

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

BEFORE

SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER

Sl. No	ITA No	SA No.	Assessment Year	Appellant / Assessee	Respondent
1	636/Hyd/2022	53/Hyd/2023	2016-17	Sarat Gopal Boppana, Hyderabad. PAN: AFCPB8083K	The Assistant Central Circle - 2(3) Hyderabad.
2	639/Hyd/2022	54/Hyd/2023	2016-17	Ms. Kavya Boppana, Hyderabad. PAN: AIKPB6992L	-do-
3	643/Hyd/2022	55/Hyd/2023	2016-17	Ms. Tara Chand Boppana, Hyderabad. PAN : AGFPB0348D	-do-
4	647/Hyd/2022	--	--	Ms. Jhansi Rani Boppana, Hyderabad. PAN : AEZPB1917Q	-do-

CROSS APPEALS

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respondent
1	689/Hyd/2022	2016-17	The Assistant Central Circle - 2(3) Hyderabad.	Sarat Gopal Boppana, Hyderabad. PAN: AFCPB8083K
2	695/Hyd/2022	2016-17	-do-	Ms. Kavya Boppana, Hyderabad. PAN: AIKPB6992L
3	691/Hyd/2022	2016-17	-do-	Ms. Tara Chand Boppana, Hyderabad. PAN : AGFPB0348D
4	693/Hyd/2022	2016-17	-do-	Ms. Jhansi Rani Boppana, Hyderabad. PAN : AEZPB1917Q

Appellant by	:	Shri P. Murali Mohan Rao, C.A
Respondent by	:	Shri Jeevan Lal Lavidiya, CIT-DR
Date of Hearing	:	28.05.2024
Date of Pronouncement	:	08.07.2024

ORDER

PER BENCH :

This bunch of eight appeals, four by different assessee's and four by the Revenue, are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals) – 12, Hyderabad all dated 20.09.2022 and pertains to A.Y. 2016-17. Since facts are identical and issues are common, for the sake of convenience, these appeals filed by the assessee's and, as well as the Revenue are being heard together and are being disposed off, by this consolidated order.

2. The assessee's have more or less filed common grounds of appeal in their respective grounds of appeals and therefore, for the sake of brevity, the grounds of appeal filed by the assessee in the case of Shri Sarat Gopal Boppana are reproduced as under :

“1. On the facts and in the circumstances of the case the order passed by the CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The Ld.CIT(A) erred in allowing the appeal in part.

3. a) *The Ld. CIT(A) ought to have appreciated that the compensation of Rs. 8 crores offered as Income from Other Sources in the Assessment year 2019-20 was in respect of Land received admeasuring 3156 sq. yds as per the Additional Supplemental Development Agreement dated 19-10-2015.*

b) *The Ld. CIT(A) erred in considering that there were two different compensations to be received by the appellant and his family members.*

c) *The Ld. CIT(A) ought to have appreciated that the assessee has transferred only the developmental rights at the time of entering Development agreement and not the ownership of the land and that the land admeasuring 3156 sq. yds which has been received subsequently as compensation from Block-E to the appellant does not amount to income of the appellant as the ownership of the land lies with the appellant.*

d) *The Ld. CIT(A) erred in directing the AO to obtain the SRO value of 3156 sq. yds of land in Block E of the project as on 19-10-2015 and the same on account of compensation.*

e) *The Ld. CIT(A) erred in directing the AO to obtain 1/4th of SRO value of land of 3156 sq. yds towards appellant's share of compensation and to bring the same to tax.*

f) *The Ld. CIT(A) ought to have deleted the addition of Rs.7,00,00,000/-."*

3. The Revenue also more or less has raised common grounds of appeal in all four appeals and therefore, for the sake of brevity, the grounds of appeal filed by the Revenue in the case of Shri Sarat Gopal Boppana are reproduced as under :

"1. The ld.CIT(A) erred both in law and on facts of the case in granting relief to the assessee.

2. The ld.CIT(A) erred in deleting the addition of Rs.7 Cr made towards compensation received by the assessee when it is clearly mentioned in para 30 of the Additional Supplementary Agreement dt.19.10.2015 entered into between the assessee and the developer that the assessee and his family members were entitled to receive compensation to the tune of Rs.28 crores.

3. *The ld.CIT(A) ought to have appreciated that the FMV of the land of 3156 sq. yards was Rs.28 crore as the assessee and his family members received the said land in lieu of the compensation amount of Rs.28 crore for which they were entitled to as per the terms of the the Additional Supplementary Agreement dt.19.10.2015.”*

ITA No.636/Hyd/2022 and ITA No.689/Hyd/2022

(SRI. SARAT GOPAL BOPPANA)

4. The brief facts of the extracted from the case of Shri Sarat Gopal Boppana in ITA No.636/Hyd/2022 are that, the assessee is an individual and has earned income from other sources. The assessee has filed his original return of income u/s 139(1) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). A search and seizure operation u/s 132 of the Act was conducted on the assessee, as part of the search conducted on M/s. Skill Promoters Private Limited on 22.10.2019. Consequent to search, notice u/s 153A of the Act was issued and served on the assessee. In response to the notice issued u/s 153A of the Act, the assessee filed his return of income on 19.12.2022 declaring total income of Rs.10,36,750/- as admitted in the return of income filed u/s 139(1) of the Income Tax Act, 1961. The assessment has been completed u/s 153A of the Act on 28.09.2021 and determined total income at Rs.14,87,36,750/-, by inter-alia making addition towards compensation received for delay in delivery of commercial space in Sarat City Capital Mall for Rs.7 crores and addition towards differential amount of long term capital gain in pursuant to Joint Development Agreement (hereinafter referred to as the “JDA”) entered into by the appellant with M/s. Skills Promoters Private Limited on 11.05.2009 amounting to Rs.7.77 crores.

5. The assessee carried the matter in appeal before the first appellate authority and the Id.CIT(A) for the reasons stated in their appellate order dt.21.09.2022, partly allowed the appeal filed by the assessee, wherein the Id.CIT(A) deleted the additions made towards computation of long term capital gain from transfer of property in pursuant to JDA dt.11.05.2009 and partly allowed relief in respect of addition towards compensation received from the builder for delayed delivery of constructed building in Sarat City Capital Mall and directed the Assessing Officer to compute compensation by taking into account of 3156 sq. yards of land received by the assessee by way of reconveyance in 'E' Block of the building and adopt fair market value of the property as on the date of reconveyance and assess 1/4th share of the assessee towards compensation received from the builder.

6. Aggrieved by the Id.CIT(A)'s order, the assessee as well as the Revenue are in appeal before us.

7. The solitary issue that came up for our consideration from ground nos.3(a) to 3(f) of assessee's appeal and ground nos.2 and 3 of Revenue's appeal is addition towards compensation received for the delayed delivery of commercial space in Sarat City Capital Mall. The facts with regard to the impugned dispute are that during the course of PO operation, a document bearing No.5740 dated 11.05.2009 was found and seized which indicate JDA between assessee and his family members with M/s Skill Promoters Pvt Ltd. The said development agreement was entered into by the appellant Shri Sarat Gopal Boppana and his family members with specific terms to construct and deliver a shopping mall namely, Sarat City

Capital Mall on the land possessed by the appellant family admeasuring Ac.04.01 gts situated at Kothaguda Junction, Kondapur, Hyderabad. As per the said agreement, a specific clause was provided for compensation in case of delayed delivery of the constructed building. The agreement specifically states that in case, the project is not completed within 40 months from the date of execution of the development agreement, the second party/ developer shall pay an amount of Rs.20/- per sq.ft per month, as compensation till handing over the possession to first party. Subsequently, the appellant and his family members entered into a supplementary development agreement with M/s. Skills Promoters Private Limited on 10.10.2015 for sharing developed area in each block of the building. As per the clause 30 of additional supplementary development agreement dt.19.10.2015, it was stated that in case, the second party / developer delayed completion of the project, then on mutual agreement, the second party shall pay a compensation of about Rs.28 crore to the first party i.e., the appellant and his family. The appellant was confronted with the documents found during the course of search being JDA and supplementary agreement and asked to explain the amount of compensation received from the developer for delayed completion of project. In response, the appellant, Sarat Gopal Boppana stated that both the parties have settled the dispute and have agreed for compensation, in terms of land admeasuring 3156 sq. yds, which is covered in "E" Block of Sarat City Capital Mall, as per additional supplementary development agreement dt.19.10.2015 and Area Allocation Deed dt.02.11.2015. The appellant further stated that although, they have agreed for compensation of about Rs.28 crores and the same was settled by reconveyance of land admeasuring

3156 sq. yds in “E” Block of Sarat City Capital Mall, but one more MOU was entered in the month of December, 2017 with the developer and both the parties agreed for compensation of Rs.8 crores worth of built-up-area in the Mall for the delayed delivery of commercial space. Since the appellant had received the Completion Certificate / Occupancy Certificate in the F.Y. 2017-18, the amount of compensation was offered to tax as additional income in the hands of four family members for assessment year 2018-19

8. During the course of assessment proceedings, the Assessing Officer noticed that the appellant is eligible to receive compensation of Rs.28 crore for delayed delivery of commercial space, as per supplementary agreement dt.19.10.2015, but the appellant has not offered any income in the F.Y. 2015-16 relevant to assessment year 2016-17, therefore, called upon the assessee to explain as to why compensation from the builder should not be treated as income of the assessee. In response, the assessee submitted that the project was delayed due to various factors, including bifurcation of undivided Andhra Pradesh into Telangana and Andhra Pradesh and because of this, there were many obstacles in obtaining permissions from various authorities. Although, there was specific clause in JDA for compensation in case of delayed delivery of constructed building, but the same was subsequently, modified from time to time by both the parties considering the reason for delay in completing the project and finally, both parties had entered into MOU in the month of December, 2017 and agreed for compensation of Rs.8 crore for delay in completion of the project. The assessee further contended that the said compensation of Rs.8 crore has been offered to tax in F.Y. 2017-18 relevant to assessment year 2018-19 by the family

members and paid taxes and therefore, the question of making further addition towards alleged compensation of Rs.28 crore in the hands of four family members does not arise.

9. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and accordingly, the Assessing Officer opined that the assessee and his family members had received compensation of Rs.28 crore, as per clause 30 of Supplementary Agreement dt.19.10.2015 for delay in completion of the project, which is clearly evident from the documents found during the course of search. Therefore, the argument of the assessee is that he has received only Rs.8 crore as compensation from the builder for delay in completion of the project on the basis of unsigned MOU dated December, 2017 is devoid of merit and further, in the MOU dated December, 2017, there is no reference of reconveyance of land in Block "E", but only reference of the compensation of built-up-area equivalent to Rs.8 crore. Therefore, rejected the arguments of the assessee and assessed additional income on account of compensation received for delay in delivery of commercial space at Rs.28 crore, as per supplementary agreement dt.19.10.2015 and added Rs.7 crores being 1/4th share of the assessee. The relevant findings of the Assessing Officer are as under:

“4. Compensation received for delayed delivery of commercial space in Sarat City Capital Mall:

4.1. During the PO operation. a development agreement bearing no. 5740/2009 dated 11.05.2009 was found and seized bearing page nos. 1 to 38 of Annexure-A/BSG/RES/PO/01. The said development agreement was entered by Sri Sarat Gopal Boppana & his family members with M/s. Skill Promoters to develop and construct a shopping mall namely, SARAT CITY CAPITAL' on the land admeasuring Ac.4.01 gts situated at Kothaguda Junction, Kondapur, Hyderabad which belongs to the said family. On

verification of the said agreement. it is noticed that there is a clause mentioned that the given project is to be completed within 40 months from the date of execution of this development agreement, in the event of delay on the part of the second party/developer in completing the construction and delivering the areas allotted towards the share of land lords i.e Sri Sarat Gopal & family members, the developer shall pay an amount of Rs 20 per sq.ft per month as compensation, every month till handing over the possession to first party i.e Sarat family members. When asked about the above compensation. the assessee Sri Sarat Gopal Boppana has stated that they have entered into an unregistered MOU during the month of December, 2017 with Skill Promoters, wherein developer has agreed to pay an amount of Rs.8 crores worth of commercial space in the mall as compensation for delayed delivery of commercial space of the project.

4.2. He has further stated that later both the parties have settled for land of 3156 sq yards, which is covered in the block-E of the mall, instead of built up area worth Rs 8 crores in the mall as agreed between both the parties as per MOU of December 2017. However, this transaction is not reflected in books of accounts of the assessee family. Hence, he has admitted an amount of Rs 8,00,00.000/- as undisclosed income from other sources for the relevant assessment year. Relevant portion of the statement dated 03.12.2019 is reproduced as under.

Q47. I am showing you the Annexures bearing Nos. A/BSG/RES/PO/1 Pages numbered 1 to 38 referring to the Development Agreement. As per clause 13 of Development agreement dated 11th may 2009 between your family members and M/s. Skill Promoters represented by Sri. Syed Mohd Aslam, the given project is to be completed within 40 months from the date of execution of this development agreement, in the event of delay on the part of the second party/developer in completing the construction and delivering the areas allotted towards the share of land lords i.e your family members, the developer shall pay an amount of Rs 20 per sqft per month as compensation, every month till handing over the possession to first party i.e your family members. Please submit the details of such compensation received from developer for delay in delivery of developed area and also state its accounting treatment in your family members books of accounts.

Ans: As stated in the said clause we were supposed to receive compensation for the delay in delivery of promised commercial space by developer. Accordingly as per MOU between developer M/s Skill Promoters Pvt Ltd and my family members in the month of December 2017, wherein developer M/s Skill Promoters Pvt Ltd, represented by its directors Syed Mohd Aslam and Syed Naveeduddin Quadri have agreed to transfer equivalent to Rs 8 crore worth sft of built up area from their share towards compensation for delay in delivering the first party share i.e our family members share. However, later both the parties have settled for land of 3100 sq yards. which is covered in block-E of the mall, instead of built up area worth Rs 8 crores as agreed between both the parties as per MOU of December 2017. However. this transaction is not reflected in our books of accounts. Accordingly, I voluntarily submit that I hereby admit Rs 8,00.00.000/- as my family members undisclosed income from other sources for the relevant assessment year and

will pay the taxes accordingly. Bifurcation of income among our family members will be submitted in two days.

4.3. Accordingly, the assessee has admitted an amount of Rs.8,00,00,000 towards compensation for delayed delivery of commercial space in Sarat City Capital, as undisclosed income for the A.Y.2019-20 in his hands and of family members based on the occupancy certificate received by developer and its subsequent handing over of the built up area and land measuring 3156 square yards in E-Block. Accordingly, the assessee has offered his share of undisclosed income of Rs.2,00,00,000/- in his ITR filed u/s 153A. The same has been verified and found to be not in order for the reasons elaborated in ensuing paragraphs.

4.4. On verification of Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015 and Area allocation deed of 2nd November 2015, the said block E has been allocated to Shri Sarat Gopal and his family members in the financial year 2015-16 relevant to Assessment year 2016-17 as compensation for delay in the execution of the project by developer. This issue of allocation of Block-E as per said Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015, and Area allocation deed of 2nd November 2015 was confronted with Shri Sarat Gopal during the PO and post search investigations. Excerpts from statements of Shri Sarat Gopal are hereby reproduced for clarity and brevity of the issue:

Q34.As per terms and conditions of the original development agreement dated 11.05.2009, between your family members (Land lords) and M/s Skill Promoters Pvt Ltd (Developer) it was mandated to developer by your family members.

- 1. To pay the security deposit as per the time line given in the above mentioned development agreement. (as per clause 13)*
- 2. To complete/deliver the land owner share within 40 months time from the date of agreement. In the event of delay on the part of M/s. Skill Promoters (developer) in completing and delivering the areas allotted towards the share of the land owners i.e. Sri Sarat Gopal and family. we (developer) have to pay an amount of Rs.20 per sft. per month as compensation till handing over the possession to the land owners. (as per clause 13)*
- 3. To marketise and sale the entire orange area allocated to Sri Sarat Gopal and his family. (as per clause 15 (iib))*

As all of the above terms and conditions of Development agreement were not adhered by your developer M/s Skill Promoters Pvt Ltd, did you and your family members demand any compensation and received any compensation from your Developer M/s Skill Promoters Pvt Ltd.

Ans. As per our Joint Development agreement with M/s Skill Promoters, the land of Ac 4.01 Guntas was to be developed within 40 months with a grace period of 90 days from the date of agreement. However the said project could not be taken up till 2013. As we were very apprehensive of the fate of project after it got delayed for a long time and also for reasons of bifurcation of

undivided state of AP. accordingly, we insisted for additional security measure and have demanded for compensation. Subsequently, we have arrived at mutual understanding have entered into Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015 as per which we were allocated entire land falling to the share of developer in Block-E admeasuring 3156 square yards and same is mentioned in Area Allocation Deed of 2nd November 2015 also.

Q.35 I am showing you the material found at the office premises of M/s Dymes Engineers Private Limited and impounded vide annexure/off/DEPL/05 during the course of Survey Operation u/s 133A on 22.10.2019 containing pages numbered 178 to 222 Registered Additional Supplemental Development Agreement entered by you with M/s Skill Promoters Pvt Ltd vide document bearing No.477/2015 dated 19.10.2015 which is also seized vide pages numbered 1-45 of Annexure-A/SPPL/OFF/PO/03, at the business premises of developer M/s Skill Promoters Pvt Ltd. wherein it was mentioned in Para 30 that in the case of combined plans are not approved by the concerned authorities for any reason or combined project is stopped due to any reason or not going ahead in the expected time period due to any reason, M/s. Skill Promoters Pvt. Ltd shall complete the project originally agreed upon as per the original development agreement and this Additional Supplementary of Development Agreement dated 19.10.2015 automatically stands cancelled. In any case the final decision will be with First Party alone. That due to any reason the Hotel/Hospital/Commercial/Residential building in Block-E project is not coming up, the same should be compensated in the Mall on the mutually accepted terms by Sri Sarat Gopal (First Party,) and second party i.e. M/s. Skill Promoters (developer) to the tune of around Rs.28 crores. Please explain whether the company M/s. Skill Promoters Pvt. Ltd has paid any compensation to the land owners i.e to your family members since the project (Block-E) has not come up till date.

Ans. As per the said Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015, the projects of Block-A and Block-E have to be simultaneously developed by the developer and handed over to us at the same time. It was also agreed as per the said development agreement that the cost of construction to the extent of 91% of the total project cost of Block-E, have to be borne by us. Further, it is to submit that the said block-E was allocated to us as per Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015 and Area Allocation Deed of 2015. However the developer could not obtain the permission for construction of Block-E and same is not yet started by the developer. Hence this Additional Supplementary agreement stands cancelled automatically and we were given land admeasuring 3156 square yards as per Area Allocation Deed and same will be developed by me after obtaining permission from concerned authorities. We have not received any other compensation except this land of 3156 square yards and the said figure of Rs 28 crores compensation was an hypothetical figure as a security measure to compel the developer to develop both the projects simultaneously, as we were very apprehensive of the fate of project after it got delayed for a long time of more than 6 years and also for reasons of bifurcation of undivided state of AP, Accordingly, we insisted for additional security measure. Hence we have not

received any compensation to the extent of Rs 28 crores mentioned in the said Additional Supplementary Agreement. However after the completion of Block—A, we have come to a mutual understanding and land admeasuring 3156 square yards was finally given to me and my family members, value of which was determined at Rs 8 crores as per MOU dated 11.12.2017 between M/s Skill Promoters and my family members. Accordingly, we have received compensation to the extent of Rs 8 crores in the form of land admeasuring 3156 square yards.

Q.36 I am showing you the Q.23 of Sworn statement recorded from Shri Syed Mohd Aslam, Managing Director of M/s Skill Promoters Pvt Ltd during PO operation at his business premises on 19 12.2019.

"Q.23 I am showing you the Additional Supplemental Development Agreement entered by you with Sri Sarat Gopal and his family members vide document bearing No.477/2015 dated 19.10.2015 seized vide pages numbered 1-45 of Annexure-A/SPPL/OFF/PO/03, wherein it was mentioned in Para 30 that in the case of combined plans are not approved by the concerned authorities for any reason or combined project is stopped due to any reason or not going ahead in the expected time period due to any reason. M/s. Skill Promoters Pvt. Ltd shall complete the project originally agreed upon as per the original development agreement this Additional Supplementary of Development Agreement dated 19.10.2015 automatically stands cancelled. In any case the final decision will be with First Party alone. That due to any reason the Hotel/Hospital/ Commercial/ Residential building in Block-E project is not coming up, the same should be compensated in the Mall on the mutually accepted terms by Sri Sarat Gopal (First Party) and second party i.e. M/s. Skill Promoters (developer) to the tune of around Rs.28 crores. Please explain whether the company M/s. Skill Promoters Pvt. Ltd has paid any compensation to the land owners since the project (Block-E) has not come up till date.

Ans. As per terms and conditions of the original development dated 11.05.2009, it was mandated to me as developer by Shri Sarat Gopal and Family members.

- 1. To marketise and sale the entire orange area allocated to Sri Sarat Gopal and his family. (as per clause 15 (iiib))*
- 2. To pay the security deposit as per the time line given in the above mentioned development agreement. . (as per clause 13)*
- 3. To complete/deliver the land owner share within 40 months time from the date of agreement. In the event of delay on the part of M/s.Skill Promoters (developer) in completing and delivering the areas allotted towards the share of the land owners i.e. Sri Sarat Gopal and family, we have to pay an amount of Rs.20 per sft. per month as compensation till handing over the possession to the land owners. (as per clause 13)*

As we could not fulfill all these terms and conditions and to compensate for all these things, Sri Sarat Gopal Boppana (First Party) has calculated the compensation to the tune of Rs.28 crores as mentioned in Additional

Supplemental Development Agreement entered with Sri Sarat Gopal and his family members vide document bearing No.477/2015 dated 19.10.2015. Hence, we have given the vacant land falling in Block-E admeasuring 3156 square yards which was originally allotted to me as developer share."

As per this statement of Shri Mohd Aslam, MD of M/s Skill Promoters Pvt Ltd. you and your family members have received compensation of vacant land falling in Block-E admeasuring 3156 square yards which was originally allotted to developer share as per Area Allocation Deed of November 02,2015, Market Value of this land admeasuring 3156 sq yards corresponds with the compensation calculated by you in Additional Supplemental Development Agreement vide document bearing No.477/2015 dated 19.10.2015. In this regard you are requested to explain whether this compensation received from developer M/s Skill Promoters is accounted for in your and your family members books of accounts and if not accounted for in books of accounts, you are show-caused why the compensation of Rs.28 Crores worth land admeasuring 3156 should not be brought to tax as per provisions of income tax act.

Ans. As stated earlier, we have not received any compensation to the tune of Rs 28 crores and whatever we have received from Developer as compensation for not adhering to the provisions of Original Development agreement is Land Admeasuring 3156 square yards and the said figure of Rs 28 crores compensation was an hypothetical figure as a security measure to compel the developer to develop both the projects simultaneously.

4.5. From above statement and seized material findings, it is ascertainable that the allocation of Block-E as compensation for delay in delivery of project has taken place and compensation received by assessee and his family members is land admeasuring 3156 square yards. However, assessee's quantification of compensation in monetary terms at Rs 8 crores as per Unregistered MOU of December, 2017 between the developer and assessee , where there is no mention of Block-E but compensation of Rs 8 crores worth built up area in A block for delayed delivery of built-up area to assessee family is not acceptable as there is no mention of block-E property. Accordingly, additional income on account of compensation received for delayed delivery of commercial space is assessed at Rs.28 crores for AY 2016-17 relevant to FY 2015-16 in the hands of assessee and his family. Therefore, share of the assessee out of four family members in the compensation received is arrived at Rs.7,00,00,000/- (1/4th share) and is added to the income returned by the assessee."

10. Being aggrieved by the assessment order, the assessee preferred the appeal before the Id.CIT(A). Before the Id.CIT(A), the assessee contended that due to various reasons, including separation of undivided Andhra Pradesh State, the project could not get approvals from various authorities and for this reason, there was

a delay in delivery of constructed building. Further, although, there is a specific clause for compensation to be paid to the land owner beyond a period of 40 months from the date of development agreement at specific rate and further stated that compensation has been quantified in the supplementary agreement dated 19.10.2015, but because of reasons which are not in the control of the developer, the project was delayed, the parties have re-negotiated the terms and conditions and had entered into an MOU in the month of December, 2017 and settled for a compensation of Rs.8 crore to be paid in the form of built-up-area in Sarat City Capital Mall and the same has been offered to tax for A.Y. 2018-19.

11. The ld.CIT(A) after considering the submissions of assessee and also taking note of relevant development agreement dt.11.05.2019, supplementary agreement dt.19.10.2015 and finally, the MOU dated December, 2017 executed between the parties, observed that from the recitals of the agreement, it is evident that the appellant had a right to receive compensation, in case, the project is not coming up and on account of delay in handing over the possession of the property. Although, the appellant claims that the compensation referred to in supplementary agreement dt.19.10.2015 of Rs.28 crores is hypothetical and is only specified for the purpose of compelling the developer to develop the project, but the document executed by the parties vide supplementary agreement clearly shows that land admeasuring 3156 Sq. Yds has been returned to the appellant and his family members, as compensation for delay in delivery of constructed building. Further, the so-called MOU between the parties dated December, 2017, only specifies compensation of Rs.8 crore to be paid in the form of built-

up-area but there is no reference of land returned to the appellant admeasuring 3156 sq. yds in Block E of the Project. Therefore, ld.CIT(A) opined that the assessee has got a right to receive compensation and the same has been received in the form of land admeasuring 3156 sq. yds. The ld.CIT(A) further observed that although, the Assessing Officer assessed compensation of Rs.28 crores, but there is no evidence with the Assessing Officer to prove that the appellant and his family members have received monetary compensation of Rs.28 crore and also the value of land was at Rs.28 crores as on the date of supplementary agreement. Therefore, directed the Assessing Officer to assess the value of land admeasuring 3156 sq.yds, received as per the additional supplementary agreement dt.19.10.2015 by taking into account SRO value and work out compensation receivable by the appellant from the builder and assess the share of the assessee towards compensation received for delayed delivery of commercial space in Sarat City Capital Mall. The relevant findings of the ld.CIT(A) are as under :

“6.5 I have considered the submissions of the AR and the order of the AO. It is seen that the appellant family has entered into a Development Agreement No.5740/2009 dated 11.05.2009 with the developer M/s. Skill Promoters to develop and construct a shopping mall namely 'Sarat City Capital' on the land admeasuring Ac.4.01 gts situated at Kothaguda Junction, Kondapur, Hyderabad. As per the development agreement, the entire project/commercial complex/malls etc. were to be built on area of 4,28,572 square feet and the project was to be completed within 40 months from the date of execution of development agreement with a grace period of 90 days i.e. till December, 2012. In the event of delay on the part of the developer in completing the construction, the developer was liable to pay an amount of Rs.20 per sft as compensation every month till handing over the possession to the appellant family. Relevant extract of clause 13 of the Development agreement dated 11-05-2009 is reproduced below:

"13. The Second Party/Developer has agreed that the entire project/commercial complex/malls etc shall be

completed in all respects within 40 months from the date of execution of this Development Agreement. In the event of any delay on the part of the Second Party / Developer in completing the construction and delivering the areas allotted towards the share of the First Party/Owners, the Second Party/Developer shall pay an amount of Rs.20 per sft per month as compensation, every month till handing over the possession to the first party/owners. However a grace period of 90 days will be given for completion of the project".

6.5.1 *Due to state separation and other issues, there was a delay in completion of the project and the appellant's family sought compensation for the delay. The appellant family and the developer have mutually entered into an Additional Supplemental Development Agreement No.477/2015 on 19.10.2015, according to which in the event of Block E project not coming up, the appellant family was entitled to receive compensation in the Mall to the tune of Rs.28 crores. For ready reference, clause 30 of the Additional supplemental Development Agreement No.477/2015 is reproduced below :*

"30. In case the combined plans are not approved by the concerned authorities for any reason or combined project is stopped due to any reason or not going ahead in the expected time period due to any reason, the Second Party/Developers shall complete the project originally agreed upon as per the original Development Agreement this Additional Supplementary of Development Agreement date_____ automatically stands cancelled. In any case the final decision will be with First Party alone. That due to any reason the Hotel/Hospital/ Commercial/Residential Building Block-E project is not coming up. the same should be compensated in the Mall, on mutually accepted terms by First Part/Owners and Second Part/Developers to the tune of around 28 Crores (Twenty Eight Crores)".

6.5.2 *From the above recitals, it is evident that appellant had a right to compensation in a case where the Block-E of the project is not coming up and on account of delay in handing over the possession of the property. The appellant claims that as per their agreement, the projects of Block A & Block E have to be simultaneously developed by the developer and handed over to them. Since the permissions for Block E could not be obtained, Block E project could not be developed and the appellant was given land admeasuring 3156 sq.yds pertaining to Block E and the figure of Rs.28 crores compensation was an hypothetical figure as a security measure to compel the developer to develop both the projects simultaneously as they were*

very apprehensive about the facts of the project due to bifurcation of AP. This was only an additional security measure and they have not received any compensation except land admeasuring 3156 sq.yds pertaining to Block E. The AO also agreed with the same and in para 4.5 of the assessment order mentioned that the assessee and his family members have received compensation by way of land admeasuring 3156 sq.yds on account of delay. However, the AO differed with the assessee's contention that it has only received Rs.8 crores worth of square feet as compensation as per the unregistered MoU dated December'2017 since the land admeasuring 3156 sq.yds was not mentioned in the unregistered MoU. I agree with the AO's observation on this issue. The unregistered MoU dated December'2017 between the owners and the Developer, in which compensation for delay was arrived at square feet equivalent to Rs.8 crores was calculated from 1st April'2016 to 31st March'2018. Whereas the land admeasuring 3156 sq.yds of Block-E project as compensation is as per the additional Supplementary agreement dated 19-10-2015 which obviously, does not factor the compensation from 1st April'2016 to 31st March'2018. Therefore, there were two different compensation, i.e, one being land admeasuring 3156 sq.yds at Block E and the other pertaining to Rs.8 crore worth of sq.ft calculated for two different periods. The AO assessed the compensation received by way of land admeasuring 3156 sq.yds at Rs.28 crores. It is not in dispute that the assessee has not received compensation of Rs.28 crores and only received land of 3156 sq.yds. Therefore, the value of land of 3156 sq.yds received as per the additional supplementary agreement dated 19-10-2015 should be taxed as compensation and not the hypothetical figure of Rs.28 crores. Hence, the AO is directed to obtain the SRO value of 3156 sq.yds of land in Block E of the project as on 19-10-2015 and tax the same on account of compensation. The AR is also directed to produce a certificate from the SRO as to the value of land admeasuring 3156 sq.yds as on 19-10-2015. With these directions, the addition of Rs.7 crore towards appellant's share of land is directed to be deleted. The AO should adopt 114th of the SRO value of land of 3156 sq.yds to appellant's share of compensation and bring the same to tax. Accordingly, the appeal of the appellant on this issue is PARTLY ALLOWED.”

12. The learned counsel for the assessee Shri P. Murali Mohan Rao, C.A., submitted that the Id.CIT(A) is erred in sustaining addition made towards compensation receivable for the delay in delivery of commercial space, even though, the appellant has filed necessary details and proved that the parties have agreed for final compensation of Rs.8 crore to be paid in the form of built up area, as per MOU dated December, 2017 and the same has been equally

offered to tax in the hands of assessee and his family members. The ld. Counsel referring to the development agreement dt.11.05.2009 and subsequent additional supplementary agreement dt.19.10.2015 submitted that there was a clause for payment of compensation for delayed delivery of constructed building. But, the parties have agreed for revisiting terms and conditions based on subsequent development which caused delay in completion of the project and had entered into MOU in the year 2017 and agreed for compensation of Rs.8 crore to be paid in the form of built-up-area. Accordingly, the appellant has received land admeasuring 3156 sq. yds as per additional supplementary agreement dt.19.10.2015 in "E" Block and valued at Rs.8 crore. Further, the compensation received from the builder in the form of land has been offered to tax as undisclosed income for A.Y. 2018-19, because the project was completed, and Occupancy Certificate was received from the authorities in the F.Y. 2017-18 relevant to assessment year 2018-19. Although, all this evidence has been furnished to the ld.CIT(A), but the ld.CIT(A) rejected the arguments of the assessee and assessed compensation on the basis of additional supplementary agreement dt.19.10.2015. Therefore, he submitted that the additions made by the Assessing Officer and upheld by the ld.CIT(A) towards compensation for delayed delivery of project should be deleted.

13. Shri Jeevan Lal Lavidia, CIT-DR, on the other hand, submitted that the agreement between the parties dt.11.09.2019 clearly specifies compensation for delay in delivery of project. Further, as per the supplementary agreement dt.19.10.2015 in clause 30 of the agreement, the amount of compensation has been quantified at Rs.28 crores. The so called subsequent MOU dated December,

2017 is unsigned and further, in the said MOU, it talks about monetary compensation of Rs.8 crore only in the form of built-up-area, but there was no reference of land admeasuring 3156 sq. yds in Block 'E' of the Project. The appellant has clearly stated in their statement recorded during the course of search u/s 132(4) regarding compensation and also quantified the amount in response to a specific question. The Assessing Officer after considering the relevant facts, has rightly computed the compensation received from developer for delayed delivery of the constructed building at Rs. 28 crores and assessed a sum of Rs.7 crores being 1/4th share of the assessee for A.Y. 2016-17. The Id.CIT(A) without appreciating the relevant facts, simply directed the Assessing Officer to consider fair market value of the land admeasuring 3156 sq. yds in Block "E" and substitute the value towards addition made on account of compensation received from the builder for the delayed delivery of the constructed building. Therefore, he submitted that the addition made by the Assessing Officer should be sustained.

14. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that as per clause 30 of development agreement dt.11.05.2009, the second party/ developer has agreed that the entire project shall be completed within 40 months from the end of the month, in which the development agreement was entered and further, in the event of delay in delivery of the project, the second party shall pay an amount of Rs.20/- per sq. ft., per month, as compensation till the period, the project was handed over to the first party. It is also not in dispute that as per clause 30 of the supplementary agreement

dt.19.10.2015, the compensation clause was reiterated and as per the said clause, in case, there is delay in delivery of the project, the same should be compensated on mutually accepted terms by the second party to the first party to the tune of around Rs.28 crore. The Assessing Officer, on the basis of above two agreements, concluded that the appellant had a right to receive compensation and also had received compensation of Rs.28 crore as per supplementary agreement dt.19.10.2015 in the F.Y. 2015-16 relevant to assessment year 2016-17. It was the argument of the assessee before the Assessing Officer that although, there was a specific clause for payment of compensation for delay in delivery of project, but because of various reasons, including the separation of erstwhile Andhra Pradesh State, the approvals from authorities were also delayed and due to this reason, the project was delayed. Further, considering the reasons for delay in completion of the project, the parties have entered into an MOU dated December, 2017, and settled for compensation of Rs.8 crore to be paid in the form of built-up-area and the same has been offered to tax by the appellant and his family members for A.Y. 2018-19.

15. We have given our thoughtful consideration to the reasons given by the Assessing Officer to make addition of Rs.7 crore in the hands of the assessee towards compensation received from the developer for delayed delivery of the project in light of various averments made by the learned counsel for the assessee. We have also carefully considered the findings of the Id.CIT(A) in directing the Assessing Officer to substitute the value of 3156 sq. yds land received by the assessee in Block 'E' and make addition of 1/4th share in the hands of the assessee. After carefully examining the

relevant reasons given by the Assessing Officer and Id.CIT(A) in light of various arguments made by the counsel for the assessee, we ourselves do not subscribe to the reasons given by the Id.CIT(A) for simple reason that, except a reference by clause 30 in the subsequent supplementary agreement dt.19.10.2015, there is no evidence with the Assessing Officer and Id.CIT(A) to allege that the appellant has received Rs.28 crore as compensation from the developer for the delayed delivery of the project. Further, the MOU between the parties dated December, 2017 and settlement of compensation for Rs.8 crore in the form of delivery of super built-up-area in the project is evidenced by re-negotiation between the parties in light of the reasons for delay in completion of the project, which is not in the control of the developer. Further, even clause 30 of supplementary agreement dt.19.10.2015 did not quantify the exact amount of compensation to be paid by the developer, but only states that on mutually agreed terms, a compensation of around Rs.28 crores shall be payable by the developer, in case the project is not coming up or delayed for completion. If we go by the recitals in supplementary agreement dt.19.10.2015 and subsequent terms and conditions referred to in MOU dated December, 2017, in our considered view, the reference of Rs.28 crore in this supplementary agreement dt.19.10.2015 was the initial agreement between the parties to quantify compensation around Rs.28 crores, but it is not an amount determined on the basis of compensation clause provided in JDA dt.11.09.2009. Further, the MOU between the parties clearly specifies the reasons for re-negotiation of compensation and to be paid in the form of super built-up-area and the same is agreed by the parties. The reference of the period of compensation by the Id.CIT(A) in Para 6.5.2 of his order and subsequent finding that two

agreements are mutually exclusive, and the appellant has received land admeasuring 3156 sq. yds in Block E and the other pertaining to monetary compensation of Rs.8 crore worth of super built-up-area is factually incorrect and not backed by any evidence. On the other hand, the appellant has filed necessary evidences to prove that the parties have re-negotiated the amount of compensation payable by the developer for delayed completion of the project and the same has been brought in the subsequent MOU dated December, 2017 and same appears to be correct and further backed by statements recorded from the appellant during the course of search and subsequent confirmations from the developer from M/s. Skill Promoters (Private) Limited. Therefore, in our considered view, the Assessing Officer is erred in making addition towards compensation received from the developer for the delayed delivery of the constructed building by taking into account the supplementary agreement dt.19.10.2015 at Rs.28 crore and further, addition of Rs.7 crore in the hands of assessee.

16. Further, Although, the Id.CIT(A) partially agreed with the submissions of the assessee that the appellant and his family members have received back 3156 sq. yards of land from the developer towards compensation, but erred in observing that the same is taxable for the assessment year under consideration, even though, the appellant made it very clear with necessary evidences that compensation received from the builder amounting to Rs.8 crore has offered to tax for A.Y. 2019-20 in the year, in which project was completed and Occupancy Certificate was obtained from the authorities. We further noted that the Assessing Officer assessed the value of land admeasuring 3156 sq. yds in the order giving effect to

the order of Id.CIT(A) and assessed the value as per SRO value which is also supports the case of the assessee that the appellant and his family members have received compensation of Rs.8 crore in the assessment year 2019-20 and the same has been offered to tax. The Assessing Officer and Id.CIT(A) conveniently ignored the statements recorded from the appellant during the course of search and took support only from the supplementary agreement dt.19.10.2015, even though at the first instance itself i.e., as on the date of search, the appellant is made it very clear that he has not received compensation of Rs.28 crore from the builder and has only received a sum of Rs.8 crore in the form of super built-up-area and the same has been offered to tax for A.Y. 2019-20. Since the Assessing Officer does not have any other evidence, except a reference in the supplementary agreement dt.19.10.2015, in our considered view, the addition made by the Assessing Officer on the basis of said agreement cannot be sustained. Therefore, to this extent we are in agreement with the findings of the Id.CIT(A). The findings recorded by the Id.CIT(A) to the effect that the appellant has not received compensation of Rs.28 crore and has only received land admeasuring 3156 sq. yds is upheld. In so far as the assessment of land admeasuring 3156 sq. yards as per additional supplementary agreement dt.19.10.2015 and same has been taxed as compensation for the impugned assessment years, in our considered opinion, the Id.CIT(A) is once again fell in error to reach to the above conclusion inspite of the fact that the appellant has offered additional income of Rs.8 crore towards compensation received from the developer in the assessment year 2019-20 and the same in accordance with law, because the MOU dated December 2017 is final agreement between the parties and further, same is supported by the fact that the

builder has completed the project and also obtained occupancy certificate in financial year 2017-18 relevant to Asst. year 2018-19. Therefore, we are of the considered view that ld.CIT(A) is erred in sustaining the additions made by the Assessing Officer towards compensation to the extent of Rs.1,18,35,000/- for the Asst. Year 2016-17. Thus, we set aside the order of ld.CIT(A) on this issue and direct the Assessing Officer to delete the entire addition made towards compensation received from the builder for delayed delivery of the constructed building.

17. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

ITA No.639/Hyd/2022 and ITA No.695/Hyd/2022

(Ms. KAVYA BOPPANA)

18. The facts of the present case and issues involved are identical to the facts and issues which we had considered in the case of Sarat Gopal Boppana in ITA No.636/Hyd/2022 and ITA No. 689/Hyd/2022 for A.Y. 2016-17. The reasons given by us in preceding paragraph nos.14 to 16 shall mutatis and mutandis apply to these appeals as well. Therefore, for similar reasons, we set aside the findings of ld.CIT(A) on the issue of addition towards compensation received from the developer for the delay in delivery of the project and direct the Assessing Officer to delete the entire additions made towards compensation received from developer.

18.1 In the result, the appeal filed by the assessee in ITA No.639/Hyd/2022 is allowed and the appeal filed by Revenue in ITA No.695/Hyd/2022 is dismissed.

**ITA No.643/Hyd/2022 and ITA No.691/Hyd/2022
(Ms. TARA CHAND BOPPANA)**

19. The facts of the present case and issues involved are identical to the facts and issues which we had considered in the case of Sarat Gopal Boppana in ITA No.636/Hyd/2022 and ITA No. 689/Hyd/2022 for A.Y. 2016-17. The reasons given by us in preceding paragraph nos.14 to 16 shall mutatis and mutandis apply to these appeals as well. Therefore, for similar reasons, we set aside the findings of Id.CIT(A) on the issue of addition towards compensation received from the developer for the delay in delivery of the project and direct the Assessing Officer to delete the entire additions made towards compensation received from developer.

20. In the result, the appeal filed by the assessee in ITA No.643/Hyd/2022 is allowed and the appeal filed by Revenue in ITA No.691/Hyd/2022 is dismissed.

**ITA No.647/Hyd/2022 and ITA No.693/Hyd/2022
(Ms. JHANSI RANI BOPPANA)**

21. The facts of the present case and issues involved are identical to the facts and issues which we had considered in the case of Sarat Gopal Boppana in ITA No.636/Hyd/2022 and ITA No. 689/Hyd/2022 for A.Y. 2016-17. The reasons given by us in

preceding paragraph nos.14 to 16 shall mutatis and mutandis apply to these appeals as well. Therefore, for similar reasons, we set aside the findings of Id.CIT(A) on the issue of addition towards compensation received from the developer for the delay in delivery of the project and direct the Assessing Officer to delete the entire additions made towards compensation received from developer.

22. In the result, the appeal filed by the assessee in ITA No.647/Hyd/2022 is allowed and the appeal filed by Revenue in ITA No.693/Hyd/2022 is dismissed.

SA Nos.53, 54 and 55/Hyd/2022 in ITA Nos.636, 639 and 643/Hyd/2022

23. The present stay applications filed by the appellant Sarat Gopal Boppana, Smt. Kavya Boppana and Smt. Tara Chand Boppana became infructuous and thus, all the three stay applications are dismissed as infructuous.

24. In the result, the stay applications filed by the assessee's are dismissed.

25. In the combined result, all the appeals of assessee are allowed, and the all the appeals of Revenue and all the stay applications of the assessee are dismissed.

Order pronounced in the Open Court on 8th July, 2024.

Sd/-

Sd/-

(G. MANJUNATHA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 8th July, 2024.

TYNM/sps

Copy to:

S.No	Addresses
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3	Shri Tara Chand Boppana, Hyderabad, C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
4	Smt. Jhansi Rani Boppana, Hyderabad, C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
5	The Assistant Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
6	PCIT, (Central), Hyderabad / Pr.CIT-Central (Circle), Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order