

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

**ITA Nos.1301, 1307 to 1313(Bang) 2015
(Assessment years : 2011-12, 2008-09 to 2014-05)**

The Income Tax Officer,
Ward-52(3),
Bangalore

Appellant

Vs

M/s Karnataka State Co-operative Subhadramma
Housing Federation Ltd.,
No.3, Dewan Madhav Rao Road,
Bangalore-560 004

Pan No.AAAAt0299F

Respondent

**Revenue by : Dr.P.K.Srihari, Addl. CIT
Assessee by : Shri Guruswamy, ITP
Date of hearing : 13-07-2016
Date of pronouncement : 29-07-2016**

ORDER

PER BENCH:

All these appeals are filed by the revenue, out of which one appeal i.e. No.1301(B)/2015 is in the course of assessment proceedings for AY: 2011-12 and the remaining seven appeals are in course of proceedings u/s 201(1) & 201(1A) of the IT Act, 1961 for AY: 2008-09 to 2014-15. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First we take up appeal of the revenue in course of assessment proceedings for AY: 2011-12 in ITA No.1301(B)/2015.

3. The grounds raised by the revenue are as under;

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

2. On the facts and in the circumstances of the case the CIT(A) erred allowing deduction u/s 80P(2)(a)(i) of the IT Act, 1961.

3. On the facts and in the circumstances of the case, the CIT(A) erred in allowing deduction u/s 80P(2)(a)(i) when the case of the assessee gets covered under section 80P(4)?.

4. On these and any other grounds that may be urged at the time of hearing, the Hon'ble ITAT is pleased to quash the order of CIT(A).”.

4. The Id. DR of the revenue supported the assessment order. He also submitted that as per the assessment order, clear finding has been given by the AO that the assessee is a co-operative Society but not primary agricultural credit society or primary co-operative agricultural and rural development bank and therefore, the assessee is hit by Sub-sec.4 of Sec.80P of the IT Act and hence, the assessee is not eligible for deduction u/s 80P but in spite of this, Id. CIT(A) had allowed deduction u/s 80P on the basis of some judicial pronouncements but without giving a finding that the assessee is not hit by sub-sec.4 of Sec.80P and therefore, the order of Id. CIT(A) should be reversed and that of the AO should be restored.

5. The Id. AR of the assessee supported the order of the Id. CIT(A) .

6. We have considered the rival submissions. We find that a categorical finding has been given by the AO that the assessee is hit by sub-sec.4 of sec.80P of the IT Act and on this actual aspect, there is no finding by the Id. CIT(A) that the assessee is not hit by sub-sec.4 of sec.80P of the IT Act, 1961

and therefore, without a finding for dislodging the objection of the AO regarding the applicability of sub-sec.4 of sec.80P of the IT Act, 1961, the order of the ld. CIT(A) is not sustainable. However, in the facts of the present case, we feel it proper that this matter should go back to the file of the ld. CIT(A) for a fresh decision after giving a clear finding on the factual aspect as to whether sub-sec.4 of sec.80P is applicable to the assessee in the present case or not. Accordingly, we set aside the order of the ld. CIT(A) and restore the mater back to the file of the ld.CIT(A) for a fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides.

7. In the result, the appeal of the revenue is allowed for statistical purposes.

8. Now, we take up remaining seven appeals of the revenue which are arising in course of proceedings u/s 201(1) and 201(1A) of the IT Act, 1961 arising out of the combined order of the ld. CIT(A)-13, Bangalore dated 20-08-2015 for AY: 2008-09 to 2014-15 respectively.

9. In all these appeals, the issue involved is common and the grounds raised by the revenue are identical except the difference in amount and hence, we re-produce grounds raised by the revenue in AY: 2008-09, in ITA No.1307(B)/2015.

“1. The order of the CIT(A) is opposed to the facts and nature of the case on hand.

2. Whether the ld. CIT(A) was right in relying upon the judgment of the Hon’ble High Court of Karnataka in the case of CIT & ITO Ward-16(3) Vs Karnataka State Judicial

Department Employees House Building Co-operative Society Ltd., when the facts of the case are clearly distinguishable?

3. Whether the ld. CIT(A) was correct in holding that there was no element of contract even though the agreement of the assessee with the developer clearly states that is for procurement of project land and carrying on works such as

i) Conversion of land from agricultural to non-agricultural purposes

ii) Obtaining various approvals from concerned authorities,

iii) Forming of layout by carrying out civil works like drainage, electricity etc.,

4. Whether the ld., CIT(A) was right in holding that there was no element of handing over of possession of land even though the first condition on page-3 of the Tripartite agreement dated 31st October 2006 clearly stated that Sri Lakshman (Second party) and Sri C.S. Sambhaiah, Sri B.S.Shantha Kumar and Sri B.M.Shialingegowda (together known as third party) had put the Karnataka State Co-operative Housing Federation Lt.,(first party) in possession of the converted land measuring 26 acres 6 guntas as described in the schedule?

5. Whether the ld. CIT(A) was correct in ignoring the clause-5 of the Supplemental Agreement dated 12/03/2008 which clearly states that the release of payment to the developer is on completion of contract basis and which is subsequent to the tripartite agreement dated 31st October 2006 in which it is stated that the possession of converted lands was with Karnataka State Co-operative Housing Federation Limited?.

6. Without prejudice to the above grounds, it is prayed that even if it is held that there is no element of contract for procurement of land whether there is no element of contract for developmental works also, especially when the

supplemental agreement envisages the release of payment on a milestone basis which is typical of 'Contracts' ?.

10. The ld. DR of the revenue supported the order of AO passed by him u/s 201(1) & 201(1A) of the IT Act, 1961. As against this, ld AR of the assessee supported the order of the ld.CIT(A). He also submitted that this issue in the present case is squarely covered in favour of the assessee by the Tribunal order rendered in the case of DCIT Vs Accountant General Office Co-operative Society Ltd. in ITA No. 299 to 300/Bang/2005 and 768 to 771/Bang/2009 dated 28.08.2009 and also by the judgments of Hon'ble Karnataka High Court rendered in the case of CIT Vs M/s Karnataka State Judicial Department Employees House Building Co-operative Society in ITA No. 1260/2006 & 1275/20016 both dated 10.03.2010 wherein it was held by the Hon'ble Karnataka High Court that the assessee is only a purchaser and hence, even if any advance sale consideration is paid by the assessee, no TDS is required to be deducted. Now in the light of these judgments, we examine the facts of the present case. In the present case, as per agreement available in paper book, the first party i.e. the assessee society agreed to purchase 1500 intermittent sites of various dimensions in the proposed layout to be formed by second party i.e. Shri Lakshman at the rate of 305/- per sq.ft. and the first party has agreed to make an advance payment of Rs.2.00 Crores to the second party and further payment was to be made in installments. This is true that the land was not owned by the second party at the time of agreement and it was specified in the agreement that the second party was

required to acquire the required land and secure either the converted land and secure the approval of the competent authority for use of land for non-agricultural purposes and residential use and also to obtain approval for the layout plan from the competent sanctioning authority and the second party was also required to provide certain specified facilities and amenities in the layout such as wide asphalted roads, water and sanitary connections, electrification with overhead lines and transformers, adequate street lights, dedicated Telephone exchange, milk booths, KPTCL/BESCOM extension counter, Police outpost, Bus terminus, shopping arcades including vegetable market etc., along with overhead tank/sump tank connected to bore wells in order to provide adequate water supply and roadside tree plantation with tree guards etc. but this is also true that the agreement is for purchase and sale of land with specific facilities and it cannot be said that this is works contract. For example, if a person A agrees with different person say 'B' to sell and supply certain quantity of specific quality of material at a predetermined price, it cannot be said that such agreement is for carrying out a contract and not a contract of purchase and sale simply because the item to be supplied is to be conforming to certain specified quality and other conditions. Hence, in our considered opinion, in the present case, the agreement of the assessee with Shri Lakshman is for purchase of land with some specific facilities and it is not a contract requiring deduction of TDS u/s 194C of the IT Act, 1961. This view of us is in line with judgment of the Hon'ble Karnataka High Court on which reliance has been placed by the assessee and therefore, by respectfully following the judgment of the Hon'ble Karnataka High Court, we

decline to interfere with the order of the Id.CIT(A) on this issue in any of these years.

11. In the result, all these seven appeals of the revenue in course of proceedings u/s 201(1)(201(1A) of the IT Act are dismissed.

12. In the combined result, one appeal of the revenue in course of assessment proceedings is allowed for statistical purposes and all the remaining seven appeals of the revenue are dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

(ASHA VIJAYARAGHAVAN)
JUDICAL MEMBER

Bangalore:

D a t e d : 29-07-2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
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(A.K. GARODIA)
ACCOUNTANT MEMBER

By order,
AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....