

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.369/Chny/2025  
निर्धारण वर्ष/Assessment Year: 2016-17

Parandhaman Bhakthavatsala Naidu, HUF, 147/326, Royapettah High Road, Luz Corner, Chennai-600 004.	v.	The ITO, Non-Corporate Ward-1(6), Chennai.
[PAN: AAEHP 9160 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms. B. Lily, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Keerthi Narayanan, JCIT
सुनवाईकीतारीख/Date of Hearing	:	23.04.2025
घोषणाकीतारीख /Date of Pronouncement	:	26.05.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee karta-HUF against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 25.01.2025 for the Assessment Year (hereinafter referred to as "AY") 2016-17.

2. The main grievance of the assessee-HUF is against the action of the Ld.CIT(A) confirming the action of the AO in computing the Long Term Capital Gains (LTCGs) of immovable property wherein the assessee has



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sold its undivided share (UDS) of 856 sq. ft. in Mylapore, Chennai, by virtue of it, assessee received Rs.1,05,00,000/- (AY 2010-11) out of the total land developed being 34,253 sq.ft. i.e. 2.49% of the total land which has been conveyed/transferred to the developer by Sale Agreement dated 06.11.2009 (AY 2010-11) and possession of the property passed on to the builder by registration of power of attorney in favour of T.V.Satia Narayana/Shri P.Kumar of M/s. Appaswamy Real Estates on 30.04.2010 i.e. AY 2011-12; and in the light of the aforesaid events, according to the assessee-HUF, the transfer of land in question happened as envisaged u/s.2(47)(v) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') r.w.s.53A of Transfer of Property Act, 1882 (hereinafter referred to as 'the TP Act') in AY 2011-12 and therefore, capital gains, if any, had risen during AY 2011-12 and not in the relevant AY 2016-17, wherein, the power of attorney holder for assessee had merely signed the document along with developer of the land as a consenting witness; and pursuant to such an event, the entire consideration of sale of the development of land had been passed on to the developer and not in the hands of the assessee. Therefore, according to the assessee, the action of the AO computing LTCG in the hands of assessee in AY 2016-17 is erroneous.

**3.** The brief facts brought to our notice in this issue is that the assessee is the karta of HUF and is a super-senior citizen who filed assessee's return pursuant to the notice issued u/s.148 of the Act by



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declaring income of Rs.3,23,660/- for AY 2016-17. On a query from the AO 'as to whether' the assessee has received capital gains for sale of immovable property, the assessee brought to his notice that the property in question had been sold as per the Sale Agreement dated 06.11.2009 for a consideration of Rs.1.05 Crs. and thereafter, assessee-HUF has executed/registered irreversible power of attorney in favour of it, Shri T. Sathia Narayana/Shri P. Kumar, which granted M/s.Appaswamy Developers, the possession of the land dated 30.04.2010. According to the assessee, the immovable property in question has been transferred to developer u/s.2(47)(v) of the Act r.w.s.53A of the TP Act and therefore, the capital gains, if any, arose in AY 2011-12 and asserted that no capital gains arose in AY 2016-17. But the AO didn't agree with the contention of the assessee and was of the view that the assessee along with four (4) other sellers had sold six (6) immovable properties for a total consideration of Rs.7,25,61,432/- in AY 2016-17 and taking note that the market value of the properties as per section 50C of the Act was Rs.7,97,43,250/-, he computed the total consideration in the hands of the assessee as per sec.50C of the Act as Rs.1,59,48,650/- [1/5<sup>th</sup> of the total consideration of Rs.7,97,43,250/-] and, *inter alia*, computed the LTCGs at Rs.41,69,758/- and passed assessment order on 26.03.2022 raising total income at Rs.44,93,418/-, since assessee didn't disclose the share of transfer in its Return of Income (RoI).



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**4.** Aggrieved by the action of the AO, the assessee preferred an appeal before the Ld.CIT(A), who was pleased to confirm the action of the AO only on the ground that the assessee failed to file written submissions or documentary evidence in support of its grounds of appeal challenging the capital gains addition. Further, according to the Ld.CIT(A), the assessee didn't submit any relevant documents during the course of assessment proceedings, and therefore, he confirmed the addition. Aggrieved, the assessee is before us.

**5.** We have heard both the parties and perused the material available on record. We note that the assessee owned 856 sq.ft. of land in Royapettah High Road, Mylapore, Chennai, which was transferred vide Agreement of Sale dated 06/11/2009 to M/s. Srinivasa Real Estates represented by Proprietor Mr. Ravi Appaswamy. The possession of the immovable property was given to the builder by registration of power of attorney in favour of Mr.T.V.Sathia Narayana/Mr.P.Kumar, of Appaswamy Real estate's on 30/04/2010 for a consideration of Rs.1,05,00,000/-, i.e. during the assessment year 2011-12. Details of transaction is captures in chart form, which are reproduced as under:-



Name and address	PAN	POA registered as Document Number	Extent of Land in square feet
S.Senthilkumar	ALGPS6106E	264/2010	31,517
Deepak V Mirpuri	AABPD8477H	2531/2015	870
Myself-Parandhaman	AAEHP9160N	361/2010	856
Vicky N Melwani and Anup N Melwani	AABPV0291P AACPM7921J	348/2010	1,010
<b>TOTAL</b>			<b>SFT 34,253</b>

6. As noted (supra), the builder, Shri Ravi Appasamy had aggregated lands from four (4) vendors (supra) and developed the property which was approximately 14 grounds i.e., 34,253 sq. ft.; and the share of the assessee's share of land is 856 sq ft and is a minor portion of the total land that the builder has aggregated. After aggregating the land, the builder has developed the property and named it "Luz Amore" which consisted of 32 premium 3BHK & 4BHK apartments. It was brought to our notice that the assessee didn't receive any other consideration apart from the above consideration of Rs.1.05 crores which was received during the financial years 2009-10 and 2010-11. In order to buttress the fact that the assessee didn't receive any sale consideration in AY 2016-17 and instead only the builder received the consideration, the Ld.AR drew our attention to the Tax deducted by the ultimate buyers of the apartments at **Luz Amore** which is seen to be in the name of Ravi Appasamy for whom the payments were made is evidenced by Form 26QB [which document is noted to have been submitted before both the Assessing officer and the Ld. CIT (A)]. And further, the assessee had also furnished the bank statements pertaining to Assessment year 2016-17 which clearly shows



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that no consideration passed on to the assessee on account of the sale of property as alleged by the AO. Even though, the aforesaid relevant facts were brought to the notice of the AO, still he held that the assessee along with four sellers had sold six immovable property for a consideration of Rs.7,25,61,432/- vide Reg. Deed and the market value being Rs.7,97,43,250/- added LTCG of Rs.41,69,758/- which decision has been confirmed by the Ld.CIT(A), which action we don't countenance because the Ld.CIT(A) has brushed aside the relevant evidences produced by the assessee to show that the property in question admeasuring 856 sq.ft. of land at Mylapore, Chennai, along with building was purchased by the assessee on 16.09.2005 and sold the same by Agreement of Sale dated 06.11.2009 and allowed the builder [Mr.T.V.Sathia Narayana/ Mr.P.Kumar, of Appaswamy Real estate] to take possession of the ibid immovable property shows that transfer/part performance of the contract as envisaged in section 53A of the TP Act r.w.s.2(47)(v) of the Act took place in the eyes of law. Thus, it is noted that incidence of LTCG arose in AY 2011-12 as per section 45 of the Act; and the consideration received from transfer, the assessee is noted to have invested in another property and the balance amount, assessee has offered for taxation as the capital gains. Even though, these relevant facts were brought to the notice of the AO/Ld.CIT(A), they have simply brushed aside the same; and merely because the builder/buyer of the land from the assessee after completing



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the project **Luz Amore** in AY 2016-17 had executed the sale of the UDS of '32' properties developed, named all the original land owners supra as vendors in the Sale Deed, even though no consideration had accrued/passed on to these vendors/assessee, but to Shri Ravi Appa Swamy [which fact is discernable from perusal of Form 26QB placed at Page No.72 of the Paper Book is self-explanatory which shows that the tax has been deducted by the ultimate buyers of the apartment at **Luz Amore** in the name of the Shri Ravi Appa Swamy in respect of the payments made to him]. This fact is also corroborated from the bank statement filed by the assessee which is found placed at Page No.55 of the Paper Book. Therefore, in the facts and circumstance of the case we find that the action of the AO/Ld.CIT(A) to be erroneous for making addition of the capital gains in the hands of the assessee to the tune of Rs.41,69,758/- when the fact remains that the capital gains ought to have been computed in the hands of the seller/builder to whom the payments have been made by the ultimate buyers as evident from Form 26QB for AY 2016-17.

**7.** Moreover, it has been brought to our notice that though similar notices had been issued in the case of other land owners/vendors who sold their immovable property to M/s.Appaswamy Real Estates as evident from the chart (supra) no capital gains is noted to have been added in their hands. In this regard, the assessee has kept a copy of the



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assessment order of Mr.Anup N. Melwani dated 30.03.2022 passed u/s.147/144 of the Act for AY 2016-17, a perusal of it, reveals that the AO notes that Shri Anup along with his brother [Mr.Vicky N. Melwani] had sold 1010 sq.ft. of land had also executed similar power of attorney in 2010 in the name of Srinivas Real Estates/Ravi Appaswamy for a total consideration of Rs.1.40 Crs. [i.e. Rs 70 lakhs each in both brothers hand]. And as done in the present-assessee's case, the power of attorney was also given to Mr.T.V.Sathia Narayana/Mr.P.Kumar, along with possession of the property. And the AO of Mr.Anup N. Melwani didn't make any addition of capital gains in their hands.

**8.** Likewise, in the case of Mr.Deepak V. Mirpuri who has sold 870 sq.ft. of land to the same parties wherein also the AO didn't draw any adverse inference against Mr.Deepak V. Mirpuri by assessment order dated 04.03.2022.

**9.** Thus, it was brought to our notice that assessee-HUF stands on the same pedestal as that of other owners/vendors whose lands were aggregated by M/s. Appaswamy Real estates in the year 2010 and sold in AY 2016-17 after developing it as **Luz More** ought not to have been taxed in the hands of the assessee.

**10.** In the light of the facts discussed supra and the contemporaneous facts brought to our notice, we are of the view that no capital gains would



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accrue in the hands of the assessee-HUF in the AY 2016-17 and therefore, the impugned addition need to be deleted, we order accordingly.

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

Order pronounced on the 26<sup>th</sup> day of May, 2025, in Chennai.

**Sd/-**

(एस. आर. रघुनाथा)

**(S.R.RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> May, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF