

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

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

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
435/Hyd/2022	2016-17	Asst. Commissioner of Income Tax, Central Circle-2(2), Hyderabad	Mohammed Samir Ur Rahaman, Hyderabad [PAN No. AEHPR4335N]
438/Hyd/2022			Syed Hameeduddin, Hyderabad [PAN No. AAHPH7931E]
441/Hyd/2022			Mohammed Mujeeb Ur Rahaman, Hyderabad [PAN No. AAJPU8580G]

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR  
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 01/02/2024  
घोषणा की तारीख/Pronouncement on: 27/02/2024

आदेश / ORDER

**PER BENCH:**

Challenging the order(s) passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), in the cases of Shri Mohammed Samir Ur Rahaman, Shri Syed Hameeduddin and Shri Mohammed Mujeeb Ur Rahman ("the assesseees") for the assessment year 2016-17, Revenue preferred these appeals. Since the issue is common in

all these appeals, we deem it just and convenient to dispose of these appeals by way of this common order.

2. Brief facts of these appeals, as could be gathered from the record, are that these assesseees along with 42 other co-owners of land admeasuring Acres 12.09 guntas entered into a Joint Development Agreement (JDA) with M/s. Trendset Bharat Project Developers Pvt. Ltd. vide document No. 7033/2007 dated 04/04/2007 for development of the land. As per such agreement, the developer was required to construct residential/commercial/office spaces within thirty months with a grace period of six months from the date of sanctioned plan granted by HUDA / Municipality Authority and hand over the developed area to the co-owners in the ratio of 45:55 namely 45% in favour of the land owners and 55% in favour of the developers. M/s. Trendset Bharat Project Developers Pvt. Ltd. spent substantial amounts for development of the property but could not complete the project due to financial difficulties and the project was stalled. Subsequently, another developer viz., M/s. Trendset Jayabheri Projects LLP came forward and entered into tri-patriate development agreement with the landlords and M/s. Trendset Bharat Project Developers Pvt. Ltd. by way of development agreement No. 2357/2016 dated 10/02/2016.

3. During the scrutiny of the returns of income filed by these assesseees, learned Assessing Officer observed that by virtue of the second development agreement, the project was handed over to M/s. Trendset Jayabheri Projects LLP on as is where is basis and the erstwhile developer

relinquished all rights over the project and the JDA of 2016 superseded the earlier JDA of the year 2007. Learned Assessing Officer further observed that two landlords namely, Smt. Mulpuri Meena and Sri T. Vijaya Kumar sold their share of the property during this period and also with more land owners, the cost of project is more and the subsequent agreement is a fresh agreement and the earlier agreement stood cancelled. Learned Assessing Officer accordingly treated the second development agreement as a separate tax event for the landowners and brought to tax the share of the assessee's ownership of land as Long Term Capital Gains.

4. Aggrieved assessee preferred appeals before the learned CIT(A). Plea of the assessee before the learned CIT(A) was twofold. Firstly that no incriminating material was found during the search and, therefore, there is no scope for any addition in this matter. Secondly that there is no transfer of property under section 2(47) of the Act read with section 53A of the Transfer of Property Act and, therefore, no question of capital gains arises, and no income accrued to the assessee except mere execution of agreement.

5. Learned CIT(A), dismissed the plea of the assessee that the scope of section 153A of the Act is limited to the seized material whether incriminatory or not and observed that the learned Assessing Officer mentioned in the assessment order that certain agreements for sale and sale deed were seized during the search. Learned CIT(A), however, basing on the view taken in the case of one of the co-sharers, namely, Smt. Kavaya Kaza by the first appellate authority wherein it was held that the second

development agreement is only an assignment of development rights by the first developer to the second developer with concurrence / no objection of the land owners., and, therefore, there was no transfer of land / capital asset during the year and there is no case for taxing the same under Long Term Capital Gains, granted relief to the assessee and deleted the addition. Hence, these appeals by the Revenue.

6. It is the argument of the learned DR that there was a breach and break down of the earlier development agreement dated 04/04/2007 due to the failure of the transferee/developer thereof, in obtaining the sanction of the building plan from the competent authority and also failing to perform its part of contract, thereby rendering the agreement as null and void in the eyes of law. He further submitted that as per clause 20 of the second development agreement dated 10/02/2016, the parties agreed and confirmed that the said agreement was made and executed in supersession of the first development agreement dated 04/04/2007 implying thereby that there was a transfer of land by the assessee on 10/02/2016 under the provisions of section 2(47)(v) of the Act. According to him, the development agreement dated 10/02/2016 cannot be considered as the one entered into in continuation of the earlier agreement dated 04/04/2007, when the sharing ratio of the constructed/developed area between the landowners and the developer in the latest agreement is different from that of the earlier agreement.

7. Per contra, it is the submission of the learned AR that the question whether or not the development agreement dated 10/02/2016 resulted in

"transfer" of land on 10/02/2016, as defined in Section 2(47)(v) of the Act had fallen for the consideration of a Co-ordinate Bench of the Tribunal in the case of Smt. Kavya Kaza and another co-owner, in ITA No. 434 & 440/Hyd/2022 by order dated 08/11/2023 and the view taken by the first appellate authority in the case of Smt. Kavya Kaza (supra), is affirmed by the Co-ordinate Bench of the Tribunal and since the facts and question of law involved in these appeals are identical to the case of Smt. Kavya Kaza (supra), it is not open for the Revenue to take a plea contrary to such view.

8. We have gone through the record in the light of the submissions made on either side. There is no dispute that Smt. Kavya Kaza and Sri Lakshminarayana Kaza are the co-owners along with the assessee herein and in their case the first appellate authority held that the second development agreement is only an assignment of development rights by the first developer to the second developer with concurrence / no objection of the land owners, and, therefore, there was no transfer of land / capital asset during the year and there is no case for taxing the same under Long Term Capital Gains. Challenging the said finding, Revenue preferred appeals before the Tribunal in ITA No. 434 & 440/Hyd/2022. The Co-ordinate Bench of the Tribunal observed that in the case of Sruthi Riedl in ITA No.126/Hyd/2023, it examined the JDA dated 04/04/2007 and 10/02/2016 and the issue of transfer of capital asset under section 2(47) of the Act.

9. In the case of Sruthi Riedl (supra), on an exhaustive dealing with the JDA dated 04/04/2007 and 10/02/2016 and the issue of transfer of capital

asset under section 2(47) of the Act, the Co-ordinate Bench of the Tribunal held that the second JDA had merely transferred the obligation of TBPD to TJP and corresponding entitlement of assessee in built-up area; that the permission from the municipal authorities pursuant to the Joint Development Agreement dated 10/02/2016 was obtained by TJP on 17/10/2016 and the plans of the TJP was approved on 09/05/2017; that transfer of the capital asset as per newly inserted Section 45(5A), which was inserted on 01/04/2018, also happened in the subsequent assessment year i.e., assessment year 2017-18 as the plans were approved on 09/05/2017 and certificate of completion would have been issued thereafter; that section 45(5A) is not applicable to the assessment year under consideration as it was inserted with effect from 01/04/2018 and was prospective in nature; and that no addition can be made even in the year 2016-17 on the basis of Section 45(5A) of the Act.

10. In the cases of Smt. Kavya Kaza and Sri Lakshminarayana Kaza (supra), the Co-ordinate Bench of the Tribunal followed its view in the case of Sruthi Riedl (supra) and dismissed the Revenue's appeals.

11. It is, therefore, clear that in the case of co-owners, while considering the issue of transfer of capital asset under section 2(47) of the Act in the light of the JDA dated 04/04/2007 and 10/02/2016 the Co-ordinate Benches of the Tribunal have taken a consistent view that there is no transfer and, therefore, no question of application of section 45(5A) of the Act.

12. In these circumstances, in view of the identical nature of the facts and question of law in these appeals, we find it difficult to take a different view from the consistent view taken in the case of co-owners. Respectfully following the same, we do not find anything illegality or irregularity in the findings of the orders of the learned CIT(A). Grounds in all these appeals are dismissed.

13. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on this the 27<sup>th</sup> day of February, 2024.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 27/02/2024

TNMM

Copy forwarded to:

1. Asst. Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
2. Sri Mohammed Samir Ur Rahaman, H. No. 5-9-88/A/1, Beside Haj House, Opp: Public Garden, Nampally, Hyderabad.
3. Sri Syed Hameeduddin, 18-8-589/65, Kumarwadi Colony, EDI Bazar, Hyderabad.
4. Sri Mohammed Mujeeb Ur Rahman, 18-8-485/17/A, Kumarwadi, EDI Bazar, Hyderabad.
5. Pr.CIT(Central)-Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE.

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ITAT, HYDERABAD