

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.171/Chny/2024
निर्धारण वर्ष/Assessment Year: 2018-19

Shri Jaishree Varadaraj, 1547-A, Avinashi Road, Peelamedu, Coimbatore-641 004.	v.	The ITO, International Taxation Ward, Coimbatore.
[PAN: ABGPV 5575 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	04.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	28.08.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Assessing Officer, (hereinafter in short "the AO"), Coimbatore, dated 06.01.2024 for the Assessment Year (hereinafter in short "AY") 2018-19 passed u/s.147 r.w.s.144C(13) of the Income Tax Act, 1961 (hereinafter in short "the Act") pursuant to the directions given by the Dispute Resolution Panel (hereinafter in short 'DRP') dated 19.12.2023.

2. The main grievance of the assessee is against action of the AO making an addition of Rs.8,26,79,878/- in the hands of the assessee.



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3. The brief facts are that the assessee is a Non-Resident Individual (NRI) and had filed his return of income (RoI) u/s.139(1) of the Act on 13.10.2018 declaring taxable income of Rs.5,63,05,650/-. The RoI of the assessee was selected for scrutiny and assessment order passed u/s.143(3) of the Act on 09.02.2021 making an addition of Rs.1,40,623/- being interest income earned during the relevant assessment year. Later, the case was re-opened on the allegation that there were six (6) instances of sales of flats which were not considered for computation of total income of the assessee and which has escaped assessment. Even though, the assessee objected to re-opening of assessment, and brought to his notice that he (the assessee) being the landlord of immovable property, had entered into Joint Development Agreement (hereinafter in short 'JDA') with the developer to built flats, and agreed to give him (developer) 45% of built up area along with undivided share [UDS] of immovable property, and in exchange, assessee would obtain 55% of the built up area of the flats built in that immovable property. Accordingly, separate sharing agreement based on the built up area in proportionate to the agreed percentage of share was entered into and accordingly, the flats were earmarked for the developer and the assessee respectively. It was pointed out to AO that the flats in question fell into the share of the developer, and that the developer had offered the tax on the entire sale consideration as turnover of the developer and hence, the same can't be



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considered as income of the assessee; and that if such an action is contemplated, then, it would tantamount to double taxation. The AO brushed aside the afore stated contentions and proceeded to issue notice u/s.148 of the Act. The assessee was directed to file details regarding JDA entered into by assessee with M/s. Foundation One India Pvt. Ltd., (hereinafter in short 'developer') for substantiating his claim; and the assessee filed the confirmation from the developer, wherein, the developer has confirmed that sale proceeds from the disputed transactions regarding '3' flats (F1, E3 & J1) was related to the developer's share and were offered to tax in their hands; and the assessee filed detailed reply dated 20.03.2023, which was rejected by the AO and he passed draft assessment order to add a sum of Rs.8,26,79,878/- as the consideration received from the sale of '3' apartments [which were allotted to the developer's share under JDA and which was offered as income by the developer in their hands].

4. Aggrieved, the assessee filed objection before the Ld.DRP, which was rejected on 19.12.2023 and pursuant to the directions of the DRP, the AO passed the final assessment order u/s.144C(13) r.w.s.147 of the Act on 06.01.2024 making an addition of Rs.8,26,79,878/-.

S.no	Name of Party	Sale of UDS	Construction Value	TOTAL in Rs
1	Kenny Jacob	44,00,000	2,62,70,969	3,06,70,969
2	Usha Ramakrishnan	38,12,500	1,92,65,924	2,30,78,424
3	Shyam Sundar Chandramohan	44,56,250	3,71,42,985	4,15,99,235
Total		1,26,68,750	8,26,79,878	9,53,48,628



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5. Aggrieved, the assessee is in appeal before this Tribunal.

6. In this regard, we note that the assessee is the owner of property at Traveler's Bungalow Road on which the apartments "SHREE" have been built. The assessee had entered into a Joint Development Agreement (JDA) dated 05.10.2012 with M/s.Foundation One Infrastructure (Developer) for construction of these apartments. As per the JDA, the Developer had to construct and deliver to the owner 55% of the Super Built up area along with covered Car Parking units representing 55% of the total car parking units, and in consideration of the Developer delivering the owner's (assessee's) constructed area, the assessee shall convey an undivided 45% share pro-rata in the Schedule-A Lands to the Developer. The Schedule-A of the JDA describes the property as "Coimbatore Registration District, Coimbatore Sub Registration District, Coimbatore South Taluk, Anupparpalayam Village, TS No. 949/14, Ward no: (A) 1, Block No: 15 with an extent of 0.71 acres. Further, as per the Building License dated 02.04.2014 issued by the Commissioner, Coimbatore Municipal Corporation, Coimbatore, it is shown that there are total of '27' apartments, out of which, eleven (11) flats were earmarked to Owner one (1); one flat each to Owners 2, 3 & 4 [i.e, 3 flats]; & thirteen (13) flats to Developer. Therefore, out of 27 apartments, fourteen (14) flats were for Owners and thirteen (13) flats to Developer, in the ratio of 55% and 45% respectively. And it is noted that the



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assessee has duly offered the income from sale of UDS (undivided shares of land) relating to the sale of three apartments flagged by the Department. However, the allegation of the AO is that assessee has not offered the income from sale of these three (3) flats during the AY 2018-19.

7. However, the case of the assessee is that ownership of the land belong to the assessee. But as per the JDA with the developer, the developer had to construct total '27' apartments; and out of it, fourteen (14) flats for the owner (assessee) and thirteen (13) flats to the developers in the ratio of 55% : 45% respectively. The dispute is regarding sale consideration in respect of three (3) flats viz., F1, E3 & J1, which flats/apartments is noted to be earmarked as share of the developer; and they have confirmed this fact to the AO vide letter dated 19.11.2021 that as per the terms of JDA dated 05.10.2012 for Project 'Shree' it being the developer of the project, the transaction of flats in question fell in their share of 45% and brought to notice of the AO regarding the six transactions flagged by Department as under:

S.No	Doc. No	Date	Party Name	Nature of Agreement	Amount (Rs.)
1	2832/2017	29.05.2017	Kenny Jacob	Sale of UDS	44,00,000
2	2831/2017	29.05.2017	Kenny Jacob	Construction Agreement	2,62,70,969
3	4871/2017	31.08.2017	Usha Sivaramakrishnan	Sale of UDS	38,12,500
4	4870/2017	31.08.2017	Usha Sivaramakrishnan	Construction Agreement	1,92,65,924
5	1291/2018	02.03.2018	Shyam Sunder Chandramoban	Sale of UDS	44,56,250
6	1290/2018	02.03.2018	Shyam Sunder Chandramohan	Construction Agreement	3,71,42,986



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8. And also brought to AO's notice that sale consideration from the sale of three (3) flats (F1, E3 & J1) were shown as income in its books of accounts and offered to tax. We note that this fact has been confirmed by the AO in his Remand Report dated 07.11.2023, wherein, we note that the AO had called for the financials and books of accounts of the developers (M/s. Foundation One India Pvt. Ltd.), and ascertained that the developer has accounted the sale proceeds in respect of the '3' flats/parties during the AY 2018-19 and has shown the same under the head 'advance from purchases' and the same has been offered as income during AY 2019-20.

9. We further note that the assessee has offered to tax on the 'undivided share of land' totaling Rs.1,12,68,000/- and that the developer offered as its income from the sale of three (3) flats. Therefore, on the same transaction (of the '3' apartments in question), the Revenue can't add the same again in the hands of the assessee, which will tantamount to double taxation.

10. In this case, the assessee is the landlord who entered into JDA/PoA with the developer and agreed to give 45% of built up area along with UDS, for 55% of the built up area to the assessee. Accordingly, separate sharing agreement based on the built up area in proportionate to the agreed percentage of share was entered into and accordingly, the flats



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earmarked for the developer and the assessee respectively. The flats in question fell into the share of the developer and the developer has duly offered the tax on the entire sale consideration as turnover of the developer and hence, the same can't be considered as income of the assessee. Consequently, the addition made can't be legally sustained and therefore, assessee succeeds, and we are inclined to order deletion of the addition made by AO.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 28th day of August, 2024, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th August, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF