

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI WASEEN AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 1356/Bang/2024	The Income Tax Officer, Ward - 1, Madikeri.	Shri Govindappa Jayaram Doddiah (HUF), Boothankadu A Estate, Madapura, Kodagu, Karnataka - 571 251. PAN: AAGHG7641P	2021-22
ITA No. 1283/Bang/2024	Shri Govindappa Jayaram Doddiah (HUF), Boothankadu A Estate, Madapura, Kodagu, Karnataka - 571 251. PAN: AAGHG7641P	The Income Tax Officer, Ward - 1, Madikeri.	
C.O. No. 31/Bang/2024 (in ITA No. 1356/Bang/2024)			

Assessee by	:	Ms. H.D. Thejaswini, CA
Revenue by	:	Ms. Neha Sahay, JCIT-DR

Date of Hearing	:	29-08-2024
Date of Pronouncement	:	13-11-2024

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

The appeals in ITA No. 1283/Bang/2024 & C.O. No. 31/Bang/2024 are the appeals filed by the assessee in respect of the A.Y. 2021-22 and the revenue is in appal in ITA No. 1356/Bang/2024.

These appeals arose out of the order passed by the NFAC, Delhi on 09/05/2024 in respect of the A.Y. 2021-22.

2. The brief facts of the case are that the assessee is a HUF and filed their return of income which includes the long term capital gains. The case was selected under CASS for examining the capital gains and the claim of exemption u/s. 54 of the act. For the notices issued by the AO, the assessee filed their reply along with the required documents but the AO estimated the long term capital gain by disallowing the cost of improvement on the ground that the same are not capital in nature. Similarly, the AO in respect of the other property had arrived the capital gains by taking the area as super built-up area even though as per the occupation certificate issued by the authorities that the assessee has received a lesser area than the super built-up area and estimated capital gains on that basis. The AO also made an addition on account of refundable security deposits paid by the developer to the assessee while entering the Joint Development Agreement as income of the assessee. As against the order of the AO, the assessee filed an appeal before the Ld.CIT(A) by contending that the improvement cost are only a capital expenditure and also contended that the area taken for the purpose of arriving the fair market value in respect of the another property is not correct since it is beyond the occupation certificate granted by the authority. Similarly, the assessee challenged the refundable security deposit since the same are to be returned to the developer. The Ld.CIT(A) accepted the improvement cost as capital expenditure and also accepted the fair market value based on the area allotted under the occupation certificate but refused to accept that the refundable security deposit is not the income of the assessee. As against the said order in which the Ld.CIT(A) has allowed the improvement cost as well as the area taken up for considering the fair market value, the revenue is in appeal before this Tribunal and raised the following grounds:

“1. The Order of the Learned CIT(A) is opposed to law and facts of the case

2. The CIT(A) erred in deleting the addition made on disallowance made on cost of improvement without considering the fact that the nature of expenditure is not capital in nature and are made on regular maintenance and making the property ready for tenancy as per the requirement.

3. The CIT(A) erred in allowing the appeal of the assessee on reason that tolerance value of 5% has been considered without considering the fact that the methodology adopted by the assessee is incorrect as the assessee inputted super built up area which is 14% more than that of built up area for computation of reference value, whereas the built up area was inputted for computation of sale consideration by multiplying it with reference rate.

4. For these and other grounds that may be urged upon, the order of CIT(A) may be reversed and that assessment order to be restored.”

3. In respect of the refundable security deposit, the assessee is in appeal with the following grounds:

“The Appellant objects to the order passed by the CIT(A) on the grounds:

1) That the impugned order is opposed to facts and law of the case in so far as it is prejudicial to the interest of the Appellant

2) The Ld CIT(A) is not justified in treating the Refundable security deposit of Rs 1.25 crores as compensation received and as part of the sale consideration despite the fact that the arbitration has been set up, both the parties had submitted their responses and details to the arbitrator and the process was on going and in doing so,

a. He failed to consider the fact that the appellant had made a claim for shortfall of area received by him from the project which wasn't in accordance with the joint development agreement and arbitration is under process.

b. He failed to consider the fact that the arbitration is under process.

c. He has erred in considering the provision made in the books of developer as compensation when there is no sufficient objective evidence to treat the security deposit as compensation.

3) The arbitration process is completed and as per the Arbitration Award dated 01-07-2024 the assessee is liable for a compensation of Rs 1,18,30,789/- and the same will be offered to tax in FY 2024-25. The remaining amount of Rs 6,69,211/- is to be repaid to developer.

4) As the assessee is awarded Rs 1,18,30,789/- as per the Arbitration Award in FY 2024-25, the same will be offered to tax in the Return of Income of AY 2025-26. Therefore, taxing the security deposit in the year when the nature of security deposit was not income is not tenable.

Appellant prays for leave to add, modify, delete, or introduce additional Grounds of Appeal at any time before the Appeal is disposed off.

Based on these and such other grounds that may be adduced from time to time, the Appellant requests the Honourable Income Tax Appellate Tribunal to consider the petition in the light of principles of justice and cancel the addition/disallowances made by Commissioner of Income Tax(Appeals).”

4. The assessee also filed a Cross Objection to the appeal filed by the revenue in which the revenue had challenged the order of the Ld.CIT(A) with the following grounds of cross objection:

“The Appellant objects to the appeal filed by Ld. AO on the grounds:

1) The Ld. AO is not justified in claiming that the Improvement cost claimed as deduction in the Capital Gain working holding them to be revenue in nature and in doing so, he failed to consider the fact that

a. The interior work which was done had an enduring benefit

b. The work was not done as per the requirement of the tenant

c. The interior work done was capital in nature.

2) The Guidance value taken for calculating the sale consideration is valid and the same is taken based on the

fair market value of the second floor of the same property and is within the limit prescribed under section 50C of Income Tax Act, 1961

3) The Ld AO failed to appreciate the fact that the area as per Occupancy Certificate is the total area received and the same is offered to tax and upon which there is no extra area given to the appellant. The same is being supported by the statement given by the developer about the total area received by the landowner.”

5. First we take up the appeal filed by the assessee in which the assessee had challenged the refundable security amount which was treated as income of the assessee.

6. At the time of hearing, the Ld.AR submitted that the assessee as well as the developer had already proceeded in the arbitration to solve the disputes arising out of the JDA dated 07/07/2017 and on the subsequent sharing agreement dated 05/10/2018 relating to the development of a commercial office space at No. 30, Crescent Road, Bangalore – 1. The Ld.AR further submitted that the assessee as well as the developer had arrived a compromise and based on that, the assessee is entitled to retain the security deposit of Rs. 1,18,30,789/- for compensating the shortfall in built-up area and the car park area are concerned. The Ld.AR also produced a copy of the award and undertook that the said Rs. 1,18,30,789/- will be added to the income of the current Assessment Year 2024-25 and on that basis, prayed to allow the appeal filed by the assessee.

7. On the other hand, the Ld.DR submitted that the refundable security deposit is finally arrived as income and therefore the order of the AO is correct and prayed to dismiss the appeal.

8. We have heard the arguments of both sides and perused the materials available on record.

9. We have also perused the arbitration award dated 01/07/2024 which is extracted as below:

SHASHIKUMAR S N F.I.V.
Chartered Engineer & Approved Valuer
CAT-1/REG.NO.09/PCIT-2/CCIT/BNG-1/2022-23
102 Yellappa Garden, 2nd Cross
Banagrinagar Banashankari III Stage
Bangalore - 560085 Ph: 98453 88488
e-mail: shashikumar.sn4@gmail.com

ARBITRATION AWARD

In the matter of arbitration between Mr. Govindappa Jayaram [HUF] ("Landowner") and APG Property Services Pvt Ltd ("Developer"), regarding disputes arising out of the Joint Development Agreement dated 07.07.2017, and subsequent Sharing Agreement dated 5/10/2018 relating to the development of a commercial office space at No 30, Crescent Road, Bangalore-560001, the Arbitral Tribunal duly constituted under the Arbitration and Conciliation Act, 1996, and appointed by mutually by the parties, renders the following award:

Background:

1. The parties entered into a Joint Development Agreement on 07.07.2017 and subsequent Sharing Agreement dated 5/10/2018, for the development of a commercial office space at No 30, Crescent Road, Bangalore-560001
2. Disputes arose primarily concerning short fall in the area allotted and the car park allocation and the non-payment of a portion of the refundable security deposit by the Developer to the Landowner which is a deviation from the agreed-upon built-up area and car parking allocation in terms of the Joint Development Agreement on 07.07.2017 and the Sharing Agreement dated 5/10/2018.

Findings:

1. It is noted that the Developer faced financial constraints which hindered the full payment of the refundable security deposit as per the terms of the Joint Development Agreement.
2. Additionally, changes in design during the construction phase led to a reduction in the built-up area and car parking allocation initially agreed upon, impacting the entitlement of the landowner.



[Handwritten signature]

Reasoning

1. The Arbitral Tribunal after acknowledging the difficulties the Developer has encountered and the subsequent deviations from the Joint Development Agreement entered between the Landowner and the Developer. proposed the following compromise between the Parties:
 - a. The Landowner shall retain the partial refundable security deposit out of Rs.1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs) paid by the Developer, considering the circumstances surrounding the Developer's financial constraints and in return, the Developer is not be obligated to pay the remaining balance of Rs.1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs) towards the refundable security deposit.
 - b. The Landowner knowing fully well that there was a shortfall in the buildup area of the Ground and the First Floor had opted for these floors at the time of sharing agreement along with the lesser car parking space, with retaining of security deposit of Rs.1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs) the shortfall in area will be compensated.
2. The Parties agreed to consider this compromise as a resolution to the disputes arising from the Joint Development Agreement.

Award

1. The Arbitral Tribunal appreciating the willingness of both parties to compromise and resolve their disputes amicably. Has passed the following Award. This award signifies a mutual understanding and acceptance of the circumstances surrounding the development project. It is expected that both parties shall adhere to this Award in good faith and without further dispute.
2. Based on the market guidance value, fair and reasonable compensation of Rs. 1,18,30,789 (Rupees One crores eighteen lacs thirty thousand seven hundred eighty nine only) shall be payable to the Landowner. Hence, the Landowner shall retain Rs 1,18,30,789 (Rupees One crores eighteen lacs thirty thousand seven hundred eighty nine only) from the refundable security deposit of 1,25,00,000/- (Rupees One Crore twenty-Five Lakhs) paid by the Developer at the time of executing the Joint




Development Agreement and refund the remaining refundable deposit of Rs 6,69,211(Rupees six lacs sixty nine thousand two hundred eleven only) to the Developer. It's also agreed between the parties that the refundable deposit held by the Landowner does not bear any interest payable.

3. With retaining of security deposit of Rs. 1,18,30,789 (Rupees One crores eighteen lacs thirty thousand seven hundred eighty nine only) by the Landowner the shortfall in built up area and the carpark is compensated
4. Both parties shall bear their respective costs incurred in relation to this arbitration.

Date: 1st July 2024

Place: Bengaluru


Signature of Arbitrator
SHASHIKUMAR S N F.I.V.
CHARTERED ENGINEER & REGISTERED VALUER
CAT-1/REG. NO. 09/PCIT-2/CCIT/BNG-1/2022-23



10. From the above said award, we came to know that as against the security deposit of Rs. 1,25,00,000/-, the assessee as well as the developer had agreed to pay a sum of Rs. 1,18,30,789/- as reasonable compensation to the assessee for the shortfall in the built-up area and the car park.

11. Even though, in the award, no interest is awarded to the developer, the dispute between the assessee and the developer with regard to the security deposit amount came to end only on 01/07/2024. Before that, there is no certainty about the said security deposit and therefore the award

amount of Rs. 1,18,30,789/- could be taken as income on 01/07/2024. The assessee also accepted to include the same as income in the Assessment Year 2024-25 and also undertook to include the said income in the return filed for the Assessment Year 2024-25.

We find that the said undertaking given by the assessee is a reasonable one and we record the above submissions made by the assessee and set aside the assessment made in respect of the security deposits and remit the issue to the AO to see that the award amount of Rs. 1,18,30,789/- is added in the income of the assessee for the A.Y. 2024-25 and thereafter make the assessment for the A.Y. 2024-25 in accordance with law.

12. In the result, the appeal filed by the assessee in ITA No. 1283/Bang/2024 is allowed for statistical purposes.

ITA No. 1356/Bang/2024

13. In this appeal, the revenue contended that the allowance made on the cost of improvement as capital in nature by the Ld.CIT(A) is not correct since the same are for regular maintenance and making the property ready for tenancy. The revenue further contended that methodology adopted by the assessee to calculate the fair market value of the property by taking the built-up area is not correct since the super built up area should be taken for deciding the value of the property.

14. The Ld.AR submitted that all the expenditure incurred are only to enhance the value of the property and therefore the cost of improvement should be added while calculating the capital gains. The Ld.AR further argued that the value of the property should be arrived by taking the actual area allotted by the developer to the assessee, based on the occupation certificate issued by the authorities and therefore the value arrived by the assessee is in order. The assessee also filed cross objection in which he objects the appeal filed by the revenue. The Ld.AR also draw our attention

to the explanations offered by the assessee before the AO as well as before the Ld.CIT(A) and contended that all the bills were made for the improvement of the property and therefore they are only capital in nature and only when the improvements are made on the property, the property would fetch more amount at the time of sale. Similarly, the Ld.AR submitted the guideline value taken for calculating the sale consideration is correct and also as per the area shown in the occupation certificate and therefore prayed to dismiss the appeal filed by the revenue before this Tribunal.

15. We have heard the arguments by both sides and perused the materials available on record.

16. The AO in his order, which discussed the issue in detail and accepted that the same are expenditure incurred on the property but declined to take the same as capital expenditure for the reason that they are all small works done on the request of the buyers or tenants.

17. We have perused the reasoning given by the AO and also considered the fact that even though these are all amounts spent for the interior works, without doing such interior work, the property would not fetch more value. It is the normal practice that while transferring the property, the owner had to do all kinds of repair works etc. in order to enhance the value of the property. Therefore the expenditure incurred can be classified as capital in nature since the value of the property has been appreciated.

18. Further, as seen from the documents, the entire payments were made to the contractors through cheques and it is also a fact that the property is owned by the HUF along with the brother of the Karta and others and therefore some part of the payments were also made by the other members. Therefore on the basis of some payments made by others, the AO disallowed

the expenditure and treated the expenditure as revenue expenditure even though, the expenditure was incurred for improving the property.

19. There is no dispute that the entire expenditure has been incurred towards the property and therefore it can be treated as a capital expenditure and the same would be taken as cost of improvement of the property. The Ld.CIT(A) also observed that the assessee had submitted all the bills and apart from his share of 78.8%, others have also made payments on their shares and the payments were made through banking channels. The Ld.CIT(A) also decided the issue after going through the agreement and come to the conclusion that the property is co-owned by the assessee as well as co-owners. Therefore the finding of the Ld.CIT(A) insofar as the cost of improvement is concerned, even though it is cryptic, it is sufficient to understand the issue and on that basis we are giving our approval.

20. Insofar as, the next issue is concerned, it is about the fair market value considered as cost of acquisition and the area offered to tax. The assessee arrived the market value based on the actual sale value of the property in the second floor and also taken the area allotted to the assessee based on the occupancy certificate. The assessee multiplied the area with the fair market value to arrive the sale consideration. The assessee relied on the sale deed executed by the developer in respect of the property situated in 2nd floor and based on that, the assessee had worked out the market value and multiplied the same with the area allotted to them as per the occupancy certificate. The AO not accepted the said method and taken the area based on the super built-up area which is beyond the area allotted under the occupancy certificate. We feel that there is no logic in taking the area more than the area allotted in the occupancy certificate and the AO merely relied on the procedures under RERA and increased the area of the property by taking the super built-up area even though the assessee had received lesser area as per the occupancy certificate. The AO has no basis to arrive the extra area as against the area allotted under the occupancy certificate. We

feel that the assessee had rightly taken into account the area allotted under the occupancy certificate and also correct in taking the value adopted for the property in the 2nd floor for the purpose of arriving the market value of the property. The assessee had arrived the sale value based on some data whereas the AO has no evidence or documents to sustain his estimated sale consideration. Further, the assessee had considered the tolerable limit of 5% as provided in section 50 of the Act and therefore the value has been correctly arrived by the assessee. The AO without having any records, had added 14% on the area offered to tax, only for the reason that in the real estate parlance, the super built-up area of the premises is the saleable area. We are not agreeing with the above view of the AO since the assessee had offered the area to tax based on the occupancy certificate issued by the statutory authorities. There is also no logic to add more area when the documents establishes the fact that the assessee had received only lesser area as per the occupancy certificate. Further, the value arrived by the assessee is also not contradicted by the AO by giving some more references but the AO made a bald allegation that the value of the 2nd floor could not be taken for arriving the sale value of the property. This reasoning of the AO is also not correct when there is no other evidences available with him. The Ld.CIT(A) had considered the entire facts and the documents filed by the assessee including the occupancy certificate and the letter from the developer and correctly come to the conclusion that the fair market value arrived by the assessee is correct. In view of the above said discussions, we are also in full agreement with the findings of the Ld.CIT(A) and therefore we dismiss the appeal filed by the revenue.

21. Insofar as the cross objections filed by the assessee, it is like a counter filed by the assessee to the grounds raised by the department. Since we are not accepting the appeal filed by the revenue, the findings given in the above said appeal holds good insofar as the grounds raised in the cross objections.

22. In the result, the appeal filed by assessee is allowed for statistical purposes, the revenue's appeal is dismissed and the Cross Objection filed by the assessee is allowed.

Order pronounced in the open court on 13th November, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 13th November, 2024.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore