

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

**BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.246 to 259/Bang/2017
(Asst. Year – 2008-09 & 2014-15)

The Income-tax Officer,
TDS Ward-2(1),
Bangalore.

. Appellant

Vs.

M/s Karnataka Legislature Secretariat
Employees Housing Co-operative Society Ltd.,
Room No.216/A, 2nd Floor, Vidhana Soudha,
Ambedkar Veedhi,
Bengaluru.

. Respondent

Appellant by : Shri L.V Bhaskar Reddy, Addl. CIT
Respondent by : Shri G Venktesh, Advocate

Date of Hearing : 06-10-2017
Date of Pronouncement : 11-10-2017

ORDER

PER BENCH :

These are a bunch of fourteen appeals by the Revenue, directed against the order Commissioner of Income-tax (Appeals) – 13, Bangalore dated 28/11/2016 for the assessment years 2008-09 to 2014-15. Since common issues are involved, these appeals were

heard together and are being disposed off together by way of this order.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee is a co-operative society engaged in the activity of identifying suitable lands and forming a residential layout for allotment of residential sites to its members and associated members. The Assessing Officer ('AO') called for information u/s 133(6) of the Income-tax Act, 1961 (in short 'the Act') pertaining to the details of payments made to developers/contractors and tax deducted thereon. From the details filed, the AO noticed that the assessee had entered into certain agreements and MOU's, with the developer/contractor M/s Jaya Surya Developers, Dominion Reality Pvt. Ltd., and Nandi Buildings India Pvt. Ltd., for carrying out the above activities and had failed to deduct tax at source on payments made to these parties with whom it had entered into agreements for the acquisition of land and formation of residential layout for the benefit of its members (requiring the carrying out of civil work such as laying of roads, drainage, electrification, etc.); which were in the nature of composite work contracts. The AO, inter alia, noticed that the aforesaid layout is to be developed as per the assessee's specifications and the words procurement of land meant that the developer does not own any land as on the date of agreement. In that view of the matter, the AO held that the aforesaid work, carried out by the developer/contractor on behalf of the assessee, is the nature of works contract and therefore the provisions of Sec. 194C of the Act was attracted. Since the

assessee has failed to deduct tax at source on payments its made to developers/contractors as required u/s 194C of the Act; AO held the assessee to be an assessee in default u/s 201(1) of the Act and also to be charged the consequential interest u/s 201(1A) of the Act. The explanations put forth by the assessee did not find favour with the AO and he passed separate orders u/s 201(1) and 201(1A) of the Act for asst. years 2008-09 to 2014-15 all dated 28/2/2014 holding the assessee to be an assessee in default for failure to deduct tax at source on payments made by it to developers/contractors as required u/s 194C of the Act as it was in the nature of works contract.

2.2 Aggrieved by the orders u/s 201(1) and 201(1A) of the Act dated 28/2/2014 for asst. year 2008-09 to 2014-15, the assessee preferred appeals before the CIT(A)-13, Bangalore. The ld CIT(A) allowed the aforesaid appeals filed by the assessee for asst. years 2008-09 to 2014-15 vide a common order dated 28/11/2016 holding that the assessee was not liable to deduct tax at source on the payments it made to developers/contracts as the provisions of sec. 194C of the Act were not attracted in the case on hand..

3.1 Revenue, being aggrieved by the orders of the CIT(A)-13, Bangalore dated 28/11/2016 for asst. years 2008-09 to 2014-15, has filed these appeals before the Tribunal raising the following common grounds for the aforesaid asst. years.

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

2. *The Id. CIT (A) erred in holding that the assessee was not required to deduct tax at source u/s. 194C from the payments made to developer.*

3 *The Ld. CIT(A) erred in deleting the demand u/s. 201(1) and 201(1A).*

4. *The Id. CIT (A) ought to have considered the fact that as per the assessee's agreement with the developer the works to be carried out like for procuring of land, developing, conversion, plan for approval, drainage, laying roads etc. clearly attracted provisions of Section 194C.*

5. *The Id. CIT (A) ought to have considered the fact that the agreement entered into by the assessee with the developer are in the nature of composite contracts for works for which provisions of Section 194C is clearly applicable.*

6. *The Ld. CIT(A) erred in relying on the decision of the jurisdictional High Court in the case of M/s. Karnataka State Judicial Department Employees House Building Co-Operative Societies in ITA No. 1275 of 2006 and the TAT's order in the case of M/s. Kautilya House Building Co-Operative Society Limited in ITA No. 1324 to 1337/Bang/2015 dated 7.4.2016 while allowing the assessee's appeal which have been accepted by the Department only for low tax effect and not in principle.*

7. The appeals have been filed for all the assessment years including the assessment years where the tax effect is below the prescribed minimum since a composite order has been passed by the CIT(A) and therefore para 5 of the CBDT's Circular No. 21 of 2015 dated 10.12.2015 is applicable in this case.

For these and other grounds that may be raised during the course of appeal and actual hearing it is prayed that the order passed by the AO u/s. 201(1) and 201(1A) be upheld and the order of the learned Commissioner of Income Tax (Appeals) may be set aside and cancelled.”

3.2 The grounds raised (Supra) relates to the single issue pertaining to the deletion of the demands raised u/s 201(1) and 201(1A) of the Act by the Id CIT(A) by following the decision of the co-ordinate bench of this Tribunal in the case of Kautilya House Building Co-operative Society in ITA No.1334 to 1337/Bang/2015 dated 7/4/2016, which had in turn followed the decision of the Hon'ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra).

3.3 The Id DR for Revenue was heard in support of the grounds raised (Supra). It is the contention of Revenue that the activity mentioned in the agreements entered into by the assessee with developers/contractors clearly indicate that they are composite

contracts for acquiring land, forming residential layouts thereon with attendant civil works and therefore, since it amounts to a composite works contract the provisions of section 194C of the Act was applicable. According to the Id DR, the judgment of the Hon'ble Karnataka High Court relied on by the Id CIT(A) (Supra) is distinguishable as in that case, the contract for purchase of sites was not a composite contract. It is further submitted that the two decisions of the Tribunal relied upon by the Id CIT(A) have not been accepted by the Department and the same are being contested in further appeal by Revenue.

3.4 Per contra, the Id AR of the assessee supported the impugned orders of the Id CIT(A), and submitted that there is no error therein as the issue in dispute is covered by the orders of the co-ordinate benches of this tribunal which were relied on by the assessee i.e (i) Kautilya House Building Co-operative Society Ltd. (Supra); (ii) Railway House Building Co-operative Society Ltd., in ITA Nos.1339, 1340 & 1344/Bang/2015 and 1343/Bang/2016 and (iii) Telecom Employees Co-operative Housing Society Ltd., in ITA Nos:2274 to 2280/Bang/2016. It was prayed that in the light of the above judicial precedents and facts of the case, the impugned order of the Id CIT(A) be upheld.

3.5.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. On an appraisal of the material before us, we find that there is nothing therein that shows that the assessee is liable

to deduct tax at source on payments made to the developers in the years under appeal.

3.5.2 Now coming to the merits of the issue in dispute, it is seen that the assessee society has entered into various agreements/MOU's with various developers/contractors on various dates as per the details extracted hereunder:-

S.No	Name of the developer/contractor	Date of agreement/MOU
1	M/s Jayasurya Developers No.17, Shanthi Nivas, 2 nd Main, 3 rd Cross, KHM Block, Ganaganagar, Bangalore - 560 032	05/06/2004, 20/06/2005, 15/10/2008, 01/01/2012 and 27/02/2013,
2	M/s Dominions Realty Private Limited, #4A, Rich Home, 5/1, Richmond Road, Bengaluru - 560 025	07/10/2013
3	M/s Nandi Builders India Private Limited, No.308, 3 rd Floor, Raheja Chambers, Museum Road, Bangalore - 560 001	16/06/2011.

3.5.3 From the aforesaid agreements/MOU's it is seen that the assessee society has entrusted the procurement of land and development of residential layout thereon with the conditions to execute civil works such as road cutting, drainage, electrification, plan approval, conversion of lands from agriculture to non-agriculture status, etc., to the developer. However, the fact remains that the agreements essentially and basically relate to the purchase of land development and purchase of residential sites from the developer/contractors. The relevant portion of the agreement of the assessee society with M/s Jayasurya Developers Pvt. Ltd., i.e; developmental contractor is as under:-

“1. Whereas the First Party, intending to form a residential layout in and around Banglore to cater

the need of its Members, was on the look out for a suitable land developers who could offer the lands in and around Bangalore City and form the residential layout according to its specifications and after obtaining approvals from the competent authorities.

2. Whereas the Second Party who is the developers of Agricultural lands signified it's intention to form a residential layout to the First Party in the land situated at survey no.4 and 8 of Gasthi Kempanahalli, Yalahanka Hobli, Bangalore North Taluk morefully described in the schedule hereunder and hereinafter called as "Schedule lands", to which the Second Party is the agreement holder and authorized person to form the residential layout in the Schedule property which comes under the jurisdiction of Yelahanka CMC.

3. Whereas the second party who is the agreement holder of the schedule lands offered to form the residential layout in the schedule lands to the First Party after obtaining the requisite approvals from various authorities for it and after completing all the requisite infrastructure works, such as roads with asphalt, electric lines, drainage, water lines, sewerage connection in accordance with the BDA

norms before the sites could be utilized for allotment to the members of First Party.

4. The First Party accepting the offer made by the second party agreed to buy the developed sites with all the facilities cited above to be formed in the Schedule lands from the Second Party subject to the following terms and conditions accordingly entered into this Agreement witenessing as follows:

(a) The parties hereby agree that the Second Party shall purchase and register the schedule property in its name in phased manner out of the payment made by the First Party as advance and then the Second Party shall deposit original title deeds with the First party towards security for the payment made by the First Party to the second party for successful completion of the project in accordance with the recitals of this agreement.

(b) The parties hereby agree that after getting the lands registered in favour of second party, the second party shall arrange to get the schedule lands fit for the use of residential purpose by paying the Betterment charges payable to the CMC,

Yelahanka or other competent authorities , as the case may be.

(c) The parties hereby agree that the second party after getting the land to the residential use, prepare the layout plan as per the specification of the First Party and after obtaining its consent for the plan, obtain necessary approval from the CMC, Yelahanka for the said layout plan and also for formation of the layout as per the specification of the CMC Yelahanka and the rules in force meeting all the expenditure including the payment of fees, Betterment charges, cess etc. required to be made for that purpose out of the agreed amount paid by the First Party under the terms of this agreement.

(d) The parties hereby agree that the Second Party shall obtain all requisite sanctions and approvals for the said layout from the competent authorities such as the CMC, Yelahanka KPTCL, BWSSB and other competent authorities in favour of the First Party by paying all the fee, cess, deposits by itself out of the agreed amount.

(e) The Second Party shall form the residential lay-out after paying the Betterment cha-ges to C.M.O Yelahanka and develop the layout on par with the BDA layout by providing all facilities as provided by BDA in its layout.

(f) The parties hereby agree that after complying with all the above requirements and completing the said works, the Second Party shall take up the developmental works of the layout including the following items of work as per the specification given by the First Party:

(1) Formation of Roads including asphaltting as per the approved plan with water bound finishing and macadam roads.

(2) Formation of Main Road, of 40' wide and all connecting cross roads of 30' wide and formation of an outer ring road connecting all the roads of the layout.

(3) Box Type drainage including Storm Water Drain with cover and concrete Culverts with 'L' shaped cement slabs at the cross and main roads.

(4) Provisions for water supply including sinking of necessary number of Borewells to ensure the satisfactory supply of the requisite requirement of water and laying of all distribution lines with C.I. pipes and control valves with covers along the Main and Cross Roads in the layout as per the plan.

(5) Under-ground Drainage facility with requisite number of manholes and septic tanks for disposal of sewage as per the BWSSB norms.

(6) Electricity Works including erection of cement poles, fixing of street lights on roads and installation of transformers as per the KPTCL norms.

(7) Construction of Overhead Tank and sump requisite capacity to fulfill the requirement of water for the layout.

(8) Demarcation of sites as per the specifications of the First party and as per the approved plan and putting the site nos. in each site.

(9) Installation of layout key plan board and direction boards indicating the Cross Roads

and Main Roads along with the site numbers coming in the respective roads as per the approved plan.

(10) Planting of Road - side trees.

(11) Putting the society's name board in the layout

(12) Fencing the park and CA sites.

13) Release of sites form the competent authorities, if necessary.

(14) Formation of road from the Main Road (Jakkur to Yelahanka Road) to the schedule property in accordance with the Government Order No. LND (NA) CR 196-97 dated 22-6-96 under section 71 K.L.R issued to land owners by the Special Deputy Commissioner (Revenue), Bangalore District passing through the BWSSB water treatment plant and connecting into the layout.”

3.5.4 As observed by the AO, the agreement/MOU's entered into by the assessee society with the other developers/contractors also contain clauses similar to the above. On appeal, the Id CIT(A) on perusal of the aforesaid clauses of the agreements has arrived at the conclusion that the payments for the purchase of the sites was calculated on sq. ft.

area of the property and the amount was paid for the purchases of completed property and not for development work carried out. The Id CIT(A) found that the agreements were only for purchase of sites and does not involve any 'works contract'. In our view, the aforesaid conclusion/finding of the Id CIT(A) cannot be faulted and the same is a correct reading of the scope of the agreements; which has to be treated as a whole and not in piece meal manner. The mere fact that the contractors/developers were required to lay'out roads and undertake other activities before the delivery of the completed sites cannot be either determinative of the facts or need to mean that the agreements entered into by the assessee society is a composite contract and amounts to a works contract. Thus, in our considered opinion, the case of the assessee is squarely covered by the decisions of the Hon'ble Karnataka High Court in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra); the relevant portion of which judgment is extracted hereunder:-

“the short that fell for the consideration for the Assessing Officer, the Commissioner of Income-tax and the Tribunal was whether if the assessee has agreed to purchase the sites from a vendor if any sale consideration is paid on instalment basis, the assessee is required to deduct the tax at source or not. When the assessee is only a purchaser, if any advance sale consideration is paid, the assessee has no business to

deduct the tax at source as it is for the seller of the sites to pay the capital gains depending upon the tax payable by him.”

3.5.5 In the aforesaid case decided by the Hon’ble Karnataka High Court (Supra), the co-ordinate bench of this Tribunal had rendered the following finding:-

“....the agreement between Sh. Lakshman, and Karnataka State Judicial Department Employees House Building Co-operative Society begins to operate only after the layout is formed and so can never be construed as an agreement in the nature of works contract. A contractor is one who I undertakes to do a particular work-for a price. No such contract is envisaged in this agreement. This agreement envisages purchase of specified intermediate sites at a price after Sri Lakshman completes the job of formation of a layout either in full or in part. We accordingly hold that the assessee was not required to deduct tax in this regard.”

3.5.6 We find that Revenue’s contention that the aforesaid judgment of the Hon’ble Karnataka High Court in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra) is distinguishable from the case on hand has also been

considered on similar fact situation, by co-ordinate benches of this Tribunal in the case of Karnataka State Co-operative Subhadranna Housing Federation Ltd. (ITA Nos.1301, 1307 to 1313/Bang/2015), Railway House Building Co-operative Society (ITA Nos.1139, 1140 & 1344/Bang/2015 & 1343/Bang/2014), in the case of Kautilya House Building Co-operative Society Ltd., (ITA Nos. 1324 to 1337/Bang/2015 dated 7/4/2016 and in the case of Telecom Employees Co-operative Society Ltd., in ITA Nos.2274 to 2280/Bang/2016 dated 12/7/2017. The Id CIT(A) has observed that in these cases (Supra) also, the contents of the agreements were similar to those of the assessee in the case on hand and the co-ordinate benches of this Tribunal after examining the same has applied the ratio of the judgment of the Hon'ble Karnataka High Court in the case of Karnataka State Judicial Department Employees House Building Co-operative Society Ltd., (Supra) and have held that there was no requirement for deduction of tax at source u/s 194C of the Act. Respectfully following the ratio of the decision of the Hon'ble Karnataka High Court in the case of Karnataka State Judicial Departmental Employees House Building Society Ltd., (Supra) and of the co-ordinate benches of this Tribunal in the cases of Karnataka State co-operative Subhadranna Housing Federation Ltd., (Supra), Railway House Building Co-operative Society Ltd, (Supra), Kautilya House Building Co-operative Society Ltd., (Supra) and in the case of Telecom Employees Co-operative Society Ltd., (Supra) we find no reason to interfere with or deviate from the view taken in these

decisions which have been rendered on similar facts and issues as in the case on hand. We, therefore, uphold the impugned orders of the ld CIT(A) deleting the demands raised by the AO u/s 201(1) and 201(1A) of the Act. Consequently, the grounds raised by the Revenue (Supra), being devoid of merits, are dismissed.

4. In the result, Revenue's appeals for asst. years 2008-09 to 2014-15 are dismissed.

Order pronounced in the open court on **11th October, 2017.**

Sd/-
(N.V VASUDEVAN)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 11/10/2017
Vms

Copy to : 1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.