

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

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No.113/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Ramesh Reddy Gongalla ADIT (Int.Taxn)-1
United States Vs. Hyderabad
[PAN : CIIPG6651H]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S.Rama Rao, AR
राजस्व द्वारा/Revenue by: Shri B.Bala Krishna, CIT, DR

सुनवाई की तारीख/Date of hearing: 08/10/2024
घोषणा की तारीख/Pronouncement on: 14/10/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the assessment order dated 09/01/2024 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP") in the case of Shri Ramesh Reddy Gongalla ("the assessee") for the assessment year 2017-18 under section 147 r.w.s. 144C(13) of the Income tax Act, 1961 ("the Act"), assessee preferred this appeal.

2. Assessee is an individual. He is nonresident of India and resident of America. He possessed 500 sq.yds of site and he entered into development agreement cum General Power of Attorney on 31/05/2016 along with 45 others in favour of M/s Preston Developers LLP, under which the assessee is entitled for 47.25% of the built up area in lieu of 52.75% of the land which worked out to 4223 sq.ft. Subsequent to the development agreement, the developer though obtained permission did not carry out any work and there arose serious disputes resulted in the special court granting stay on the activities of the developer.

3. When the matter stood thus, the learned Assessing Officer gathered information about the transaction. Learned Assessing Officer obtained information relating to market value of the land from the SRO by issue of notice under section 133(6) of the Income tax Act, 1961 ("the Act"). According to the SRO, market value of such site was Rs.20,000 per sq.yd. Learned Assessing Officer, therefore, valued the site of 250 sq.yds at Rs.50,00,000/- and computed the capital gains by taking cost of acquisition as Nil, stating that the assessee did not furnish any information about cost of acquisition.

4. Assessee pleaded before the learned Assessing Officer on two counts. Firstly, that inasmuch as he received no advance in the transaction and no possession of the plot is handed over to him in view of the internal disputes between the developer, in terms of amendment to section 45 of the Act with effect from 01/04/2018 capital gains have to be computed in the year in which the possession of constructed area is handed over to him. On this premise assessee pleaded before the learned Assessing Officer that no capital gains accrued in the year 2016-17. Assessee pleaded that in the alternative that the entire sale consideration was reinvested in the villa and therefore, capital gains are exempt under section 54 of the Act.

5. Other plea taken by the assessee before the learned Assessing Officer is that in view of certain dispute surrounding the property purchased by him quite for a long time, it does not fetch Rs.20,000/- per sq.yd. nor Rs.50,00,000/- from the alleged 250 sq.yds as computed by the learned Assessing Officer basing on the SRO value. Assessee specifically pleaded that the determination of the value of the property may be referred to the Valuation Cell to be decided basing on the factors impacting the value of the land.

6. Learned Assessing Officer brushed aside both the contentions of the assessee and stated that the plea of the assessee is self-contradictory because in one breath, the assessee pleads that no part of sale consideration is received and in the same breath, he states that the entire sale consideration is reinvested in the villa to be handed over by the developer. Even otherwise also to claim the benefit under section 54F of the Act, assessee is to acquire new property within two years, but since no legal title is acquired by the assessee, so far, he cannot claim benefit under section 54F of the Act.

7. In respect of the plea of the assessee to refer the matter to the DVO for valuation, the learned Assessing Officer observed that the assessee did not furnish the reasons for referring it to the valuation cell and in the absence of any plausible explanation, such a request cannot be acceded to.

8. Aggrieved, assessee filed objections before the DRP. Learned DRP agreed with the learned Assessing Officer while turning down the contention of the assessee that since no possession is handed over to the assessee, no question of reckoning the capital gains arise in the assessment year 2017-18. Learned DRP observed that the decision of the Hon'ble Supreme Court in the case of Balbir Singh Maini, 398 ITR 531 is not at all helpful to the assessee inasmuch as the facts involved in that case are different from the facts of the case of the assessee.

9. On the other hand, learned DRP placed reliance on the decision of the Hon'ble Karnataka High Court in the case of TK Dayalu 202 Taxmann 531, wherein, it was held that in case of passing of or transferring the complete control over the property in favour of the developer, date of the contract would be relevant to decide the case of chargeability to tax. Learned DRP therefore rejected the contention of the assessee and upheld the chargeability of capital gains as proposed in the draft assessment order.

10. Assessee is therefore before us aggrieved by such findings of learned DRP, resulting in the final assessment order dated 09/01/2024, whereunder the long-term capital gains of Rs.50,00,000/- was to be added to the income of the assessee. Assessee challenged this on two counts as pleaded before the learned Assessing Officer. Main plank of argument of the assessee is that the authorities failed to consider the fact that as per the development agreement, the assessee transfers only 52.75% of the land and retains only 47.25% and in lieu of the transferred land agreed to receive the constructed area. Learned Assessing Officer should have allowed indexed cost of

acquisition and referred the matter to the DVO for determination of the full value of consideration in respect of the transferred land. The next argument of the learned Ld.AR is that section 45 of the Act is amended with effect from 01/04/2018, pursuant to which the capital gains becomes chargeable in the year in which the possession of the constructed area is handed over and since the activities of the developer are stayed by the competent court taking cognizance of the internal disputes, no activity took place and no built up area is handed over to the assessee. On this premise, learned Ld.AR submitted that since the built-up area is not yet handed over under section 45(5A) of the Act, no capital gains are chargeable till date.

6. Learned DR vehemently argued that the learned Assessing Officer has given cogent reasons for not accepting the request of the assessee, to refer the matter to the DVO since the assessee did not furnish any plausible explanation making out a case for such reference and therefore, assessee cannot now seek such relief in respect of the plea of the assessee that since no possession of built up area is handed over, no question of capital gains arise. Learned DR submitted that the findings of the learned DRP are categorical on this aspect and the learned DRP explained that in the case of Balbir Singh Maini (supra) is not applicable to the facts of the assessee and on the other hand facts of the case are governed by the decision of Hon'ble Karnataka High Court in the case of TK Dayalu (supra) which followed the decision in the case of Chaturbhuj Dwarkadas Kapadia Vs. CIT (2003) 260 ITR 491.

7. We have gone through the record in the light of the submissions made on either side. Insofar as the request of the assessee to refer the matter to the DVO for determination of the value of the land is concerned, in the assessment order itself, the learned Assessing Officer referred to the allegation of the assessee that the property has been under dispute quite for a long time and therefore, the sale consideration is not Rs.50,00,000/- and determination of the fair market value may be referred to the DVO. According to us, this constitutes plausible reason for the assessee to seek reference to the DVO about the determination of the value of the land. We, therefore, are of the considered opinion that in all fairness, the learned Assessing Officer should have referred the determination of the value of the land in question to the DVO and called for the documents under which the assessee acquired the property for computing the indexed cost of acquisition and determination of fair capital gains. We, therefore, allow this plea of the assessee and direct the learned Assessing Officer to refer the determination

of value to the DVO and to take a view on receipt of such report according to law. In view of this finding, we set aside the impugned orders and restore the matter to the file of the learned Assessing Officer to refer the matter to the DVO for determination of the value of the land in the light of the contentions of the assessee to be submitted in detail and to take a view according to law. We hold and order so.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this the 14th day of October, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 14/10/2024
L.Rama, SPS

Copy forwarded to:

1. Shri Ramesh Reddy Gongalla, C/o Suresh Reddy Gongula S/o G.Srinivas Reddy, H.No.8-2-120/110/1/2-B, Nandini Nagar, Road No.14, Banjara Hills, Hyderabad
- 2 The ADIT (International Taxation)-1, Hyderabad
3. The Dispute Resolution Panel (DRP), Bengaluru
4. The Director of Income Tax (IT & TP), Hyderabad
5. The Addl.Commissioner of Income Tax (Transfer Pricing), Hyderabad
- 6.The DR, ITAT, Hyderabad
- 7.Guard File

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