

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

ITA No.23/Bang/2016
Assessment year : 2008-09

Shri M. Parameshwara Murthy, No.5, Ashirward, Dr. Shivaram Karanth Road, 18 th Main, Padmanabhanagara, Bengaluru – 560 061. PAN: AELPM 6407Q	Vs.	The Income Tax Officer, Ward 4(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Smt. Swapna Das, JCIT(DR)(ITAT-2), Bengaluru

Date of hearing	:	02.02.2017
Date of Pronouncement	:	22.02.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the
CIT(Appeals) *inter alia* on the following grounds:-

- “1. The Order of the learned Commissioner (Appeals) is grossly opposed to law and facts of the case.
2. The learned Commissioner has grossly erred in upholding the view of the assessing officer that there was a transfer within the meaning of Sec.2(47)(v) of the Act for the AY 2008-09 as the

transaction of the Joint Development Agreement was allegedly in the nature of an exchange, a view which runs counter to the definition of the word "exchange" in Sec.118 of the Transfer of Property Act which necessitates the existence of the two properties being exchanged.

3. Without prejudice, the reliance of the learned Commissioner on the decisions of the Hon'ble High Court of Karnataka in the case of Dr. T K Dayalu which had adverted to Hon'ble Bombay High Court in the case of Chaturbhuj Dwarakdas Kapadia (260 ITR 491) and other cases is misplaced as the facts of the case on hand were entirely different in so far as the consideration in this case was indefinite and not quantifiable in the foreseeable future.

4. The learned Commissioner has grossly erred in holding that the nature capital gain was short term when in reality the effective transfer was only during the FY 2009-10 relevant to the AY 2010-11 and has thereby denied the benefit of the exemption u/s 54F to which the appellant was otherwise entitled.

5. The learned Commissioner has erred in confirming the adoption of an arbitrary and highly unreasonable value by the assessing officer as the cost of construction in order to arrive at the consideration arising on account of the alleged transfer, when in reality the prevailing costs of construction at the impugned time were substantially lower.

6. The learned Commissioner ought to have appreciated that where the consideration was not quantifiable at the time of the alleged transfer, the machinery provisions would fail and thereby the charging section would also fail.

7. It should have been held that at the time of the alleged transfer, what could be taxed was only the real income and not income that was a mere estimation.

8. The appellant craves for leave to add to, to delete from and to amend the grounds of appeal.”

2. This appeal was listed for hearing on 02.02.2017, but none appeared on behalf of the assessee, despite service of the notice of hearing. Since the assessee did not appear, we have no option, but to hear the appeal *ex parte, qua* the assessee. Accordingly, the revenue was heard.

3. We have carefully examined the order of the CIT(Appeals) on the impugned grounds and we find that he has rightly adjudicated the issues in detail and we find no infirmity therein. Accordingly, we confirm the order of CIT(Appeals).

4. In the result, the appeal of assessee is dismissed.

Pronounced in the open court on this 22nd day of February, 2017.

Sd/-
(S. JAYARAMAN)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd February, 2017.
/ D S /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.