Rs. 4,38,57,500/- respectively.

3. For the assessment year 2012-13, the department treated the date of JDA as transfer and determined a sum of Rs.6,77,04,992/- as long-term capital gains. In the first appeal the entire sum of Rs.6,77,04,992/- was allowed as deduction u/s.54F of the Act. On Second Appeal the a Co-ordinate Bench of the Tribunal vide order dated 21/07/2022, restored the matter to the files of learned CIT(A) to examine the eligibility of deduction under section 54F of the Act. Learned Assessing Officer while giving effect to ITAT Orders for AY.2021-13, withdrew the deduction of Rs.6,77,04,992/- granted under section 54F of the Act and thus as on the date, the assessee is not enjoying any deduction under section 54F of the Act.

4. Further case of the assessee is that for the assessment year 2014-15, the assessee filed his return of income on 24/08/2015, admitting the total income at Rs. 1,01,00,000/-. Subsequently, on 29/03/2021, a notice under section 148 of the Act was issued for the assessment year 2014-15 and the assessee filed the return of income under section 148 of the Act, admitting total income at Rs.1,00,09,110/-, consisting of Income from Capital Gains. learned Assessing Officer passed draft order on 28/03/2022 under section 144C of the Act, assessing the total income at Rs. 8,09,06,331/-. He proposed addition of Rs. 1,32,01,339/- on account of short-term capital gains, and Rs. 6,77,04,992/- on account of long-term capital gains by way of disallowance of claim of section 54F of the Act already granted by learned CIT(A) for the assessment year 2012-13.

5. Aggrieved by such a draft assessment order, assessee filed objections before the learned DRP. Learned DRP disposed the objections by order dt.28-12-2022, giving partial relief. Pursuant to the said directions

issued, the learned Assessing Officer passed on 05-01-2023 order u/s.147 read with section 144C(13) by assessing total income at Rs.5, 12,07,003/-.

6. Aggrieved by directions passed by the learned DRP under section 144C(5) of the Act and the final assessment order passed by the learned Assessing Officer under section 147 read with section 144C(13) of the Act, the assessee files this appeal.

7. At the outset, learned AR submitted that though the learned Assessing Officer brought to tax the entire amount of Rs. 5,12,07,000/- towards the sale consideration of 29 flats during the assessment year 2014-15 to tax, he failed to reduce the cost of acquisition and on this aspect, learned DRP found that the cost of acquisition for these 29 flats will be Rs. 3,80,05,661/- which is entitled for indexation and, therefore, learned DRP directed the learned Assessing Officer to reduce the indexed cost of acquisition from the sale consideration to arrive at the correct long term capital gains. Learned Assessing Officer, however, misread this direction and instead of reducing the long term capital gains by the indexed cost of acquisition, learned Assessing Officer added this Rs. 3,80,05,661/- towards long term capital gains by disallowing the claim of section 54F of the Act. He, therefore, submitted that the indexed cost of acquisition as directed by the learned CIT(A) may be reduced from the sale consideration.

8. From a reading of the order of the learned DRP, we find that the directions reads as follows:

"2.2.12 we note that the assessee has entered into an agreement with the developer M/s. SNR Nirman India Pvt. Td. On 06.04.2013 & 10.03.2014 where by the assessee has sold and conveyed 29 flats out

of 52 flats for a total consideration of Rs. 5,12,07,000/- (it seen that balance 23 flats sold in A.Y 2015-16). However, the assessee failed to declare this income from Long Term Capital Gains. Hence, the Assessing officer has brought in the whole sale consideration of Rs. 5,12,07,000/- as LTCG. However, he has failed to reduce the cost of acquisition.

2.6.2 It is seen from the records, that the cost of acquisition of 52 flats admeasuring 65,190 sq. ft is Rs. 6,77,58,600/- (as brought to tax in A.Y. 2012-13). Thus the cost of acquisition for 29 flats admeasuring 36565 sq. ft. {65,190 sq. ft being total built area (-) 28625 sq. ft being built up area of 23 flats} will be 3,80,05,661/-. Accordingly, we direct the AO to reduce the indexed cost of acquisition from the sale consideration and arrive at the correct LTCG.”

9. On a reading of the above direction, we understand that the learned DRP found the sale consideration of 29 flats at Rs. 5,12,07,000/- and the cost of acquisition was Rs. 3,80,05,661/-. Since the learned Assessing Officer failed to reduce the cost of acquisition from the sale consideration to compute the long term capital gains, learned DRP directed the learned Assessing Officer to consider this aspect and to allow the indexed cost of acquisition to be reduced from the sale consideration to compute the correct long term capital gains.

10. Learned Assessing Officer mistook this direction and he computed the long term capital gains at Rs. 3,80,05,664/-. We, therefore, accept the request of the assessee and direct the learned Assessing Officer to reduce the sale consideration by indexed cost of acquisition, taking the cost of acquisition at Rs. 3,80,05,664/-. Ground No. 2 is accordingly allowed.

11. In respect of Ground No. 3, learned AR submitted that the learned Assessing Officer disallowed the deduction under section 54F of the Act allowed by the learned CIT(A) for the assessment year 2012-13, but as a

matter of fact, for the assessment year 2012-13, a Co-ordinate Bench of the Tribunal directed the learned CIT(A) to verify whether the assessee is entitled to claim deduction under section 54F of the Act; that pursuant to such a direction, learned CIT(A) called for remand report of the learned Assessing Officer and such an appeal is pending at that stage. He submitted that unless the entitlement of the assessee to claim benefit of section 54F of the Act is finally decided in the appeal for the assessment year 2012-13, there cannot be any addition on substantive basis in the assessment year 2014-15 and it shall be on protective basis only. He submitted that pending finalization of the issue relating to section 54F of the Act in the appeal for the assessment year 2012-13, this issue may be restored to the file of the learned Assessing Officer to be taken up after the learned CIT(A) finalizes the issue for the assessment year 2012-13. Learned DR placed reliance on the assessment order and argued in justification thereof.

12. Since there is no dispute on the factual aspect, we deem it just and proper to restore the issue to the file of the learned CIT(A) to take a view inconsonance with the view to be taken in the appeal for the assessment year 2012-13. Ground No. 3 is, therefore, treated as allowed for statistical purposes.

13. Insofar as Ground No. 4 is concerned, it relates to not allowing the credit of taxes paid in the assessment year 2013-14 and 2015-16 in respect of the sale of 29 flats ignoring the directions of the learned DRP. Since the main grounds are restored to the file of the learned Assessing Officer for complying with the directions of the learned DRP, we restore this issue also to the file of learned Assessing Officer to comply with the directions of

learned DRP on this aspect also. Ground No. 4 is also treated as allowed for statistical purposes.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this the 31st day of October, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 31/10/2023

TNMM

Copy forwarded to:

1. Madhu Kumar Patel, C/o. Katrapati & Associates, 1-1-298/2/B/3,
1st Floor, Ashok Nagar, Street No. 1, Hyderabad.
2. The ADIT (INT TAXN)-2, Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD