

ITA Nos.962 & 963/Bang/2025 K.S. Akhilesh Babu
ITA No.964/Bang/2025 K.A. Sujith Chandan
ITA No.965/Bang/2025 K.G. Subbarama Setty

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.962 & 963/Bang/2025
Assessment Years:2007-08 & 2021-22 respectively

K.S. Akhilesh Babu No.172, 4 th Floor, Komarla Nivas Kavi Lakshmisha Road Bangalore South Basavanagudi HO Bangalore 560 004 PAN NO :ACNPA3743K	Vs.	ACIT Circle 5(2)(1) Bangalore
APPELLANT		RESPONDENT

ITA Nos.964/Bang/2025
Assessment Years: 2007-08

K.A. Sujith Chandan No.172, Kavi Lakshmisha Road Bangalore South Basavanagudi HO Bangalore 560 004 PAN NO :AJGPS8502G	Vs.	ACIT Circle 5(2)(1) Bangalore
APPELLANT		RESPONDENT

ITA Nos.965/Bang/2025
Assessment Years: 2007-08

K.G. Subbarama Setty No.172, Kavi Lakshmisha Road Bangalore South Basavanagudi HO Bangalore 560 004 PAN NO :ACGPS0517G	Vs.	ACIT Circle 5(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Siddesh N Gaddi, A.R.
Respondent by	:	Sri Balusamy N, D.R.

Date of Hearing	:	04.09.2025
Date of Pronouncement	:	28.11.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of 3 different assesseees are directed against the orders of the ld. CIT(A)-11, Bangalore, dated 25.02.2025 vide DIN No.ITBA/APL/M/250/2024-25/1073691632(1) for the AY 2007-08, vide DIN No.ITBA/APL/M/250/2024-25/1073693303(1) for the AY 2021-22, vide DIN No.ITBA/APL/M/250/2024-25/1073691404(1) for the AY 2007-08and vide DIN No.ITBA/APL/M/250/2024-25/1073692275(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act"). Since the issues in all these four appeals is arising out of the common Joint development agreement, these are clubbed together, heard together and disposed of by this common order.

3. First, we take up the ITA No.963/Bang/2025 for the AY 2021-22, wherein the assessee has raised the following grounds of appeal:

1. The impugned order passed by the Learned Commissioner of Income Tax (Appeals) and Assessing Officer, to the extent prejudicial to the Appellant, is not justified in law and on the facts and circumstances of the case.
2. The Ld. CIT(A) has erred in law and on facts in upholding the impugned order of the Ld.AO to the extent he did.
3. The Ld.AO has erred in law and on facts in imputing notational rent in term of section 23(1)(c) of the Act.
4. The Ld.AO has erred in law and on facts in not appreciating the circumstances due to which the Appellant was unable to let out the subject properties.
5. The Ld. AO has erred in law and on facts in not considering the correct cost of acquisition/improvement in arriving at the capital gains, thereby erred in making an addition contrary to the provisions of section 48 read with section 45 of the Act.
6. The Ld.AO has erred in law and on facts in not allowing the benefit of costs while computing the capital gains.
7. The Ld.AO has erred in law and on facts in considering the value towards garden while arriving at sale consideration.
8. The Ld.AO has erred in law and on facts in not appreciating that the

Appellant could not have transferred garden and other common amenities and therefore, no value can be attributed to the same while arriving at the sale consideration.

9. The Ld.AO has erred in law and on facts in restricting the value of exemption under section 54 of the Act to the extent of Rs. 71 lakhs instead of Rs. 75 lakhs, as claimed by the Appellant.

10. The order has been passed on the basis of surmise and presumptions and therefore bad in law;

11. The Ld.AO has erred in imposing conditions that are not prevalent under the statute, and therefore the impugned additions and denial of exemptions are bad in law;

12. Consequent to the above, the Ld.AO has erred in law and on facts in levying interest under sections 234A, B and C of the Act;

13. Consequent to the above, the Ld.AO has erred in law and on facts in raising the demand by issuing of notice u/s 156 of the Act;

14. Consequent to the above, the Ld.AO has erred in law and on facts in initiating penalty proceedings;

(Total tax effect: Rs. 13,05,912/-)

On the basis of the above grounds and other grounds which may be urged at the time of hearing with the consent of the Honorable Tribunal, it is prayed that the

order passed under section 250 of the Act by the Commissioner of Income Tax (Appeal) by upholding holding additions u/s 143(3) of the Act, to the extent it is against the Appellant, be quashed and the relief sought to be granted.

3. Brief fact of the case are that the assessee Shri K.S. Akhilesh Babu is an individual whose main sources of income are from salary, house property and business income (remuneration and share of profit from partnership firms). For the AY 2021-22, the assessee filed his return of income on 15/03/2022 by declaring total income of Rs.5,07,94,880/-. The return of income was processed u/s. 143(1) of the Act on 28/03/2022. Subsequently, the rectification order u/s. 154 of the Act was passed and the same was processed on 18/08/2022 by determining the total income of Rs.5,07,94,880/-. A search u/s. 132 of the Act was conducted on 23/02/2022 in the case of Komrala and Nanda Group of Companies, in the course of which the residential premise of the assessee at 66/1(164), Pranav, South Cross Road, Basavangudi, Bengaluru-560004 was covered. Thereafter, the case was centralized with the Deputy Commissioner of Income Tax, Central Circle-1(4), Bengaluru vide order u/s. 127 of the Act dated 05/03/2022 of the Principal Commissioner of income Tax, Bengaluru-3, Bengaluru. Accordingly, notices u/s. 143(2) as well as 142(1) of the Act was issued on various dates calling for the details as per the said notices. The assessee submitted the details as called for.

3.1 During the course of search operations u/s.132 of the Act at the residence of the assessee, several documents among which the material related to a joint development agreement with the developer, namely M/s. Renaissance Holdings and Developers Pvt. Ltd. were seized. On perusal of the seized material, it was seen that the assessee along with six other parties, in the capacity of land owners enter into a joint development agreement with the developer on **01/03/2007** for a land measuring 13 Acres 24 Guntas situated in Basavanpura Village, Bengaluru. As per the terms of the JDA,

the landowners transferred 61.50% of their ownership in the land in lieu of 38.50% of the Super Built up Area in the form of villas. The assessee's share in the flats to be received as part of the JDA was **15%** of the Super Built up Area (SBA). The capital gain arising out of the JDA signed with the developer was assessed to tax in the hands of the assessee for AY 2007-08 vide assessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 10/02/2015. The AO by considering the 38.50% of the Super Built up Area (SBA) to be constructed by the developer at the rate of Rs.760 persq. ft as fixed by the Government of Karnataka as sale consideration received in exchange of 61.50% of undivided share of land with developer. Further, the cost of acquisition for 61.50% of undivided share of land was considered at Rs.1,67,28,000/- (2,72,00,000*61.5%). Considering the total area under JDA was 13 Acres 24 Guntas or 5,92,416 sq. ft, the cost of acquisition works out to **Rs.45.91 per Sq.ft.** The computation as adopted in the above-mentioned assessment order for the AY 2007-08 are given below for ease of reference and convenience-

Particulars	Amount (In Rs.)
Sale Consideration for 38.5% of Super Built up Area or 1,83,500 sq. ft whichever is higher at the rate of 760 per sq. ft	13,94,60,000.00
Less: COA for 61.5% of undivided share of land	1,67,28,000.00
Capital Gains	12,27,32,000.00
Share of assessee- 15%	1,84,09,800.00

3.2 After the completion of the JDA, the assessee was handed over his share of flat as per the terms of conditions set out. During the year under consideration i.e. AY 2021-22 the assessee sold 4 villas i.e. B-77, D-103, B-13 and Villa No.15 for a total consideration of Rs.8,96,22,061/- and declared capital gain on the same. On examination of the calculation of cost of acquisition

claimed by the assessee, the AO noticed that the assessee had taken different rates ranging from Rs. 45.85 to 49.74 as cost per sq.ft. for **undivided share of land** and a cost of Rs. 760 per sq.ft. for the total Super Built up Area. The claim of cost of Rs.760 per sq.ft. for SBA was the cost used to determine the sale consideration while computing the capital gains at the time of JDA and accordingly, the AO held this claim to be justified. However, with respect to cost per sq.ft. of undivided land, for determination of capital gains on JDA, the cost considered was Rs.1,67,28,000/- for an area of 3,64,335.84 sq. ft. (area given up by the landowner) and therefore in the opinion of AO the cost per sq.ft. is Rs.45.91 sq.ft. (Rs.1,67,28,000/364335.84 sq.ft.) and accordingly held that assessee's calculation of cost per sq.ft was erroneous. During the course of assessment proceedings, the assessee provided his submission on 27/12/2022, the gist of which is reproduced below:-

- The total cost at which and was transferred to the partners was Rs.2,72,00,000 out of which the builder's share was Rs.1,67,28,000(61.5%) and owner's share being Rs.1,04,72,000 (38.5%).
- There was exemption of Rs.2,50,000 towards STCG, hence the final value of land is Rs.2,69,50,000 (2,72,00,000 - 2,50,000) that is Rs. 20 lakhs/ acre
- Hence the value of land for landowners is Rs.1,02,22,000 (Rs.2,72,00,000 * 38.5% - 2,50,000). As per the sharing agreement, the landowners have got UDS (land area) of **1,09,924 sq.ft.** So final land cost per sq feet is **Rs.92.99** (Rs.1,02,22,000 divided by 109924 sq.ft.)
- The COA was erroneously calculated at from 45.85 to 49.74 as cost per sq ft while filing the ITR. The correct COA rate is Rs.92.99 per sq.ft. and this rate should be adopted for the

purpose of computing capital gains during this assessment proceedings.

3.3 The AO did not accept the contention of per unit cost of Rs.92.99 per sq.ft. because of the following reasons: -

- Firstly, regarding the methodology of arriving at the cost of acquisition of Rs.2,69,50,000/- cannot be accepted as the actual cost of acquisition of the land which formed part of the JDA was Rs.2,72,00,000/-. For the purpose of computation of COA, only the actual cost of purchase incurred towards acquisition of and along with the expenses on purchase such as stamp duty and registration are to be considered. Assessee's methodology of reducing the exemption of STCG of Rs.2,50,000/- is not provided for in the Act and is without any basis.
- On selling flats obtained through a JDA, the cost of acquisition will necessarily be the sale consideration which was offered at the time of offering the capital gains on JDA
- In the instant case, the rate considered for the purpose of calculating sale consideration was Rs.760 per sq.ft. for the total SBA to be received by the assessee as part of the JDA. Therefore, at the time of sale of flats, the cost of acquisition is to be considered by adopting Rs.760 per sq.ft. for the super built up area.
- In the instant case, **there is no dispute regarding** the cost of Rs.760 per sq.ft. which has been adopted by the assessee.
- In addition to the above, the assessee is also eligible to claim the cost of land for the undivided share of land. This rate will again be **restricted to the cost** which was

considered at the time of offering capital gains on JDA to tax. In the instant case, the cost which was allowed to be claimed by the assessee as per assessment order dated **10/02/2021** was Rs.1,67,28,000/- for an area of 3,64,336 sq. ft. thus cost per sq ft. being Rs.45.91 sq. ft.

The assessee is eligible to claim the per sq.ft. rate.

- However, the assessee has divided the cost already claimed during the AY 2007-08 by the undivided share of land in the flats sold as opposed to the total area of land given up in lieu of receiving the flats.
- This calculation is erroneous as cost can be claimed only to the extent of what was actually incurred by the assessee and what was actually claimed in at the time the JDA was offered to tax. The cost of Rs.1,67,28,000/- which the assessee is not disputing, is the proportionate cost of the land which was given up as a result of the JDA. Therefore, this **cost has to be divided by the proportionate area of the land given up by the assessee** and not by the undivided share in the constructed flats which has been adopted by the assessee.
- Further, the assessee himself adopted a lower rate of Rs.45.85 per sq.ft. in the return of income filed for the AY 2021-22.

In view of the aforementioned facts, the AO did not accept the claim of the assessee for considering the cost of acquisition @ Rs.92.99 per sq.ft. and the AO considered the same at Rs.45.91 sq.ft. for every sq.ft. of undivided share in the flats sold.

3.4 Further, it is seen from the calculations adopted by the assessee, the guidance value of the properties sold have not been

considered while determining the sale consideration as per the provisions contained in section 50C of the Act. The guidance value of the property was @ Rs.5,110/- per sq.ft. as seen from the SRO's registry for stamp duty value. The guidance value prescribed by the SRO from 1/04/2018 till 31/12/2018 WAS Rs.48,000/- per sq.mt. and thereafter the value prescribed is Rs.55,000/- per sq.mt. Converting the same to sq.ft., it comes to Rs.5,110/- per sq. ft.

3.5 Further, as regardsto the claim of exemption u/s. 54 of the Act, it was seen by the AO that the assessee had invested an amount of Rs.75,47,933/- in constructing residential house property at vacant site owned by the assessee and accordingly claimed exemption u/s. 54 of the Act. The assessee was required to provide proof of actually having incurred the construction expenses and in response to the same the assessee submitted invoices for expenses to the tune of Rs.71,67,207/- and accordingly the AO restricted the claim of exemption u/s. 54 of the Act amounting to Rs.71,67,207/- only. Considering all the above, the AO reworked out the taxable capital gain in the hands of the assessee for the AY 2021-22 as follows:-

Particulars	Amount (In Rs.)
Total Capital Gains Chargeable to tax in FY 20-21	6,14,36,386
Less: Exemption claimed u/s. 54 restricted to Rs.71,67,207/-	71,67,207
Less: Exemption claimed u/s. 54EC	50,00,000
Net Capital Gains on sale of villas for FY 20-21	4,92,69,179

As the assessee had declared a capital gains of Rs.4,74,72,475 in the ITR filed for AY 2021-22, therefore the additional capital gains

of Rs.17,96,704/- (Rs.4,92,69,179 – 4,74,72,475) was added back to the income of the assessee and brought to tax.

3.6 With regard to the Notional rent on residential property owned, it was seen that the assessee owned one building and four residential villas during the year. On perusal of ITR filed, the assessee had declared rental income only from one building and claimed two residential house properties as self-occupied. The gross annual value of the remaining house properties had not been brought to tax during the year. In response to show cause, the assessee in his reply submitted that apart from the properties already declared and properties which are considered as self-occupied, the assessee owns villas 78, 104 and 04. The assessee suo-moto provided the details of Municipal value and notional rent in respect of above mentioned three properties. The main contention of assessee is that he had entered into agreement of sale for the above two villas on 07/08/2021 and 12/04/2021 and therefore these villa could not be put up for rent and the same should not be considered for calculation of notional rent. The AO did not accept the contention of the assessee since, the assessee being the owner of the House property during the year, the annual value of the property must be determined and brought to tax during the year. Further, the AO observed that the purchaser only agreed to purchase the property and ownership had not been transferred yet as the sale deed was not executed during the year. In view of the same, the notional rent of two properties, that is D-104 and D-04 (D-78 considered as self-occupied) are brought to tax as follows: -

Particulars	Gross Annual Value	Less: Municipal Tax	Annual Value	30% Standard deduction	Income from HP
D-104	62,958	10,493	52,465	15,740	36,726
D-4	59,322	9,887	49,435	14,831	34,605
TOTAL					71,331

Thus, the AO completed the assessment proceedings on a total assessed income of Rs.5,26,62,915/- against the return income of Rs.5,07,94,880/- under section 143(3) of the Act vide order dated 30/12/2022.

4. Aggrieved by the assessment order passed u/s. 143(3) of the Act, dated 30/12/2022, the assessee preferred an appeal before the Id.CIT(A)-11, Bengaluru.

5. The Id.CIT(A) dismissed the appeal of the assessee by observing as follows: -

- I) With regard to rate per sq. ft towards the cost of acquisition of land, the Id.CIT(A) observed that the cost per sq.ft. amounting to Rs.45.91 is correct and the assessee contention that the STCG of Rs.2,50,000 should be excluded is also not correct as there is no such provision under the Act. The cost of acquisition as considered at the time of JDA is Rs.760/ sq.ft. for the SBA and there is no dispute about adopting this rate. The Id. CIT(A) held that the assessee is also eligible for cost of land for the undivided share of land but this has to be restricted to the cost adopted at the

time of offering the capital gain on the JDA to tax. As the assessment order for the AY 2007-08, the cost which was allowed to claim by the assessee was Rs.1,67,28,000/- for 3,64,336 sq.ft. of land which works out to be Rs.45.91/ sq.ft. The Id.CIT(A) was of the view that the calculation adopted by the assessee is erroneous as the cost can be claimed only to the extent of what was actually incurred by the assessee and what was actually claimed at the time of JDA and offered to tax. Hence, the calculation which the assessee is now contending to be adopted @ Rs.92.99/ sq.ft. is not correct. Further, the assessee also did not adopt the guidance value of Rs.5,110/ sq.ft. as evident from the SRO's registry for stamp duty valuation at time of computing the sale consideration and accordingly held that the same had been correctly adopted by the AO for computing the sale consideration. Further, the Id.CIT(A) did not accept the contention of the assessee of exclusion of the garden area of 906 sq.ft. of villa no.13 included by the AO to arrive at the sale consideration. Since at the time of JDA, the sale consideration was computed on SBA which includes all the common areas and accordingly held that the AO has correctly included the same in the sale consideration.

- II) With regard to claim of exemption u/s. 54 of the Act, as the assessee could provide evidences regarding cost of construction only to an extent of Rs.71,67,207/- during the course of assessment proceedings and even during the course of appellate proceedings, the assessee did not submit any further evidences and accordingly the

ld. CIT(A) upheld the action of AO by restricting the claim u/s. 54 of the Act to Rs.71,67,207/-.

III) With regard to determination of notional rent by the AO in respect of two villas, the ld.CIT(A) observed that the assessee had although entered into certain agreement for sale but no sale deeds were materialized during the year. The ld.CIT(A) by relying on the decision of the coordinate bench of ITAT held that taxing statutes are to be strictly construed and the notion of “intent to let out” or “proposed to be let” etc. cannot be imported into the provision which seeks to tax a notional sum. The ld.CIT(A) was also of the view that where the property was not let out at all during the entire previous year, no deduction for vacancy allowance is permissible.

6. Again aggrieved by the order of the ld.CIT(A)-11, Bebgaluru dated 25/02/2025, the assessee has filed the present appeal before this Tribunal. The assessee has filed written synopsis and case law compilation in support of his case.

7. Before us, the ld.A.R. of the assessee vehemently submitted that the ld.AO had taken the value of cost of acquisition @ 45.91 per sq.ft. instead @ 92.99 per sq.ft. has claimed by the assessee by ignoring the cost of acquisition of the area which cover roads, amenities amongst other miscellaneous lands which enables the habitability of the property. The assessee had correctly included the total cost of acquisition of land and distributed the same over the salable area/ built up area as per the agreements with the builders vide Joint Development Agreement. Further, with regard to adoption of guidance value over the actual sale consideration of

villa no.13, the ld.A.R. of the assessee vehemently submitted that as per the third proviso to section 50C of the Act the assessee is entitled to take actual sales consideration wherein the guidance value is within the range of 110% of the sales consideration of the property. The ld.AO had also erred in considering the value towards garden while arriving at sale consideration. Further with regard to difference in investment claimed and having proved with the documentary evidences, the ld. A.R. of the assessee submitted that in the construction & development business, there are certain expenses such as labour charges, petty materials, transportation, supervision exp and allied outlays which often do not carry formal bills or vouchers and hence the difference which was in the range of approx 5.50% should not be discarded. Lastly the ld.A.R. of the assessee with regard to addition of notional income with respect of two villas vehemently submitted that the assessee was unable to sell the properties solely due to the ongoing pandemic situation which severely degraded the assessee's ability to advertise and find customers. The assessee had in an effort to sell the properties also entered into sale agreements with the parties for both the properties which clearly demonstrate the earnest attempts made by the assessee to sell the properties involved. Further the ld. AR of the assessee also submitted that the assessee had also intention of letting out & earning the rental income but did not find any tenant due to the Covid pandemic and therefore the notional rent should be deleted.

8. The ld.D.R. on the other had supported the authorities of order below.

9. We have heard the rival submission perused the material available on record. First, we are adjudicating the matters relating to

capital gains on sale of 04 numbers of flats which resulted in the net addition of Rs.17,96,704/- being the difference of Rs.4,92,69,179/- and Rs. 4,74,72,475/- as calculated by the assessee. It is an undisputed fact that the assessee, along with the other five parties in the capacity of landowners had entered into a Joint Development Agreement on 01/03/2007 with the developer namely M/s. Renaissance Holdings and Developers Pvt Ltd. As per the terms of the JDA, the landowners transferred 61.5% of their ownership in the land in lieu of 38.5% of the super built up area in the form of villas and row house. The assessee's share in the flats to be received as part of the JDA is 15% of the SBA. During the year under consideration, the assessee sold villa no.B-77, D-103, B-13 and villa no.15 and declared capital gains amounting to Rs. 4,74,72,475/-. It is an undisputed fact that the total cost at which the land was transferred to all the partners was Rs.2,72,00,000/- out of which the owners share being Rs.1,04,72,000/- (38.5%). It is also an undisputed fact that the assessee share in the cost of acquisition in the owner's share is Rs.15,70,800/- (1,04,72,000 X 15/100). The only dispute is with regard to cost per sq.ft. towards the land to be adopted while arriving at the capital gain on the sale of the properties. The assessee himself adopted a rate of Rs. 45.85 per sq.ft. in the return of income filed for the AY 2021-22 however, during the course of assessment proceedings submitted that the correct rate of cost of acquisition towards the land is Rs.92.99 per sq.ft. (1,02,22,000 / 1,09,924 sq.ft.). The assessee claimed that as per the sharing agreement, the landowners had got undivided share of saleable area of 1,09,924 sq.ft. The AO, on the other hand taken the cost of acquisition @ Rs.45.91 per sq.ft (1,67,28,000/ 3,64,335.64). We are of the considered opinion that both the Authorities below failed to understand the real issue involved in considering the rate of cost of land to be applied for calculating the

capital gains. Both the Authorities below held that the cost can be claimed only to the extent of what was actually claimed in at the time the JDA was offered to Tax which in our opinion is completely incorrect. The proportionate cost of the land amounting to Rs. 1,67,28,000/- was already allowed as deduction while calculating capital gain for the AY 2007-08. What is relevant for the AY 2021-22 is the remaining proportionate cost of Rs. 1,04,72,000/- to be considered for deduction while calculating the capital gains. Since the actual cost of acquisition amounting to Rs.1,04,72,000/- (assessee's share 15% amounting to Rs.15,70,800/-) is not in dispute however, we feel that the exclusion of cost of acquisition of the area which covered roads, amenities, common areas amongst other miscellaneous lands which enables the habitability of the said property is not correct. When the sale consideration is determined on the basis of the saleable area/ built up area as per the agreements, we have to decide the proportionate cost of saleable area/ built up area only. The value of Rs.45.91 determined by the AO is on the basis of entire land of owner's area however, the sale consideration is decided only of 1,09,924 sq.ft. and therefore in our opinion, the cost of land per sq.ft. should be 95.26 per sq.ft. (1,04,72,000/1,09,924) which should be allowed while computing the capital gain. The methodology of reducing the exemption of STCG of Rs.2,50,000/- as calculated by the assessee is not correct as in our view it will not reduce the actual cost of the acquisition incurred for the property.

9.1 Further, with regard to adoption of the guidance value over the actual sale consideration in respect of villa no.13, the AO had taken the guidance value of Rs.2,32,54,118/- and disregarded the actual sale consideration of property amounting to Rs.2,18,29,631/- while calculating the capital gains. We are of the

considered opinion that as per the third proviso of section 50C of the Act, where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48 of the Act, be deemed to be the full value of consideration. In the present case, the sale consideration of villa no.13 was Rs.2,18,29,631/-. The 110% of the consideration received is Rs.2,40,12,594/- whereas the stamp duty value was only Rs.2,32,54,118/-and therefore we of the considered opinion that the actual sale consideration so received amounting to Rs.2,18,29,631/- shall be deemed to be the full value of the consideration for the purpose of section 48 of the Act. Accordingly we direct the AO to consider sale consideration of Rs.2,18,29,631/- instead of Rs.2,32,54,118/- as determined in respect of Villa No.13.

9.2 Now with regard to restriction of the claim of exemption under section 54 of the Act to Rs.71,67,207/- only instead of Rs.75,47,933/- as claimed by the assessee, the AO had discarded the balance amount of Rs.3,87,726/-since the assessee during the course of assessment proceedings had submitted the invoices for expenses to the tune of Rs.71,67,207/- only. The Id.CIT(A) also in the absence of bills and vouchers confirmed the disallowance of Rs.3,87,726/- as made by the AO. We are of the considered opinion that in case of construction and development ventures, it is not possible to maintain and preserve the bills/ invoices/ vouchers etc. for each and every component of expenditures such as labour expenses, transportation, petty materials, supervision and other miscellaneous expenditures. These type of expenses often do not carry formal bills and vouchers. Further, taking into consideration the assessee had produced almost 95% of bills and vouchers during

the course of the assessment proceedings, the exemption u/s 54 of the act should not be denied merely for non-production of bills & vouchers for approx. 5% of expenditure in the absence of any adverse material on record. As the assessee had already substantiated the major portion of the cost through verifiable evidence, the marginal balance should not be refuted from claiming full exemption u/s. 54 of the Act. Since these expenses are incurred as wholly and exclusively for the purpose of improving the property and therefore eligible to be considered for exemption u/s 54 of the Act.

9.3 Now with regard to AO's addition of notional income amounting to Rs.71,331/- as the annual rent of two villas kept for sale during the relevant FY, we take a note of the fact that assessee had entered into agreement of sale for the above two villas on 07/08/2021 and 12/04/2021 and therefore these villas could not be put up for rent. Further, before us the Id.A.R. of the assessee vehemently submitted that the assessee was unable either to let out or sale the properties solely due to the ongoing covid pandemic situation which severely degraded the assesses's ability to advertise and find customers. However, the AO on the ground that as per section 23 of the Act, as long as the assessee is owner of house, the annual value of the properties must be determined and brought to tax. It is an undisputed fact that the assessee wanted to sell these two villas and he had entered into an agreement for sale and for this reason he kept the property vacant. We are of the considered opinion that for the application of section 23(1)(c) of the Act, it is not at all relevant as to whether the property was let out in past or not. If the property is held by the owner for let it out and efforts were also made to let it out, then the properties were covered by provision of section 23(1)(c) of the Act. We are also of the

considered opinion that in case the property is vacant because of inability of the assessee to let out or sale due to the pandemic, then the notional rent should not be added as income of the assessee. In our opinion as the assessee clearly demonstrated that the same was kept for the sale and no one came forward to take on rent during the covid period due to the covid pandemic, the notional rent determined amounting to Rs.71,331/- is unwarranted and accordingly the same is deleted.

10. In the result appeal filed by the assessee is allowed.

11. Now, we take up the three appeals related to the Asst. year 2007-08 in which all three assessee being the partners of the erstwhile firm raised the sole issue that whether the capital gain accruing to the assessee on transfer of land under the joint development agreement is a long-term capital gain or a short-term capital gain.

12. In ITA No.962/Bang/2025 for the AY 2007-08, wherein the assessee has raised the following grounds of appeal:

1. The impugned order passed by the Learned Commissioner of Income Tax (Appeals) and Assessing Officer, to the extent prejudicial to the Appellant, is not justified in law and on the facts and circumstances of the case.
2. The Ld. CIT(A) has erred in law and on facts in upholding the impugned order of the Ld.AO to the extent he did.
3. The Ld. CIT (Appeals) and AO ought to have appreciated that the asset which was owned by the firm in which the Appellant is a partner, was a long-term capital asset and by virtue of transfer in the name of the partner, it does not lose the status of asset.
4. The Ld. CIT (Appeals) ought to have appreciated that if capital gain is computable and included, the cost of the asset should have been taken at the value at which it was determined while allocating to the Appellant on acquisition since the value at which the asset allocated to the Appellant had already suffered tax by way of deemed consideration in the hands of the firm while computing capital gain under Section 45(4) of the Act. Accordingly, the asset in the hands of the Appellant was a long-term capital asset and has to be taxed at 20%.
5. Without prejudice, the asset being a long-term capital asset, the value as on 01.04.1981 as inflated by Cost Inflation Index under Section 48(2) of the Act ought to have been considered by the learned CIT (Appeals).
6. The Ld. CIT (Appeals) further erred in taxing the capital gain on the asset at 30% as against 20% declared by the Appellant.

7. The Ld. CIT (Appeals) erred in not following the case law relied on by the Appellant.

8. The Ld. CIT (Appeals) has erred in confirming the levy of interest under Section 234A from 01.08.2007 while the due date for filing the return of the appellant was 30.11.2007, and further the CIT (Appeals) erred in not giving any finding in that regard.

9. The Ld. CIT (Appeals) has also grossly erred in not considering the provisions of sub-section (3) of Section 234B which is abundantly clear that on the reassessment the interest be charged from the date of the original order i.e., 143(1) and the learned CIT (Appeals) ought to have appreciated that in the absence of the order, the AO should have charged from the date of assessment order i.e., 31.03.2009.

10. For these and other grounds which could be taken up at the time of the hearing, the Appellant prays to allow the appeal by directing to charge at 20% on capital gains, deleting interest charged under Section 234A and to charge the interest under Section 234B from 01.04.2009, as per sub-section (3) of Section 234B of the Act.

(Total tax effect: Rs. 61,96,740/-)

13. In ITA No.964/Bang/2025 for the AY 2007-08, wherein the assessee has raised the following grounds of appeal:

1. The impugned order passed by the Learned Commissioner of Income Tax (Appeals) and Assessing Officer, to the extent prejudicial to the Appellant, is not justified in law and on the circumstances of the case.
2. The Ld. CIT(A) has erred in law and on facts in upholding the impugned order of the Ld.AO to the extent he did.
3. The Ld. CIT (Appeals) and AO ought to have appreciated that the asset which was owned by the firm in which the Appellant is a partner, was a long-term capital asset and by virtue of the transfer in the name of the partner, it does not lose the status of the asset.
4. The Ld. CIT (Appeals) ought to have appreciated that if capital gain is computable and included, the cost of the asset should have been taken at the value at which it was determined while allocating to the Appellant on acquisition since the value at which the asset allocated to the Appellant had already suffered tax by way of deemed consideration in the hands of the firm while computing capital gain under Section 45(4) of the Act. Accordingly, the asset in the hands of the Appellant was a long-term capital asset and had to be taxed at 20%.
5. Without prejudice, the asset being a long-term capital asset, the value as on 01.04.1981 as inflated by Cost Inflation Index under Section 48(2) of the Act, ought to have been considered by the learned CIT (Appeals).
6. The Ld. CIT (Appeals) further erred in taxing the capital gain on the asset at 30% as against 20% declared by the Appellant.

7. The Ld. CIT (Appeals) erred in not following the case law relied on by the Appellant.

8. The Ld. CIT (Appeals) has erred in confirming the levy of interest under Section 234A from 01.08.2007 while the due date for filing the return of the appellant was 30.11.2007, and further the CIT (Appeals) erred in not giving any finding in that regard.

9. The Ld. CIT (Appeals) has also grossly erred in not considering the provisions of sub-section (3) of Section 234B which is abundantly clear that on the reassessment the interest be charged from the date of the original order i.e., 143(1) and the learned CIT (Appeals) ought to have appreciated that in the absence of the order, the AO should have charged from the date of assessment order i.e., 31.03.2009.

10. For these and other grounds which could be taken up at the time of the hearing, the Appellant prays to allow the appeal by directing to charge at 20% on capital gains, deleting interest charged under Section 234A and to charge the interest under Section 234B from 01.04.2009, as per sub-section (3) of Section 234B of the Act.

(Total tax effect: Rs. 61,96,738/-)

14. In ITA No.965/Bang/2025 for the AY 2007-08, wherein the assessee has raised the following grounds of appeal:

1. The impugned order passed by the Learned Commissioner of Income Tax (Appeals) and Assessing Officer, to the extent prejudicial to the Appellant, is not justified in law and on the facts and circumstances of the case.
2. The Ld. CIT(A) has erred in law and on facts in upholding the impugned order of the Ld AO to the extent he did.
3. The Ld. CIT (Appeals) and AO ought to have appreciated that the asset, which was owned by the firm in which the Appellant is a partner, was a long-term capital asset and by virtue of the transfer in the name of the partner, it does not lose the status of asset.
4. The Ld. CIT (Appeals) ought to have appreciated that if capital gain is computable and included, the cost of the asset should have been taken at the value at which it was determined while allocating to the Appellant on acquisition since the value at which the asset allocated to the Appellant had already suffered tax by way of deemed consideration in the hands of the firm while computing capital gain under Section 45(4) of the Act. Accordingly, the asset in the hands of the Appellant was a long-term capital asset and has to be taxed at 20%.
5. Without prejudice, the asset being a long-term capital asset, the value as on 01.04.1981, as inflated by the Cost Inflation Index under Section 48(2) of the Act ought to have been considered by the learned CIT (Appeals).
6. The Ld. CIT (Appeals) further erred in taxing the capital gain on the asset at 30% as against 20% declared by the Appellant.

7. The Ld. CIT (Appeals) erred in not following the case law relied on by the Appellant.

8. The Ld. CIT (Appeals) has erred in confirming the levy of interest under Section 234A from 01.08.2007 while the due date for filing the return of the appellant was 30.11.2007, and further the CIT (Appeals) erred in not giving any finding in that regard.

9. The Ld. CIT (Appeals) has also grossly erred in not considering the provisions of sub-section (3) of Section 234B which is abundantly clear that on the reassessment the interest be charged from the date of the original order i.e., 143(1) and the learned CIT (Appeals) ought to have appreciated that in the absence of the order, the AO should have charged from the date of assessment order i.e., 31.03.2009.

10. For these and other grounds which could be taken up at the time of the hearing, the Appellant prays to allow the appeal by directing to charge at 20% on capital gains, deleting interest charged under Section 234A and to charge the interest under Section 234B from 01.04.2009, as per sub-section (3) of Section 234B of the Act.

(Total tax effect: Rs. 75,84,838/-)

15. In all these three appeals, the brief facts of the case are that the assessing officer passed an order u/s. 143(3) r.w.s 147 of the Act on 10/02/2015 for the AY 2007-08 by calculating the short term capital gains on transfer of land under the Joint development agreement dated 01/03/2007 as detailed below for ease of reference and convenience-

Particulars	Amount (In Rs.)
Sale Consideration for 38.5% of Super Built up Area or 1,83,500 sq. ft whichever is higher at the rate of 760 per sq. ft	13,94,60,000.00
Less: COA for 61.5% of undivided share of land	1,67,28,000.00
Capital Gains	12,27,32,000.00

Aggrieved by the order passed by the AO, the assessee filed an appeal before the Id. CIT(A)-5, Bengaluru. The Appellate order for the AY 2007-08 was disposed of on 19/09/2016. Aggrieved by the order of the Id. CIT(A)-5, Bengaluru, the assessee preferred an appeal to ITAT. The first Appellate Order was set aside by this tribunal vide order dated 28/08/2020 for determining the quantum of capital gains computed in the hands of the assessee. The limited purpose for which the appeal was set aside by this ITAT to the Id. CIT(A)-5, Bengaluru was that the Id. CIT(A) had not adjudicated Ground No.9 and also the ground no.10 related to the interest.

15.1 Thus, the sole ground to be adjudicated on merits in the set aside proceedings was whether and gain accruing to the assessee on transfer of land under the joint development agreement is a long-term capital gain or a short-term capital gain. A capital asset is long term capital asset if it is held by the assessee for more than 36 months. The assessee submitted that the land i.e. the matter of joint development, was originally acquired a decade ago by the partnership firm M/s. Komarla Hatcheries, in which the assessee is one of the partners. It was contended that under the partnership law, the firm by itself has no formal existence. Further, the assessee had submitted that, in case of gift or acquisition by will, the holding of the previous owner is considered and even in this case, the holding of the firm should be considered and taxed as LTCG. The period of holding is reckoned from the date of purchase

of property owner who actually acquired the property, in this case of assessee, it is a partnership firm.

15.2 On going through the assessment order, the Id.CIT(A) noticed that the property was originally held in the name of the firm M/s. Komarla Hatcheries in which the assessee is one of the partners. Due to dispute between the partners the land which was owned by the partnership firm was distributed among the partners in their own respective sharing ratios on court settlement. The firm paid the capital gains on the distribution of land to the partners at the notified value of the land. The Partners then entered into a JDA with the developers. The assessee has not disputed the year of the taxability of the capital gains arising on entering into JDA. However, the AO's action of treating the capital gain as short term capital gain @ 30% instead of long-term capital gain to be taxed @ 20% is the sole issue in the set aside appellate proceedings. The Id. CIT(A) held that the basic ingredients required for attracting section 45(4) of the Act are: -

1. There should be dissolution of the firm or otherwise and
2. Distribution of the assets.

In the opinion of the Id. CIT(A), as per the provisions of 45(4) of the Act, when the capital asset of the firm are distributed on dissolution or otherwise, the firm needs to pay capital gain tax. For the purpose of paying capital gain tax, the fair market value of the assets on the date of such distribution is deemed to be the full value of the consideration u/s. 48 of the Act. In the present case once the assets are distributed by the firm to the partners, the partners have entered into JDA as co-owners of the property in the same FY 2006-07 relevant to AY 2007-08.

15.3 On perusal of the relevant provisions of the Act and the written submission of the assessee, the Id.CIT(A) was of the opinion that assessee become the owner of the property once the asset was distributed by a court order and the assessee immediately entered into a JDA with the developer. Thus, the asset was held by the co-owners for a short period which is less than 36 months. Since, the asset was held with the co-owners for a short period, the AO had correctly computed the gain as short term capital gain which is confirmed by the Id.CIT(A). Accordingly Ground No.9 of the appeal was dismissed. Further, with regard to Ground No.10 related to chargeability of interest u/s. 234B of the Act, the Id.CIT(A) was of opinion that it is mandatory and consequential in nature and there is no need for any specific adjudication and accordingly dismissed the appeal of the assessee.

15.4 Aggrieved by the order of the Id.CIT(A), the assessee has filed present appeal before this Tribunal. The assessee has filed a paper book comprising 91 pages containing therein the copy of the court order along with the compromise petition as well as various case laws relied upon by the assessee.

16. Before us, the Id.A.R. of the assessee vehemently submitted that the partnership firm were consisting of family members of the assessee only and it is akin to the partition due to the family settlement and accordingly the cost as well as period of holding of the previous owner must be considered for calculating the capital gains.

17. The Id.D.R. on the other hand vehemently submitted that the property was originally held in the name of firm M/s. Komarla

Hatcheries in which the assessee is one of the partners. Due to dispute between the partners, the land which was owned by the partnership firm was distributed among the partners in their respective sharing ratios on court settlement. The decision relied upon by the council of the assessee are totally distinguishable from the fact of the present case and therefore the contention of the A.R. of the assessee is not acceptable. Further, the ld. D.R. heavily relied on the order ld. CIT(A).

18. We have heard the rival submission perusal the materials available on the record. It is an undisputed fact that the assessee was partner in the erstwhile firm M/s. Komarla Hatcheries, which originally owned the land and the partnership firm had transferred the said land to all its partners in their respective ratios and paid the capital gain tax in the AY 2007-08. The assessee entered into a JDA along with other five co-owners in the same AY i.e. AY 2007-08. The AO had taxed the capital gain arising on signing the JDA @ 30% as short term capital gain and not considered the same as long term capital gain which had to be taxed@ 20% since the asset was held for more than three years.

18.1 During the course of assessment proceeding, the assessee firstly submitted that there was no transfer in the relevant year and there was no reason to tax the capital gain as the land was continued to be agricultural land and it was not a capital asset with the meaning of section 2(14) of the Act. Before us, the AR of the assessee neither argued this ground taken before the AO nor produced any details & evidence to show that the land in question was agricultural land. Anyway when the land were transferred from the partnership Firm to its partners, the firm had paid the capital gain tax on the Long term capital gain & the assessee had never

objected the same. Further, it was also contended that even if the capital gain is computable, the same was nil in the case of the assessee since the land was acquired from the firm at the guideline value and even if the transfer is required to be considered at the same guideline value there was no profit required to be considered for taxation under the head capital gains under the Act. This contention of the assessee is not at all acceptable as the partnership firm & partners are two separate & distinct person in the eyes of the income tax. Section 2(31) of the Act define person to include an individual as well as a firm. Therefore, merely because the land was acquired from the firm at the guideline value & the transfer under the JDA is also required to be considered at the same guideline value that does not mean the capital gain accruing as a result of JDA will not be taxed. We are of the considered opinion that the same person entered a two separate transactions. Once he received the land of the firm as the partner & thereafter he again transfer the same land as co-owner. The assessee after receiving the land from the firm had transferred the same under JDA within a very short span of time. Therefore the AO had correctly calculated the capital gain as short term capital gain. We also do not agree with the contention of the AR of the assessee that the asset which was owned by the firm in which the assessee was partner was long-term capital asset and by virtue of transfer in the name of partners, it does not lose the status of the asset. As stated above the assessee had entered two separate transactions i.e. one as a receiver of the land on distribution of asset by the firm & another as a seller by entering into JDA with the developer. Lastly, the contention of the AR of the assessee that, even in case of succession, inheritance, gift or acquisition by will, the holding of the previous owner is considered and even in this case, the holding of the firm should be considered and has to be taxed as LTCG is

also not acceptable. It is neither a case of distribution of capital asset in the partition of HUF nor it is a case of transfer of capital asset under a gift, will or by succession, inheritance & therefore the question of the consideration of the period for which the asset was held by the previous owner does not arise.

18.2 Undisputedly, the property was originally held in the name of the firm M/s Komarla Hatcheries in which the assessee was one of the partners. Due to dispute between the partners, the land which was owned by the partnership firm was distributed among the partners in their respective sharing ratio by virtue of compromise petition filed before the Civil Court. The partnership firm had paid the capital gains on the distribution of land to the partners which is also not disputed. The Co-owners thereafter entered into a JDA & executed the power of attorney with the developer namely M/s Renaissance Holdings and Developers Pvt. Ltd. on 01/03/2007 in their individual capacity as co-owners & not in the capacity of Partnership firm. Further, on going through the compromise petition, we also take a note of the fact that all the co-owners will receive their share of sales consideration directly from the developer. Thus, once the assets have been distributed to the partners, the partners/co-owners had entered into the JDA in the same year i.e FY 2006-07 relevant for the Asst. year 2007-08. Thus we are of the considered opinion that since the asset was held by the co-owners for a short period i.e. less than 36 months, the AO had correctly computed the gain as short term capital gain. We also agree with the contention of the Id. DR that the decision relied upon by the council of the assessee are totally distinguishable from the fact of the present case and therefore the contention of the A.R. of the assessee is not acceptable. Accordingly we dismiss all these three appeals.

19. In the result all the three appeals in ITA Nos. 962, 964 & 965/Bang/2025 relating to the Assessment year 2007-08 are dismissed

Order pronounced in the open court on 28th Nov, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 28th Nov,2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.