

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI R. C. SHARMA, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 2188/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO 17(2) (2) R. No. 134 AAYAKAR BHAVAN. M.K.RD. MUMBAI-400020	बनाम/ Vs.	KARWA DEVELOPERS R. NO. 452 AAYAKAR BHAVAN, M.K. MARG MUMBAI-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA AFK7619P		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Saurabh Rai
प्रत्यर्थी की ओर से/Respondent by	:	Shri Sanjiv M Shah

सुनवाई की तारीख / Date of Hearing	:	08/02/2017
घोषणा की तारीख / Date of Pronouncement	:	08/03/2017

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the revenue against the order of Commissioner of Income Tax (Appeals)-28, dated 02.01.2015 for AY 2010-11 on the grounds of appeal mentioned herein below:

“1. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in reducing the addition to the income of the assessee to Rs. 3 Crores as against Rs. 19,65,54,000/- without appreciating the fact that the A.O. has adopted fair market value of the sale of development right at Rs. 19,65,54,000/- as against Rs. 3 Cr., on the basis of value of development right reckoned by stamp valuation authority of Maharashtra Government.

2. The appellant prays that the order of the A.O. should be restored and order of the CIT(A) should be set aside

3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary”

2. Aggrieved by the order of AO, assessee filed appeal before CIT(A) and the CIT(A) after considering the case of both the parties partly allowed the appeal and deleted the additions.

3. Aggrieved by the order of CIT(A), the revenue has filed the present appeal before us on the grounds mentioned herein above.

Ground No. 1

4. The Sole ground raised by the revenue is with regard to undervaluation of the sale of development rights in respect of the Dadar land belonging to the assessee. Ld. DR appearing on behalf of the revenue submitted that the assessee had sold the development rights in respect of the Dadar land by executing the registered agreement dated 24.09.09. It was further submitted by Ld. DR that from the documents submitted by the assessee it transpired that the assessee firm has sold the development rights in respect of land which was occupied by the tenants.

In this respect the deed of confirmation has been registered along with the agreement of joint-venture cum development on 24.09.2009. It was further argued that the stamp duty was evaluated for the rights which are getting sold at Rs.19,65,540/- being 1% of the valuation of development rights which is evaluated at Rs.19,65,54,000/-. It was also argued by Ld. DR that the development rights is a very important and crucial right inherently attached to the land and if the land is existing on which the real estate can be developed, this development right is the whole right which predominantly results into the valuation of the land. It was also argued that if this land had been free and open land based on the fair market value of the price of the land, the development rights of the land would be worked multiple times more than the price at which the development rights has been evaluated by the Stamp Duty Authority. But considering that this land has certain occupants on the same, the Stamp Duty Authorities has valued the same at Rs.19,65,54,000/-. The ld. DR also relied upon the orders of the AO.

5. Before we decide the merits of the case it is necessary to evaluate the orders passed by CIT(A) on this issue. The ld. CIT(A) has decided this ground in para number 4.12 of its order. The operative portion of the orders of C.I.T(A) appeal is reproduced below: -

4.12. It is also relevant to note that the A.O has himself held that the assessee has sold 50% of the Development Rights and that the Stamp Valuation Authority has valued 50% of the Development Rights at Rs.

19,65,54,000/-. As a result, the AO has calculated the business income of the assessee by considering the Fair Market Value for sale of 50% Development Rights in the land at Dadar at Rs. 19,65,54,000/- and added the same to its income as business income. Without prejudice to my decision that the Stamp Duty Valuation cannot be adopted for working out the business income of the assessee on transfer of the development rights in the land and that the business income assessable on this count would be Rs. 3 crores, I find that the Stamp Duty Authority has valued the entire property of 4637.18 sq. metres at Rs. 19,65,54,000/- for stamp Duty purposes and not 50% of the property. Hence, by the AO's own findings, the business income could have at best been calculated at 50% of Rs. 19,65,54,000/-, i.e., at Rs. 9,82,77,000/- and not at Rs. 19,65,54,000/-. However, this observation is only academic since it has already been held by me that the receipt on account of Development Rights from KKRPL is assessable at Rs. 3 crores as business income in the hands of the assessee. Further, no evidence has been brought on record by the A.O. that the assessee has received or would receive any amount in excess of Rs. 3 crores on account of the development rights from KKRPL. Hence, no amount other than the amount of Rs. 3 crores can be considered as the consideration received by the assessee from KKRPL in respect of the development rights. It is also held that no deduction of expenses incurred towards development of the Dadar land will be allowed to the assessee against the business income of Rs. 3 crores. In view of the aforesaid reasons, addition to the extent of Rs. 3 crores is confirmed. The balance addition shall stand deleted. The ground of appeal is partly allowed.

We have gone through and analysed the orders passed by CIT(A) and we have also heard the counsels for both the parties at length. We are of the considered view that the basic issue for decision before us is as to whether the assessee has sold any part of the land or any right in the land held by it as its stock-in-trade to M/s. Keval Kiran Realtors and infrastructure private limited (KKRPL). If yes, then it is to be determined as to which year is to be considered as a year of sale and on which year the income of the sale would accrue to the assessee. We have noticed that the Ld. CIT(A) while passing the impugned order has carefully examined the joint-venture cum development agreement entered into between KKRPL and the assessee. As per the facts of the present case Rs.03 crores was to be paid by KKRPL towards development rights in the land and only then it will become part of the development. We have further noticed that KKRPL has also mentioned this amount in its account and since the land was being treated by the assessee as stock-in-trade. Therefore, Rs 3 crores are rightly assessed as business income in the hands of the assessee. the Ld. CIT(A) has further noted that out of this amount of Rs. 3 crores, Rs. 1.5 crores have already been paid while the remaining Rs. 1.5 crore is to be paid on or before the sanction of the plan for the development of the said property. The Ld. CIT(A) has also considered the factual position that as per the terms and condition of the agreement there is no clause that Rs. 1.5 crores will not be paid if the commencement certificate is not received.

Therefore, in these circumstances, the Ld. CIT(A) has rightly held that the amount of Rs. 3 crores was agreed to be paid only to become part of the joint-venture and in this way KKRPL gets the right to become part of the joint-venture. In these circumstances it was also rightly appreciated by the CIT(A) that once the joint venture has been formed, it cannot be argued that the amount would not be payable if the commencement certificate is not received or that the development of the project does not take off. We have further noticed that after appreciating the decided cases on identical issue, the Ld. CIT(A) has rightly concluded and upheld that an amount of Rs. 3 crores would be assessable in the hands of assessee as its business income in assessment year 2010 – 11. The Ld CIT(A) has also given well-reasoned finding in para number 4.8 to 4.12 of its order that when once the income of Rs. 3 crores have already been considered as business income. Therefore, the provisions of section 50C of the income tax act 1961 are not attracted in the present case.

No new material or contrary case laws have been placed before us in order to controvert or rebut the lawful and judicious findings recorded by CIT(A). Therefore, we see no reasons to interfere or divert from the findings so recorded by CIT(A). Hence, in these circumstances, we find no merits in the arguments raised by Ld. DR. Therefore, we dismiss this ground raised by the revenue and confirmed the findings recorded by CIT(A).

Ground No. 2 & 3

6. These grounds raised by the revenue are general in nature and needs no specific adjudication.

In the net result, the appeal filed by the revenue is **dismissed**.

Order pronounced in the open court on 8th March, 2017

Sd/-

(R. C. Sharma)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 08 .03.2017

PS Ganesh Kumar

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

