

ITA Nos.775 & 954/Bang/2024  
Sri Alagappa Muthiah (HUF), Bangalore  
ITA Nos.776 & 955/Bang/2024  
Sri Alagappa Annamalai (HUF), Bangalore

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.775/Bang/2024
Assessment Year: 2017-18

Sri Alagappa Muthiah (HUF) 34, 8 <sup>th</sup> Main, 4 <sup>th</sup> Cross Rajamahal Vilas Extension Bangalore 560 080  <b>PAN NO : AAAHA3885P</b>	<b>Vs.</b>	DCIT Central Circle-2(4) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.954/Bang/2024
Assessment Year: 2017-18

DCIT Central Circle-2(4) Bangalore	<b>Vs.</b>	Sri Alagappa Muthiah (HUF) 34, 8 <sup>th</sup> Main, 4 <sup>th</sup> Cross Rajamahal Vilas Extension Bangalore 560 080  <b>PAN NO : AAAHA3885P</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.776/Bang/2024
Assessment Year: 2017-18

Sri Alagappa Annamalai (HUF) 221, Upper Palace Orchards Bellary Road Bangalore 560 080  <b>PAN NO : AAAHA3884N</b>	<b>Vs.</b>	DCIT Central Circle-2(4) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.955/Bang/2024
Assessment Year: 2017-18

DCIT Central Circle-2(4) Bangalore	<b>Vs.</b>	Sri Alagappa Annamalai (HUF) 221, Upper Palace Orchards Bellary Road Bangalore 560 080  <b>PAN NO : AAAHA3884N</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Sri Kiran D., D.R.

<b>Date of Hearing</b>	:	31.07.2024
<b>Date of Pronouncement</b>	:	12.08.2024

## O R D E R

### **PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These cross appeals for the assessment year 2017-18 in respect of different assessees are directed against different orders of CIT(A) both are common dated 29.2.2024.

**2.** The issue in both the appeals of assessee and revenue are common. Now we consider the grounds in assessee's appeal, which is with regard to assessment year in which capital gain to be taxed arising out of impugned transaction.

**3.** Facts of the case are that Alagappa Annamalai [HUF] and Alagappa Muthiah [HUF] are co-owners of land measuring 6 Acres 23.2 guntas of Hebbal Village Kasaba Hobli, Bangalore North Taluk. These persons entered into 2 Development Agreements both dated 10/02/2011. Under these Development agreements the properties belonging to these two persons were being developed into both residential as well as commercial units. These 2 persons were allotted the entire commercial unit and 6 apartment units in the residential units. The details of the undivided interest in the land and built-up area shared between the developers and these 2 persons are as under :-

**Landowners and Developers share in the Land in the Project as Per JDA**

Particulars	Land Share (Sq. Ft)	Developers Share (Sq. Ft)	Total in Sq. Ft
Commercial	77,627	-	77,627
Residential	14,630	1,94,368	2,08,998
Total Area	92,257	1,94,368	2,86,625

**Landowners and Developers share in the Constructed Area in the Project as Per JDA**

Particulars	Share in Commercial Portion	Share in Residential Portion	Total Share
Landowner	2,33,818	33,443	<b>2,67,261</b>
Developer	-	5,11,492	<b>5,11,492</b>
<b>Total</b>	<b>2,33,818</b>	<b>5,44,935</b>	<b>7,78,753</b>

**3.1** There was a search conducted in the case of Sri Alagappa Annamalai on 04/07/2019, which was concluded on 03/09/2019. A sworn statement was recorded from Sri Alagappa Annamalai on 04/07/2019 and 05/07/2019. In course of the statement Sri Alagappa Annamalai stated in answer to Q.No.33 as under :-

*“Q.No.33 Under the circumstances, why has the Capital gain on account of the above outlined in Q.38. Transaction not been computed for AY 17-18.*

*Ans. As I already stated in the absence of OC and construction details, we have offered the capital gains in the year in which possession was given to me. Further, I would like to state that I have offered Long Term Capital gain of Rs.14,60,95,303 in my return of income filed for the A.Y. 2018-19 filed in the status of HUF. Having understood that the OC has been issued in the FY 2016-17 and after going through the details of cost of construction provided by M/s. Millenia Realtors Pvt. Ltd., I agree to recompute the Capital Gains and undertake to file returns admitting the differential capital gains of Rs.27,35,99,751 [being the difference between Rs.41,967,95,044 and Rs.14,60,95,303] for the AY 2017-18 and permit me to pay the balance tax in instalments. I hereby submit that the omission to offer the capital gains in the AY 17-18 was not wilful but due to lack of details from Millenia Realtors Pvt. Ltd and the same may be considered leniently”.*

**3.2** Similar statement was recorded u/s.131 of the Act from Sri Alagappa Muthiah on 05/07/2019. In course of the statement Sri Alagappa Muthiah stated in answer to Q.No.36 as under :-

*“Q.No.36. Do you have anything further to say ?*

*Ans. I have offered Long Term Capital gains of Rs.14,60,95,303 in my return of AY 2018-19. Having understood that the OC has been issued in the FY 2016-17, I agree to file returns admitting the differential capital gains of Rs.27,35,99,751 [being the difference between Rs.41,96,95,044.50 and Rs.14,60,95,303 in the AY 2017-18 and permit me to pay the balance tax in instalment. I hereby submit that the omission to offer the capital gains in the AY 17-18 was not wilful but due to lack of details from Millenia Realtors Pvt. Ltd., and the same may be considered leniently”.*

**3.3** Thereafter Sri Alagappa Annamalai retracted the statement vide letter dated 04/02/2020 filed before DDIT [Inv.], Unit-3[4], Bengaluru along with an Affidavit. The retraction was also filed before the A.O. vide letter dated 06/02/2020 along with another Affidavit [See pages 34 to 42 of Paper book in ITA 776/Bang/2024.

**3.4** Thereafter Sri Alagappa Muthiah retracted the statement vide letter dated 04/02/2020 filed before DDIT [Inv.], Unit-3[4], Bengaluru along with an Affidavit. The retraction was also filed before the A.O. vide letter dated 06/02/2020 along with another Affidavit.

**3.5** Thus, the retraction has been filed within 6 months from the date of search. In the retraction Sri Alagappa Annamalai and Sri Alagappa Muthiah stated that the admission made at the time of search was erroneous and on account of severe mental strain, stress and fatigue. They stated that the possession of the properties was received by them after development on 08/05/2017 and accordingly the liability to capital gains arose for the assessment year 2018-19 and not for the assessment year 2017-18 as admitted in their earlier statements. They also explained that

they had engaged a registered Valuer to determine the value of the property received by them after development and the said value was as under:-

Commercial portion	Rs. 82,26,36,541
Residential portion	Rs. 6,89,11,624
	-----
Total	Rs.89,15,48,164
	=====

**3.6** Accordingly, they stated that they would be offering capital gains for the assessment year 2018-19 on the above basis in course of assessment proceedings after receipt of notice.

**3.7** Both these persons had accordingly filed returns in response to notice u/s.153C of the Act offering capital gains by adopting the value determined by the registered valuer. Sri Alagappa Annamalai and Sri Alagappa Muthiah offered capital gains of Rs. 27,14,43,062/- each. The relevant computation is as under :-

		Original		153C
<b><u>Sale consideration</u></b>				
Consideration Received in the form of constructed Area		54,76,33,980		89,15,48,166
Commercial Property – 233818 sq.ft.		9,80,20,137		
Residential property - 33433 sq.ft.		-1,08,69,390		-1,08,69,390
Less : Paid for Excess Area				
	[A]	<b>63,48,87,727</b>	[A]	<b>88,06,78776</b>
<b><u>Indexed Cost of Acquisition</u></b>				
Land handed over as UDS for balance Residential Area [sq.ft]		157729.5		
1600049		11,82,97,088		
FMV of land as on 01.04.2001/sft				
750				
<b>Indexed cost of Acquisition :</b>				
Base Year Index	100			
Sale Year Index	276			
	[B]	<b>33,13,02,430</b>	[B]	<b>32,64,99,962</b>
<b><u>Expenditure in relation to transfer :</u></b>				
Betterment fee – Residential uinits		43,25,290		43,25,290
Fees paid for change of land use		17,49,200		17,49,200
Partition Deed		40,000		40,000

Survey charges		11,251		11,251
Evaluation and speculation of JD		1,05,150		1,05,150
JD Agreement		45,00,000		45,00,000
Design and inspection		5,61,800		5,61,800
	[C]	<b>1,12,92,691</b>		<b>1,12,92,691</b>
<b>Total Long Term Capital Gains</b>	[D]	<b>29,21,90,606</b>	[D]	<b>54,28,86,124</b>
<b>½ Share of assessee in Total Long Term Capital Gains</b>		<b>14,60,95,303</b>		<b>27,14,43,062</b>

**3.8** In the assessment proceedings, the A.O. held that the liability to capital gains arises for the assessment year 2017-18 as occupancy certificate was received on 01/02/2017 for commercial portion and 17/03/2017 for residential portion. On the other-hand both these persons contended that the liability to capital gains arose for the assessment year 2018-19 on receipt of possession vide letter dated 08/05/2017.

**3.9** In the assessment order, the A.O. also varied the computation of capital gains by adopting the full value of consideration at Rs. 120,03,46,357/- based on the details furnished by the Developer vide letter dated 07/01/2022. While doing so the A.O. has taken the cost of construction reported by the Developer of Rs.4,597 per sft for the commercial portion and Rs.3,750 per sft. for the residential portion.

**3.10** That apart, the A.O. has also varied the cost of acquisition, which was claimed by the appellant at Rs.750 per sft. based on the guideline value published by the Sub-Registrar vide Notification No. RD 325 MUNOMU 98, Bangalore dated 03/12/1998 wherein, the market value for Bellary Road was specified at Rs.1,500 per sft. However, the A.O. adopted the market value based on Notification published for Bangalore Rural District vide Notification No. RD 548 MUNOMU 98, Bangalore dated 03/12/1998. which is Rs.140 per sft. It is submitted that vide reply filed on 23/03/2022, it was pointed out by Sri Alagappa Annamalai that their property was part of the Bangalore Urban Agglomeration i.e., Bangalore Urban

District even before 01/04/2001. A copy of the Tax paid receipt dated 16/08/2000 reflecting the katha No.69/458/69 wherein the taxes have been paid to City Municipal Council, Byataranayapura as well as a document showing the land and building taxes paid on 2000-01 with the same katha was also furnished. In terms of the said notification the appellant was entitled to adopt Rs.1,500 / Rs.2,000 per sft. for residential / commercial units whereas the appellant adopted Rs.750 per sft on conservative basis.

**ISSUES – Assessee's Appeals :**

**ITA Nos.775 & 776/Bang/2024 (AY 2017-18):**

4. The grounds in these appeals are common. We will take up the grounds in ITA No.775/Bang/2024 in the case of Sri Alagappa Muthiah (HUF) (AY 2017-18) as follows:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in upholding the assessment of capital gains arising on the transfer of the Developers share in land in terms of the Joint Development agreement dated 10/02/2011 entered into between Appellant and his brother Sri A L Annamalai with the Developer M/S Millenia Realtors Pvt Ltd dated 10/02/2011 as liable for assessment for the assessment year 2017-18 under appeal mainly relying upon the fact that the occupancy certificate for the property developed was received during the year under appeal under the facts and in the circumstances of the Appellant's case.*

3. *The learned CIT[A] ought to have appreciated that the Appellant had taken possession of his share of the built-up area only on 08/05/2017, which is also supported by irrefutable documentary evidence and accordingly, the Appellant had rightly considered that the transfer occurred during the assessment year 2018-19 for which the Appellant had duly computed and offered capital gains tax and therefore, the assessment of capital gains for the assessment year 2019-18 is not justified, considering the facts of the Appellant's case*

*and ratio of judicial precedents relied upon in course of the appellate proceedings.*

*4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the Appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs*

**4.1** The first common ground with regard to year of assessability of capital gain whether it is in assessment year 2017-18 or 2018-19. In the assessment proceedings, the A.O. held that the liability to capital gains arises for the assessment year 2017-18 as occupancy certificate was received on 01/02/2017 for commercial portion and 17/03/2017 for residential portion

**5.** The only issue in assessee appeal is the year of taxation of capital gains i.e., assessment year 2017-18 or 2018-19. In so far as the said contention is concerned, the appellant relies upon the possession letter dated 08/05/2017 under which the appellant received possession of the commercial as well as residential area simultaneous on repayment of the deposits to the developers. It is the appellant's case the transfer is completed only upon the receipt of possession and there is no justification to take the date of occupancy certificate as a date of transfer. Provisions of section 45[5A] inserted by the Finance Act, 2017 w.e.f. 01/04/2018 would not apply since the date of occupancy certificate is prior to 31/03/2017. It is only after Section 45[5A] of the Act, has been inserted that the date of occupancy certificate is relevant for determining the taxation of capital gains. The appellant has relied upon the decision of the Hon'ble ITAT in the case of N.A. Harris in ITA No.988/Bang/2018 dated 15/02/2021 specifically para [33] on page 200 to 202. Appellant also relies upon the decision of the Hon'ble ITAT, Bangalore in the case of N.G.Balu Reddy in ITA

651/Bang/2020 dated 21/12/and the decision of the Hon'ble ITAT, Bangalore in the case of Sri Dinesh Devaraj Ranka in ITA No.2786/Bang/2017 dated 13/03/2023 [See page 254 to 274 of the Paper book in ITA No.776/Bang/2024] wherein the taxation of capital gains on receipt of possessions by the landowners has been accepted.

**5.1** The assessee had also furnished a copy of its katha after development, as undertaken before the Hon'ble Bench vide a separate memo filed on 02/08/2024.

**6.** On the other-hand both ld. D.R. contended that the liability to capital gains arose for the assessment year 2018-19 on receipt of possession vide letter dated 08/05/2017.

**7.** We have carefully gone through the case records. The reason for taxing the capital gain arise out of the transfer of impugned property is that assessee obtained the occupational certificate from BBMP i.e. on 17.3.2017 in respect of RMZ, Latitude during the financial year 2016-17. Accordingly, the capital gain was charged to income tax in the assessment year 2017-18. However, contention of ld. A.R. is that section 45(5A) was introduced by Finance Act, 2017 w.e.f. 1.4.2018 placed on record at paper book-I page no.143 to 145 and the said provisions applicable where the capital gain arises to an assessee, being an individual or HUF, from the transfer of capital asset, being land and building or both, under a specified agreement, the capital gain shall be chargeable to income tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Being so, the provisions of section 45(5A) of the Act cannot be applied to a present assessee as the said law is applicable from the assessment year 2018-19 and not to the assessment year 2017-18. Further, we note that the section 45(5A) of the Act cannot be applied retrospectively as applied by the ld.

AO. We also note that the assessee taken possession of property from developer vide letter reference VKT/LND/591 dated 8.5.2017 which is placed on record at page 146 to 150 of assessee paper book-I. The ld. AO not accepted the said letter of the allocation of possession to assessee by alleging that there could be manipulation between the parties concerned in procuring that letter. In our opinion, the ld. AO without bringing any material on record cannot hold that the assessee has manipulated said letter of delivery of possession of built-up area with the collusion with the builder Millennia Realtors Pvt. Ltd. There is no basis for such allegation. Further, the parties to the transfer of impugned property mutually agreed to hand over the delivery of the possession vide the said letter and it is to be accepted as true unless it is proved otherwise. In view of this, we are not in a position to uphold the contention of the departmental representative that the assessee has taken up the possession of the built-up area of the property in the AY 2017-18. Accordingly, on the basis of occupancy certificate of the project which has been received from the BBMP vide certificate dt. 17.2.2017, i.e. financial year 2017-18 and relevant AY which falls under AY 2018-19 and the capital gain arising out of impugned transactions to be taxed in the AY 2018-19. For this purpose, we rely on the order of the coordinate bench in the case of N.A. Haris in ITA No.988/Bang/2018 dated 15.2.2021 wherein held as under:

*“33. As per this clause No.7, the time limit to complete the project is five years. In the assessment year 2005-2006 nothing moved towards the construction of the schedule property. Thus, in the financial year 2004-2005 relevant to assessment year 2005-2006, the transferee had neither performed nor was it willing to perform its obligation under the JDA. Being so, the argument of the learned AR that the capital gains are to be taxed in the present case in the assessment year 2005-2006 is not tenable. This is so because the transferee not adhered to complete any act as mentioned in JDA. The transferee only made payment of refundable deposit of Rs.10 crore by 08.01.2004 and other necessary permission so as to commence the construction not at all commenced and there was no progress in the development of property in the assessment year 2005-2006. The Municipal*

*sanction for development was obtained subsequently, which is utmost important for the implementation of the JDA. Without sanctioning of the building plan, the very genesis of the agreement fails. To enable the execution of the JDA, firstly, plan is to be approved by the competent authority. Since no building plan in the assessment year 2005-2006 was approved or produced before us, we cannot hold that the transfer took place in the assessment year 2005-2006. Nothing is brought on record by the assessee to show that there was a development activity in the impugned project during the assessment year 2005-2006 and any cost of construction was incurred by the builder. It is to be inferred that no amount of investment by the developer in the construction activity during the assessment year 2005-2006. Hence, we are of the opinion that transferee was not willing to perform his part of obligations as stipulated in the JDA, in the assessment year 2005-2006 within the meaning as expressed in section 53A of the Transfer of Property Act. As such, the contractual obligation of the developer was not met with in the assessment year 2005-2006. Being so, the conditions laid down in section 2(47)(v) of the I.T. Act cannot be invoked so as to bring the capital gains into tax in the assessment year 2005-2006 and thus the very foundation of the assessee's case is devoid of merits and not tenable and more so there is a specific clause in the JDA as enumerated earlier that the assessee is only permitted to give licence to the vendee to develop the Schedule Property and the legal ownership remains with the assessee and there cannot be any transfer in the assessment year 2005-2006 and it has rightly brought into taxation by the A.O. in the assessment year 2012-2013 as in the assessment year 2012-2013, the assessee received duly developed and constructed area into his possession coming into his share. Accordingly, we are not in agreement with the argument of the learned AR that the transfer took place in the assessment year 2005-2006 and has been rightly brought to tax by the AO in the year 2012-2013, since the assessment in the year 2012-2013 the assessee received duly developed and constructed area into his possession out of his share of constructed area. Thus, the additional ground raised by the assessee is dismissed."*

**7.1** In view of the above, we hold that the capital gain arising out of the impugned property vide JDA dated 10.02.2011 to be taxed in the assessment year 2018-19 only. Ordered accordingly.

**8.** In the result, both the appeals of the assesseees in ITA Nos.775 & 776/Bang/2024 are allowed.

**9.** Now we will take up revenue's appeals in ITA Nos.954 & 955/Bang/2024 for the AY 2017-18. The grounds are common in both appeals. The revenue filed revised grounds which are as follows:

1. *"Whether on the facts and in circumstances of the case, Ld. CIT(A) was in right of allowing the appeal of the assessee by arriving at the sale consideration of Rs.93,80,19,968/- instead of which Rs.120,03,46,357/- was ascertained as per section 45 of the Income Tax Act,1961 which is also the value of the constructed area received by the landowner in the developed project".*
2. *"Whether on the facts and in circumstances of the case, Ld. CIT(A) was in right of allowing the appeal of the assessee by arriving at the sale consideration of Rs. 93,80,19,968/- whereas in response to notice u/s 133(6) by the AO, the developer M/S Millennia Realtors Private Limited has confirmed the cost of construction and the sale consideration is accurately ascertainable at Rs.120,03,46,357/-."*
3. *"Whether on the facts and in circumstances of the case, Ld. CIT(A) was in right of allowing the appeal of the assessee by adopting the cost of acquisition at the rate of 750/- per sq. ft as on 01.04.2001 instead of Rs. 140/- as on 01.04.1981 as the assessee has inherited the property as per the provisions of section 55 of the IT Act, 1961 where the capital asset became the property of the assessee before the 1<sup>st</sup> day of April 1981, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1<sup>st</sup> day of April 1981 at the option of the assessee in accordance with Finance Act, 2017 instead of as on 01.04.2001 as held by Ld. CIT (A)"*

**9.1** These revenue appeals are infructuous in view of our findings in assessee's appeals for assessment year 2017-18 in case of those assessee. However, we will adjudicate the grounds raised by the revenue in these appeals for the purpose of completion of adjudication of these appeals.

**10.** Facts of the issue are that The department has raised grounds on two issues with regard to the relief granted by CIT[Appeals] on full value of consideration and cost of acquisition.

**Issue 1 – Full value of consideration :**

**10.1.** The learned CIT[A] determined the full value of consideration for transfer of the undivided interest land to the developer at Rs.93,80,19,968/- as against Rs.120,03,46,357/- taken by the Assessing Officer. It is relevant to point out that the appellant had adopted the consideration at Rs.89,15,48,116/-. The CIT[A] findings are at para [7] at pages 19 to 34 of the appellate order. The CIT[A] found the following :-

- (1) *The full value of consideration of Rs.120,03,46,357/-, worked out by the A.O. includes the following, which cannot form part of the cost of construction / is inconsistent with valuation :-*

- (a) *Cost of land at Rs.13,62,53,443/- has been included in the cost of construction adopted for the commercial portion;*
- (b) *Finance Cost of Rs. 25,71,12,635/- for commercial and Rs.1.25 Crores for residential property is exorbitant considering the total cost of construction to the project;*
- (c) *Administrative cost of Rs.3,02,31,991/- for commercial and Rs.1.25,23,028/- for residential property should not have been adopted.*
- (2) *It is also required to be noted here that the appellant has placed the correspondences with the DVO who was asked to value the property. After several correspondences with the DVO [which are placed at page 31 to 77 of the Paper book in ITA 955/Bang/2024 – Departmental Appeal], the DVO asked the appellant to correspond with the assessing Officer in future [See page 78 of the Paper book]. Thereafter the appellant obtained copy of the DVO report [placed at page 83 to 87 of the Paper book], the DVO has stated that he was unable to arrive at the valuation in the absence of any bills and vouchers given by the Developer. He also referred to a single unsigned sheet given by the Developers without support of bills and vouchers or structural drawings that has been furnished. The DVO stated that the valuation report submitted by the assessee appears to be underestimated. However, no reasons for the same have been stated. This aspect of the matter has also been noted by the learned CIT[A] in para [7.7] of the appellate order [page 30 of the appellate order].*
- (3) *Reliance was also placed by the appellant on the decision of the Hon'ble Karnataka High Court in the case of Shankar Vittal Motor Company in ITA 653/2016 dated 01/12/2021 [copy placed at pages 110 to 133 of the Paper book in ITA 955/Bang/2024 ] as well as the decision of the jurisdictional High Court in the case of Smt. Sarojini M. Kushe P.V.S.Beedies P. Ltd in ITA 475/2016 dated 01/12/2021 [See page 170 to 178 of the Paper book in ITA 955/Bang/2024]. In the aforesaid cases it has been held that the cost of construction given by the developer which is not supported by any particulars cannot be taken as full value of consideration. The Hon'ble High Court has held that section 50D of the Act, would be applicable and accordingly, the full value of consideration should be computed on the basis of guideline value of land or building that is transferred / received on development. Thereafter the CIT [A] has noticed that the appellant has transferred 1,94,368 sft. of land to the developer. The said land has been valued at Rs.4,826 per sft. after deriving the same by reducing the guideline value of the building from the guideline value of the super built-up area [See page 193 of the Paper Book ITA No.955/Bang/2024]. This is because the super built-up area includes both undivided interest in land as well as the built-up area. In this manner the learned CIT[A] has held that the deemed value of consideration for the transfer of the undivided share of land in the project pertaining to the developer share was Rs.93,80,19,968/-.*

**11.** We have heard both the parties and perused the materials available on record. The ld. AO computed the consideration relying upon the letter given by the developer mentioning cost of construction by including the following:

- (a) Cost of land at Rs.13,62,53,443/- has been included in the cost of construction adopted for the commercial portion;
- (b) Finance Cost of Rs. 25,71,12,635/- for commercial and Rs.1.25 Crores for residential property is exorbitant considering the total cost of construction to the project;
- (c) Administrative cost of Rs.3,02,31,991/- for commercial and Rs.1.25,23,028/- for residential property should not have been adopted.

**11.1** However, the said cost of construction has been disputed by the assessee before ld. CIT(A). The ld. CIT(A) directed to include these above items from the cost of construction for determining the full value of consideration received by the assessee.

**11.2** In our opinion, the method adopted by ld. AO for determining the consideration of the impugned transfer of property is not correct. There is no basis for inclusion of above cost for determining the consideration received by the landlord.

**11.3** However, there is a most appropriate judgement applicable to the facts of present case which came before Hon'ble High Court in the case of Shankar Vittal Motor Company Ltd. and others in ITA No.653 of 2016 /w ITA No.11/2017 dated 1.12.2021 wherein held as under:

10. We have carefully considered the rival submissions made by the learned counsel appearing for the parties and perused the material on record.

11. Section 45 of the Act reads thus:

***“Capital gains.***

*45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head “Capital gains”, and shall be deemed to be the income of the previous year in which the transfer took place.”*

Section 48 of the Act reads thus:

***“Mode of computation.***

*48. The income chargeable under the head “Capital gains” shall be computed, by*

*deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—*

*(i) expenditure incurred wholly and exclusively in connection with such transfer;*

*(ii) the cost of acquisition of the asset and the cost of any improvement thereto;*

*(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:*

*Provided.....”*

12. On combined reading of these provisions, any profits or gains arising from the transfer of a capital asset with the exception as saved in Sections 54, 54B,

54D, 54E, 54EA, 54EB, 54F, 54G and 54H shall be chargeable to income tax under the head capital gains and by legal fiction it is deemed to be the income of the previous year in which the transfer took place. The mode of computation as prescribed under Section 48 would indicate that the income chargeable under the head capital gains shall be computed by deducting the following amounts from the full value of consideration received or accrued as a result of the transfer of the capital asset. [1] expenditure incurred wholly or exclusively in connection with such transfer [2] cost of acquisition of the asset and the cost of any improvement thereto. Special provision for full value of consideration in certain cases is dealt by Section 50C which reads as under:

***“Special provision for full value of consideration in certain cases.***

*50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land*

or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

**Provided .....**"

Section 50D of the Act reads thus;

**"Fair market value deemed to be full value of consideration in certain cases.**

50D. Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of

*transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.”*

13. Now the main controversy revolves around the determination of full value of consideration. The expression 'full value of consideration' has been dealt by the Hon'ble Supreme Court in the case of **Commissioner Of Income-Tax, West V/s. George Henderson And Co. Ltd.** [(1967) 66 ITR 622 (SC)] as under:

*“It is manifest that the consideration for the transfer of capital asset is what the transferor receives in lieu of the asset he parts with, namely, money or money's worth and, therefore, the very asset transferred or parted with cannot be the consideration for the transfer. It follows that the expression "full consideration" in the main part of section 12B(2) cannot be construed as having a reference to the market value of the asset transferred but the expression only named*

*the full value of the thing received by the transferor in exchange for the capital asset transferred by him. The consideration for the transfer is the thing received by the transferor in exchange for the asset transferred and it is not right to say that the asset transferred and parted with is itself the consideration for the transfer. The main part of section 12B(2) provides that the amount of a capital gain shall be computed after making certain deductions from the "full value of the consideration for which the sale, exchange or transfer of the capital asset is made". In case of a sale, the full value of the consideration is the full sale price actually paid. The legislature had to use the words "full value of the consideration" because it was dealing not merely with sale but with other types of transfer, such as exchange, where the consideration would be other than money. If it is therefore held in the present case that the actual price received by the respondent was at the rate of Rs.136 per share the full value of the consideration must be taken at the rate of Rs.136 per share. The view that we have*

*expressed as to the interpretation of the main part of section 12B(2) is borne out by the fact that in the first proviso to section 12B(2) the expression "full value of the consideration" is used in contradistinction with "fair market value of the capital asset" and there is an express power granted to the Income-tax Officer to "take the fair market value of the capital asset transferred" as "the full value of the consideration" and "fair market value of the capital asset transferred" and it is provided that if certain conditions are satisfied as mentioned in the first proviso to section 12B(2), the market value of the asset transferred, though not equivalent to the full value of the consideration for the transfer, may be deemed to be the full value of the consideration. To give rise to this fiction the two conditions of the first proviso are : (1) that the transferor was directly or indirectly connected with the transferee, and (2) that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 12B. If the conditions of this proviso are not satisfied the main part*

*of section 12B(2) applies and the Income-tax Officer must take into account the full value of the consideration for the transfer.*

*Fourthly, a related objection has been raised in Para 9 of your letter dated 02.06.2014. You have stated that, "full value of consideration cannot be construed as having a reference to the market value of the asset transferred."*

14. Learned counsel for the Revenue argued that Section 50C is applicable where the consideration is less than the guidance value and as such the same is not applicable to the facts of the present case. Similarly, Section 50D is also not applicable which has come into force with effect from 01.04.2013; thus, cost of construction would be the appropriate mode. However, we are not inclined to accept the arguments of the Revenue in entirety for the reason that the entire issue is revenue neutral. The Tribunal has categorically observed that "even otherwise, if any capital gains to be

accrued in favour of assessee after receiving the possession of the property, certainly that would also be subject to capital gains." It is thus clear that in the event the assessee were to dispose of the built up area, on any part thereof, after receipt of the same from the developer, it would have to necessarily pay tax on the capital gains in the year of such sale and the cost of such built up area to be reckoned for the purpose of indexation which would be proportionate to the fair market value of land. At this juncture, it would be beneficial to refer to the judgment of the Hon'ble Apex Court in the case of **Commissioner of Income-tax V/s. Excel Industries Ltd., [(2013) 358 ITR 295]** wherein the Hon'ble Apex Court has observed thus:

*"32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and*

*the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”*

Similarly, in the case of **Commissioner of Income-tax V/s. Bilahari Investment [P.] Ltd., [(2008) 215 CTR 201 (SC)]**, the Hon'ble Apex Court has observed thus:

*“20. As stated above, we are concerned with assessment years 1991-1992 to 1997-1998. In the past, the Department had accepted the completed contract method and because of such acceptance, the assessees, in these cases, have followed the*

*same method of accounting, particularly in the context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure, is revenue neutral. Therefore, we do not wish to interfere with the impugned judgment of the High Court.”*

15. In the present case (ITA.No.11/2017), Assessing Officer has adopted the rate of Rs.1250/- per square feet merely based on the letter given by the developer which is not supported with any particulars. It cannot be ruled out the possibility of the developer giving an inflated figure

to suit his requirements in order to gain minimum tax on his profits by inflating his costs. As such, the basis for determination of full value of consideration by the Assessing Officer based on the letter of the developer cannot be appropriate. No doubt at the relevant period, no provision was available in cases where the consideration received or accruing as a result of transfer of a capital asset by an assessee is not ascertainable. Section 50D inserted by Finance Act, 2012 with effect from 01.04.2013 would throw some light on the said issue. As per the memorandum to Finance Bill, 2012, the reasoning for inserting Section 50D of the Act is as under:

*“Capital gains are calculated on transfer of a capital asset, as sale consideration minus cost of acquisition. In some recent rulings, it has been held that where the consideration in respect of transfer of an asset is not determinable under the existing provisions of the Income-tax Act, then, as the machinery provision fails, the*

*gains arising from the transfer of such assets is not taxable.*

*It is, therefore, proposed that where in the case of a transfer, consideration for the transfer of a capital asset(s) is not attributable or determinable then for purpose of computing income chargeable to tax as gains, the fair market value of the asset shall be taken to be the full market value of consideration.”*

Even in terms of this provision, cost of construction would not be the appropriate method to arrive at the full market value of consideration.

16. In ***Seshasayee Steels [P.] Ltd., V/s. Assistant Commissioner of Income Tax, Company Circle VI[2], Chennai [(2020) 115 taxmann.com 5 (SC)]*** while considering the provision of Section 53 of the TP Act in the context of capital gains under the Income Tax Act, it has been held thus:

*“11. In order that the provisions of Section 53A of the T.P. Act be attracted, first and foremost, the transferee must, in part performance of the contract, have taken possession of the property or any part thereof. Secondly, the transferee must have performed or be willing to perform his part of the agreement. It is only if these two important conditions, among others, are satisfied that the provisions of Section 53A can be said to be attracted on the facts of a given case.*

*12. On a reading of the agreement to sell dated 15.05.1998, what is clear is that both the parties are entitled to specific performance. (See Clause 14)*

*13. Clause 16 is crucial, and the expression used in Clause 16 is that the party of the first part hereby gives ‘permission’ to the party of the second part to start construction on the land.*

*14. Clause 16 would, therefore, lead to the position that a license was given to another upon the land for the purpose of*

*developing the land into flats and selling the same. Such license cannot be said to be 'possession' within the meaning of Section 53A, which is a legal concept, and which denotes control over the land and not actual physical occupation of the land. This being the case, Section 53A of the T.P. Act cannot possibly be attracted to the facts of this case for this reason alone."*

17. It was argued by the learned counsel for the assessee that when the scheme of the Act does not contemplate the method of computation, no capital gains could be computed, placing reliance on **B.C.Srinivasa Setty** supra. It appears to overcome this aspect, a machinery provision has been introduced by way of Section 50D of the Act. Though the said provision has come into effect from 1.4.2013, it certainly throws some light on the mode of computation under Section 48 of the Act. In the circumstances, we are of the considered opinion that the guidance value of the

land or the guidance value of the building would be appropriate mode to determine the full value of consideration in the case of a transfer where consideration for the transfer of a capital asset is not attributable or determinable. Hence, guidance value adopted by the Tribunal cannot be faulted with.

18. Though the Tribunal in **ITO, Ward-7(2), Bangalore V/s. N.S.Nagaraj [(2014) 52 Taxman 211]**, has held that full consideration would be the cost of construction incurred by the builder on the assessee's share of constructed area, because the assessee would receive the constructed area in view of the land share, the same not having been challenged, we are not inclined to subscribe to the same, for the reasons stated in the preceding paragraphs. Moreover, in that case, Commissioner of Income Tax [Appeals] has held that no capital gains accrues to the assessee on account of transfer of the asset. Having regard to the

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facts and circumstances of the case, the Tribunal having exercised its discretionary power adopted the guidance value of the land as the mode for determination of full value of consideration, the same being not perverse or arbitrary, we are not inclined to interfere with the impugned order

19. As the issue relates to pure question of facts, no substantial question of law arises for our consideration.

Accordingly, appeals stand dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

11.3 Further, same view has been taken by Hon'ble Karnataka High Court in the case of Smt. Sarojini M. Kushe in ITA No.475 of 2016 dated 15.12.2021 wherein held as under:

*"15. It was argued by the learned counsel for the assessee that when the scheme of the Act does not contemplate the method of computation, no capital gains could be computed, placing reliance on B.C. Srinivasa Setty supra. It appears to overcome this aspect, a machinery provision has been introduced by way of*

*Section 50D of the Act. Though the said provision has come into effect from 1.4.2013, it certainly throws some light on the mode of computation under section 48 of the Act. In the circumstances, we are of the considered opinion that the guidance value of the land or the guidance value of the building would be appropriate mode to determine the full value of consideration in the case of a transfer where consideration for the transfer of a capital asset is not attributable or determinable. Hence, guidance value adopted by the Tribunal cannot be faulted with.”*

**11.4** We find that the Id. CIT(A) has followed the above judgements to determine the full value of consideration received by the assessee, which is SRS value as held by the above judgements. We do not find any infirmity in the above findings of Id. CIT(A). Accordingly, ground nos.1 & 2 raised by the revenue in its appeals are dismissed.

**Issue 2 in revenue’s appeals – cost of acquisition :**

**12.** While computing the capital gains in the assessment order, the learned A.O. has adopted the cost of acquisition at Rs.140 per sft. in the manner explained above. The findings of the learned CIT[A] is at para [8] at pages 34 to 38 of the appellate order.

**12.1** It was contended by the appellant that the guideline value adopted by the learned A.O. was erroneous considering the location of its project. As explained above, the appellant property was situated at Bangalore Urban District and the relevant entry for the appellant’s property would be Bellary Road for which the appellant had relied on a notification published by the Sub-Registrar vide Notification No. RD 325 MUNOMU 98, Bangalore dated 03/12/1998 wherein, the market value for Bellary Road was specified at Rs.1,500 per sft. [See page 188 of Paper book in ITA 955/Bang/2024]. The appellant explained that it had adopted a conservative approach by taking only a sum of Rs.750 per sft. as on 01/04/2001 though he was entitled to adopt a much higher value.

**12.2** The learned CIT[A] has duly considered the submissions of the appellant had held vide para [8.3] at page 38 of the appellate order that the guideline value was in fact Rs.750 per sft. and has directed the learned A.O. to adopt the value of Rs.750 per sft. as the cost of land as on 01.04.2001. The AO erred in taking Rs. 140 per sft which is the value prescribed for properties in Bangalore Rural and not on Bellary Road.

**13.** We have heard both the parties and perused the materials available on record. As per section 55 of the Act as applicable to the assessment year under consideration, which provides that for the computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of asset and also cost of improvement, if any. However, for computing the capital gains in respect of an asset acquired before 1<sup>st</sup> April, 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1.4.2001 or actual cost of asset as cost of acquisition.

In the present case, the ld. AO has based the adoption of the value at Rs.140/- p.sq.ft. which is based on the entry no.19, under Kasaba Hobli as per the entry "Hebbala", which applies to a Gramathana/Industrial site. Said value was adopted by ld. AO on notification No.RD 548 Munomu 98, dated 3.12.1998 issued by Government of Karnataka in exercise of power under section 45(B)(3) of the Karnataka Stamps Act 1957, which applies to immovable property situated in the Bangalore Rural district. However, the ld. CIT(A) based his conclusion fixing the value at Rs.750/- sq.ft. on another notification RD 325 Munomu 98 dated 3.12.1998 issued by Government of Karnataka in exercise of power under section 45(B)(3) of the Karnataka Stamps Act 1957, which applies to immovable property situated in the Bangalore Urban district. The present property considered for taxing the capital gain is located on Bellary road as seen from the JDA dated 10.1.2011.

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Being so, the Id. CIT(A) considered the value at Rs.750/- sq.ft. which is very reasonable and same is confirmed and this ground of appeal of the revenue is dismissed in both the appeals.

**14.** In the result, both the appeals of the assesseees are allowed and revenue appeals are dismissed.

Order pronounced in the open court on 12<sup>th</sup> Aug, 2024

**Sd/-**  
**(Soundararajan K.)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 12<sup>th</sup> Aug, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**