

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

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA Nos.374 & 375/Hyd/2023**
(निर्धारण वर्ष/Assessment Years:2013-14 & 2014-15)

Income Tax Officer, Ward-1, Chittoor.	Vs.	Shri G. Vijayasimha Reddy, Bengaluru. PAN:AEYPG0539E
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		Shri Y.V. Bhanu Narayan Rao, C.A.
राजस्व द्वारा/Revenue by::		Shri S. Mookambikeyan, SR-DR
सुनवाई की तारीख/Date of hearing:		13/11/2024
घोषणा की तारीख/Pronouncement:		02/12/2024

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

These two appeals are filed by the Revenue, feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 06.06.2023 for the AYs 2013-14 & 2014-15. These two appeals were earlier disposed of by this Tribunal vide common order dated 05.01.2024. Subsequently, pursuant to M.A.Nos.22 & 23/Hyd/2024, ITAT vide it's order

dated 29.08.2024 recalled its earlier orders. For the sake of convenience both these appeals were heard together and are decided by way of this consolidated order.

ITA No.374/Hyd/2023 for A.Y. 2013-14.

2. The brief facts related to this appeal are that the Tribunal had passed its order against the said appeal on 05.01.2024. After passing of the order, the revenue filed M.A. No.22/Hyd/2024 and the Tribunal vide its order dated 28.08.2024 recalled its earlier order to adjudicate the appeal on following ground:

“Whether CIT(A) erred in holding the capital gains as long term in nature when the flats were demarked for the assessee through agreement dated 26.06.2021 and sold during F.Y. 2012-13, 2013-14 and 2014-15, being less than 36 months of holding ?”

3. At the outset, the Learned Department Representative (“Ld. DR”) submitted that the assessee had purchased agricultural land of 1 acre 38 guntas in S.No.343/1, at Bidaraguppe Village, Anekal Taluk, Bangalore district on 19.05.2006(“impugned land”). The impugned land was converted for non-agriculture purpose vide BBMP order dated 01.02.2007

of Spl. Dy. Commissioner, Bangalore. Thereafter the assessee along with other owner of adjacent land entered into a JDA with M/s. Shriram Properties Ltd. ("M/s. SPL") on 21.08.2008 for construction of apartment buildings and residential villas on impugned land and adjacent land belonging to other owner, on total land measuring 21 acres and 1.5 guntas in Badaraguppe Village, Anekal Taluk, Bangalore district. Thereafter due to change in plan, the assessee and other co-owner entered into another JDA on 17.03.2011 with M/s. SPL wherein certain modified clauses were agreed amongst them. Subsequently, the assessee, other co-owner and M/s. SPL entered into an agreement dated 26.06.2012 stating that the assessee will receive 2.40% of revenue from sale of residential apartments by M/s. SPL in view of his share. The Ld. DR further submitted that as per agreement dated 26.06.2012, the flats were demarcated for the assessee for the first time, therefore the date of acquisition of the flats in the hands of the assessee will be 26.06.2012. Thereafter, the assessee sold out such flats in F.Y. 2012-13. Hence, the holdings period in the hands of the assessee were less than 36 months, therefore, the capital gains

arises in the hands of the assessee should be Short Term Capital Gains (“STCG”) and not Long Term Capital Gains (“LTTCG”).

4. Per contra, the Learned Authorised Representative (“Ld. AR”) submitted that, in the development agreement model agreed upon by the assessee, the assessee had to receive a share in the revenue as and when the flat / build up area is sold by the builder / developer. The consideration received by the assessee is in lieu of impugned land holding, which was purchased by the assessee way back on 19.05.2006. He further submitted that by agreement dated 17.03.2011 only permission was granted by the owner to the developer to enter upon the scheduled property to carry out development of the same in terms of the development agreement, which constitute only a license given to the developer within the meaning of section 52 of the Indian Easements Act, 1882 and shall not be construed as delivery of possession in part performance under section 53A of the Transfer of Property Act, 1882 or a transfer defined under section 2(47)(v) of the Income Tax Act, 1961 (“the Act”). The legal possession of the Schedule Property was continued to vest with the owners. Hence there was no transfer of property on the date of JDA i.e. 17.03.2011 and accordingly no capital gain arises to the assessee on

17.03.2011. The Ld. AR further submitted that the capital gains got attracted in the hands of the assessee only on receipt of the share of revenue by the assessee from the builder in terms of the development agreement. The share of Revenue has been received by the assessee in consideration of the impugned land. The assessee continue to be in the legal possession of the impugned land till the date of sale of flats to third party. Therefore, the same is to be construed as LTCG, as the land transferred in question has been held by the assessee from 19.05.2006 till the date of sale of flats, which is for a period of more than 36 months.

5. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. We noticed that the co-ordinate bench of the Tribunal in similar case of another co-owner of same JDA in the case of Vinod Narappa Reddy in ITA No.1853 to 1855/Bang/2018 dated 05.10.2020 has decided the realisation of capital gain as LTCG. Otherwise also in the case of another co-owner, the similar view was taken by Ld. CIT(A) in the case of Vishnu Swaroop Reddy, PAN No.ACWPN3597, who was assessable in Hyderabad. Against the said order of Ld. CIT(A), no appeal was preferred by

the revenue before the Tribunal. In our view, the Revenue is supposed to take coherent, consistent and uniform stand against all the assesses, who are similarly situated and whose rights are emanating from the very same agreement. The Revenue cannot take the contrary view, which has been taken in a group of assesseees to the determinant to the assessee before us. The law abhor uncertainty and selective approach against any individual. On this count also the appeal of Revenue is liable to be dismissed. In our considered opinion, once the co-ordinate bench in the case of connected assesseees, whose rights are emanated from the same JDA, has decided the issue in favour of the assessee, then the said principle laid down by the co-ordinate bench is required to be applied to all the assesseees unless there is a change in law or facts. The revenue in the instant case has failed to point out any change in law or facts in the case of assessee and therefore, we are left with no other option but to follow the decision of the co-ordinate bench of the Tribunal in the case of Vinod Narapa Reddy (supra). Therefore, we hold that the capital gains arises in the hands of the assessee as LTCG. Accordingly, the grounds of appeal of revenue are dismissed.

ITA No.375/Hyd/2023 for A.Y. 2014-15

6. The grounds of this appeal are identical to the facts and issues raised in ITA No.374/Hyd/2023 for A.Y. 2013-14. In view of our discussion as above, the decision taken in ITA No.374/Hyd/2023 shall apply mutatis mutandis to ITA No.375/Hyd/2023. Accordingly, this appeal of revenue is also dismissed.

7. To sum up, both the appeal of revenue are dismissed.

Order pronounced in the open Court on 2nd Dec., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 02.12.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. Shri G Vijayasimha Reddy, 501, Santaclara Apartments, 3rd Cross, 18th Main Road, Jayanagar, 4thT Block, Bangalore-560 041
2. ITO, Ward-1, Chittoor.
3. Pr.CIT, Tirupathi.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,