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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI MANJUNATHA G, ACCOUNTNAT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं /**ITA No.1452/Hyd/2016**
(निर्धारण वर्ष/Assessment Year:2008-09)

Dy. Commissioner of Income Tax, Central Circle 2(4), Hyderabad.	**Vs.**	M/s. Godavari Developers, Hyderabad. PAN AAFFG5872K
(Appellant)		(Respondent)
C.O.No.27/Hyd/2017 (In ITA No.1452/Hyd/2016) (By Assessee)		
निर्धारिती द्वारा/Assessee by:	None.	
राजस्व द्वारा/Revenue by::	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख/Date of hearing:	12/09/2024	
घोषणा की तारीख/Pronouncement:	30/09/2024	

आदेश/ORDER

PER PRAKASH CHAND YADAV, J.M:

The present appeal and the cross objections filed by the revenue and the assessee are arising from the order of Learned Commissioner of Income Tax (Appeals) dated 20.07.2016 and relates to assessment Year 2008-09.

2. The facts leading to the filing of present appeal are as under :

2.1 The assessee is a firm carrying on business in real estate. It has filed its return of income declaring total income as Nil. Thereafter search u/s.132 stated to have been carried in the premises of M/s. Ramky Estates

& Farms Limited. During the course of search one Development Agreement cum GPA dated 29.11.2007 07.02.2013. entered into between the assessee and the said concern was seized. As per the said agreement the developer paid an amount of Rs.15.52 crores as security deposit to the assessee firm in lieu of the land given for development. Taking the general facts into consideration the assessing officer arrived at the conclusion that it amounts to transfer of stock in trade. Thus, the assessing officer worked out the taxable profits at Rs.6,46,85,173/- and finalized the assessment proceedings.

2.2 It is the case of the revenue that as per the development agreement found during search related to the development / construction of villas by M/s. Ramky Estates & Farms Ltd. (REFL) and the assessee was entitled for 48% of the total built up area in those villas in lieu of its stock in trade. The Assessing Officer was of the view that since the assessee is following Mercantile System of Accounting, the assessee would have disclosed profits from the sale of transfer of stock in trade in the impugned assessment year.

2.3 Aggrieved with the order of Assessing Officer, the assessee filed an appeal before the Ld. CIT(A) and contended that the assessee has entered into development agreement with REFL and handed over around 12 acres of land to that concern for development and the profit sharing ratio among

them was 48:52. The assessee pointed out that the total area of the land was 12 acres and the agreed consideration for security deposit was Rs.1.71 Crores per acre which comes to Rs.20.52 Crores for 12 acres. However, the REFL has paid only Rs.15.52 Crores in the impugned assessment year. The assessee contended that the above land was never transferred to the developer. The assessee further contended that the sale proceeds received from these developed properties has been offered for taxation as and when the assessee has sold the villas. The Ld. CIT(A) finding force in the argument of the assessee and after perusing the entire material and held that the Assessing Officer has erred in concluding that profit attributable to the alleged transfer of stock in trade would be assessable in the impugned assessment year. The Ld. CIT(A) also ruled out that there is no transfer of land as alleged by the Assessing Officer within the meaning of section 2(47) of the Act.

3. The Ld. DR appearing on behalf of the revenue vehemently argued that the Ld. CIT(A) had erred in not appreciating that there was transfer of stock in trade by the assessee to the developer and hence the profit accrued or arise to the assessee during the year under consideration have been rightly assessed by the Assessing Officer.

4. Nobody appeared on behalf of the assessee, this is a very old matter pending since 2016 and already adjourned for 56 times. Therefore, in the interest of justice we are adjudicating this matter.

5. After considering the submissions made by the Ld. DR and perusing the material on record, we observe that the Ld. CIT(A) has rightly held that there was no transfer in this case. The findings of the Ld. CIT(A) are reproduced hereunder for the sake of convenience.

> *" 6.3 Perused the submissions of the appellant and the observations of the AO in assessment order. As could be made out from the facts of the case, the appellant firm is in the business of Real Estate more particularly conversion of land into plots and offering the income from business, from AY the 2005-06 onwards. However, such income for the year under reference has been shown at NIL with no sales reflected for the year. During the year, assessee firm shown to have entered in to a Joint Development Agreement with one M/s.Ramky Estates & Farms Pvt. Ltd., hereafter referred to as REFPL, vide the agreement dated.29-11-2007, by contributing Ac 12.00 land out of existing land of Ac 17.16 gts. towards their share and in return the Firm is entitled for 48% of the total constructed area which is equivalent to 46 villas, and project was to be completed within 30 months from the date of grant of municipal permission, with a provision for a grace period of 6 more months in case of excessive rock cutting etc. The assessee firm, being the owner of the land, which was shown in the books as stock in trade, was also entitled for refundable security deposit of Rs.15.52 cr. @ Rs.1.71 cr. Per acre. The project was shown to have been executed and the constructed area received as share of the assesseee firm, which has been put at 213120 SFT, which is equivalent to 48% of total built up area of 4,44,000 SFT and such constructed area falling into the share*

of the assessee firm were shown to have been put to sale in the subsequent assessment years, for which details were brought on record. However, the AO had computed the profits attributable to the development of land, as profits of the business, for the year during which the Development Agreement has been entered with developer, i.e. vide agreement dated.29-11-2007, falling into the assessment year under reference, mainly on the ground that the moment the stock in trade transferred towards capital contribution, right to receive the developed area, which is a consideration in kind, which has a value and can be worked out, would accrue to the assessee. Accordingly, the AO worked out the value of the right to the assessee as constructed area for the year of agreement, in terms of the said Development Agreement-cum-GPA, dated.29-11-2007, on accrual basis as per Mercantile system of accounts, and has worked out the value of consideration by taking the value of the constructed area as per SRO/Municipal Valuation and arrived at Rs.12,36,09,600/-. Accordingly, the AO worked out the business profits of Rs.6,46,85,173/- after deducting the proportionate cost of 12 acres of land contributed as capital and asserted to tax as business income.

6.3.1 In the back ground of the facts of the case, it appears the AO had followed the provisions of Sec.2(47) without mentioning it, in ascertaining the profits attributable to transfer of the land vide a Development Agreement. As the assessee claimed and not denied by the AO that the land under reference was treated as stock-in-trade by the assessee, accordingly, the AO had treated the said profits as profits attributable to the accrued value of the constructed area, on estimated or market value method, as business income. In the process, the AO appears to have adopted the rates as per SRO, as reflected in the Development Agreement, for arriving at the value of share of constructed area of the assessee though it was mentioned as Municipal Valuation, which is nothing but as per the provisions of Sec.50C of IT Act, which is only applicable for valuation of a capital asset. In case of

the assessee, it was only a current asset as it has been treated as stock in trade. Hence, the method of valuation adopted by the AO, in this case, appears to be on wrong side of the law. On the other hand, the constructed area stipulated in the said project has not been received by the assessee during the year, as per the Agreement dated.29-11-2007, which was scheduled to be completed in 30 to 36 months, from the date of permission by Municipal Authority. In case, the valuation of such stocks/constructed area, to be adopted on accrual basis, by following the Mercantile method of accounts, then the next question would be valuing the stock, which would be generally the least of cost or market value. In this case, the cost of the land under reference, would be the cost of closing stock or work in progress (WIP) and the addition/accredition to the WIP/Stocks may take place in the year of actual receipt of constructed area, either as per the cost of construction in books of builder/developer or any other method adopted by the assessee, which means there are no profits to the assesse firm during the year of agreement, since the opening value and closing value of the stock-in-trade remain unchanged.

6.3.2 It is also a fact that the assessee firm had received constructed area in the form of Villas and accounted the profits attributable to such sales in the subsequent years and offered said profits for tax and this is not the case of the AO to controvert the same. attributable to business of development of land in the subsequent year, on Having offered the profits receipt/actual basis, the treatment by the AO, for taxing the profits, on accrual basis for the year of agreement, may only amount to taxing the same income twice. Here is the case of conversion of capital asset in to stock in trade, and the assessment of gains/profits arising from such conversion would be taking place in the year of sale of such stock in trade, for which the provisions of Sec. 45(2), are appropriately applicable. In such a case, the year of conversion is not held to be the basis or criteria, but only the sale of

converted assets. In this context, it may be relevant to refer to the provisions of Sec.45(2) of I.T. Act.

"Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as, stock- in- trade of a business carried on by him shall be chargeable to income- tax as his income of the previous year in which such stock- in- trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."

6.3.3 As could be made out from the facts of the case, provisions of Sec.45(2) are applicable to the case, where the year of conversion of stock is not material but only the year of consideration for the stocks received. In this case, stock in trade/work in progress, in the form of constructed area has not been received during the year under reference, as per the Development Agreement, as opined and observed by the AO, but only in subsequent years. In the case of the appellate firm, the profits relatable to consideration on sale of such stocks are very much offered to tax in subsequent years, as per the information brought on record. Hence, taxing the gains as per the Agreement of Development were already offered in subsequent years and were not accrued to the assessee during the assessment year under reference. In this context, the decision of ITAT, Mumbai in case of Ramesh Abaji Walvalkar No.852/Mum/2009 & 1534/Mum/2010), which is on the similar subject are applicable to the facts of the case. The relevant portion of decision refer to the specific issue of relevance of the year of conversion of assets into stock in trade vis-à-vis the year of realizing the consideration.

"It was held that all the arguments relating to conveyance, possession etc., which were generally related to transfer of capital asset, were

rendered meaningless in such a case and the assessee having recognized business profit on sale of converted asset in the relevant year, tax on capital gain on conversion would also be levied in that year. In the present case, the sale of stock in trade was recognized by the assessee in the previous year relevant to assessment year 2005-06 when the consideration in the form of constructed area was actually received by him and this being so, we hold, respectfully following the decision of the Co-ordinate Bench of the Tribunal in the case of Crest Hotels Ltd., (Supra), that the capital gain on transfer of capital asset by way of conversion is chargeable to tax in assessment year 2005-06 as per the provisions of Sec. 45(2)".

6.3.4 Thus, going by the facts of the case and the relevant provisions of IT Act (u/s.45(2)) and the judicial decisions in this regard, it may be reasonable to hold that in case of conversion of capital assets into stock in trade, the relevant year for taxation of profits attributable for such conversion, would be year of realization of consideration of such stocks, irrespective year of conversion. Thus, in this case, the assessment of income on accrual basis based on the agreement for development, is the year of actual realization of value, which is subsequent to AY 2008-09, but not the year of agreement, which is the year under reference. As such, the assessment made by the AO in making addition of Rs.6,46,85,173/- held to be failed for the year under reference and the relevant grounds on this issue are treated as Allowed."

5. Perusal of the above findings of Ld. CIT(A) would prove beyond doubt that -

a) There was no transfer, as construed by the Assessing Officer within the meaning of section 2(47) of the Act as it is a case of current assets being used by the assessee as stock in trade and hence the Assessing

Officer is erred in applying a method which is applicable in the cases of capital assets.

b) Referring to the provisions of section 45(2) of the Act, the Ld. CIT(A) has categorically held that in a case where stock in trade is sold or transferred otherwise then only such year would be considered as the year of taxability in which the trading assets are sold. The Ld. DR has failed to point out any error vis-à-vis the factual or legal findings recorded by the Ld. CIT(A) in his order. Therefore, we hereby affirm the view taken by the Ld. CIT(A).

6. Since we have already decided the appeal of revenue on merits and have dismissed the same, there is no need for us to go into the cross objections filed by the assessee as they become academic in nature.

7. In the result, the C.O. filed by the assessee as well as the appeal of revenue stand dismissed in the above terms.

Order pronounced in the open Court on 30th Sept., 2024.

Sd/-	**Sd/-**
(**MANJUNATHA G**)	(**PRAKASH CHAND YADAV**)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Hyderabad.
Dated: 30.09.2024.
** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Godavari Developers, HMT Satavahana Nagar, Kukatpally, Hyderabad.
2. DCIT, Central Circle 2(4), Hyderabad.
3. Pr.CIT, Central Circle, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,