

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1374/Bang/2018
Assessment Year: 2014-15

Jaya Prakash No.26, Narayanaghatta Village Sarjapura Hobli Anekal Bengaluru 560 099. PAN NO : AETPJ8946B	Vs.	ITO Ward – 4(3)(5) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Guruswamy, A.R.
Respondent by	:	Shri Shishir Srivatsava, D.R.

Date of Hearing	:	07.04.2021
Date of Pronouncement	:	16.04.2021

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of the CIT(A) dated 28.2.2018. The assessee has raised following grounds of appeal:

- 1. “The impugned Appellate order dated 28-02-2018 passed by the Learned CIT(A), Bangalore, is opposed to law, facts and circumstances of the case in so far as it is prejudicial to the interest of Assessee.*
- 2. The Ld. CIT(A) has erred in adjudicating the Appeal in the Status of “Individual” as against the Status of “HUF” without appreciating the facts that the Appellant has sold the land being Ancestral Property along with other*

Co-parceners of the family, each one of them had 1/4th Undivided Share in the property inherited.

3. *The Ld. CIT(A) has erred in holding that the Sale consideration to be adopted at Rs. 4,88,75,000/- in the hands of the Appellant as against the actual sale consideration of Rs. 2,70,00,000/- as per the Registered Sale Deed dtd: 11-07-2013 which collectively belonged to Four Co-owners who were the vendors of the HUF Property and each one of them had undivided 1/4th Share of Rs. 67,50,000/- out of the Total Consideration of Rs. 2,70,00,000/-.*
4. *The Ld. CIT(A) ought to have appreciated the fact that the Appellant was entitled for deduction admissible u/s. 54F of the Act, in respect of the Sale Consideration of Rs. 39,86,280/- inclusive of Stamp Duty and Registration Fee in acquiring a New residential flat bearing No. G-2. Creative Environs, 2nd Sector HSR Layout, Bangalore.*
5. *Without Prejudice to the above grounds the Appellant submits that the Ld. CIT(A) ought to have appreciated the fact that the Appellant in his Status of "HUF" was liable to Capital Gains Tax in respect of his 1/4th Share of Sale Consideration out of the Total Sale Consideration of Rs. 2,70,00,000/- as against the assumed sale consideration of Rs. 4,88,75,000/-.*
6. *The Ld. CIT(A) has erred in holding the Sale Consideration at Rs. 4,88,75,000/- without any basis and merely considering the details furnished by the Appellant in respect of Fair Market Value Deductible as on 01-04-1981.*
7. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.*

For these and other grounds that may be urged at the time of hearing, the Appellant prays that your Hon'ble Authority be pleased to cancel the Assessment Order made in the Status of "Individual" as against Status of "HUF" and also to set-aside the Appellate Order of the Ld. CIT(A) for the same reasons and further be pleased to pass such other orders granting such other relief as your Hon'ble Authority may deem fit, in the interest of Justice and Equity."

2. The assessee has raised additional grounds on 5.4.2021 as follows:

"1. The Appellant begs to submit the following additional grounds of Appeal for adjudication on the same set of facts and circumstances as prevailed upon as on 31-03-2014 relevant to the A.Y 2014-15.

2. Additional Grounds:-

"1. The Ld. CIT(A) has erred in computing the consideration at Rs. 4,88,75,000/- in the Appellate Order without appreciating the fact that the MOU dtd: 01-05-2013 followed by supplementary MOU dated 27-06-2013 and Second Supplementary Agreement dtd: 12-08-2013 relating to the development of the Land was not materialized in favor of the deductor of TDS M/s. Nambiar Builder Pvt Ltd and hence no transfer.

2. The Ld. CIT(A) has erred in computing the deemed consideration at Rs. 4,88,75,000/- on the basis of TDS deducted by the Company M/s. Nambiar Builders Pvt Ltd without appreciating the fact that the TDS was paid in anticipation of the land transaction which was not materialized in favour of the Deductor of TDS M/s. Nambiar Builder Pvt Ltd."

- 3. The Appellant submits that the additional grounds urged are not emerged out of the New Set of facts and circumstances of the case. but it relate to the same facts and circumstances of the case prevailed as on 31-03-2014 relevant to the A.Y 2014-15.*
- 4. The Appellant submits that the admission of additional grounds do not cause any prejudice to the revenue, since the matter would be ultimately disposed off on the basis of the merits of the case. On the other hand if the additional grounds are not admitted, the Appellant would be put to hardship and denial of justice, otherwise admissible in accordance with law.*
- 5. In view of the above submissions, the Appellant respectfully prays that the Hon'ble bench be pleased to admit the additional grounds for adjudication for the cause of substantial justice."*

3. Further, assessee filed petition under Rule 11 of the Tribunal Rules to admit the additional ground stating that there was no necessity of investigation of any facts on the grounds urged before the Tribunal and it relates to the same facts and circumstances of the case prevailed on assessment records and admission of additional grounds do not cause any prejudice to the revenue, since the matter would be ultimately disposing of on the basis of the merits of the case. On the other hand, if the additional grounds are not admitted, the assessee would be put to hardship and denial of justice, otherwise admissible in accordance with law. Further, he placed reliance on judgement of Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT and prayed to admit the additional grounds.

4. The Ld. DR did not put any serious objection for admission of additional grounds.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. As seen from the additional grounds of appeal, which go to the root of the matter and it is very necessary to adjudicate this ground so as to render substantial justice. Accordingly, we admit the additional grounds in the interest of justice. Facts of the case are that the assessee is an individual and deriving the income from contracts. The assessee has declared nil income in his return. However, assessee shown long term capital gain at Rs.6,73,75,000/- in his return and claiming exemption u/s 54B of the Income-tax Act,1961 [the Act' for short]. The A.O. observed that the assessee has sold a property to one Shri Ratish Nambier residing at RF(A) 164, Purava Rivera, Marathahalli, Bengaluru. It is seen that the said

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land is at Narayanghatta village, Bengaluru and is within the city limit and a capital asset. The assessee did not produce any details/documents to the contrary. In view of this gain on the sale of land is considered as long-term capital gain and a proposal was sent to the assessee for addition. However, there is no reply from the assessee. In the absence of reply, the A.O. treated Rs.6,73,75,000/- as long-term capital gain taxed at 30%. In addition to this, the A.O. considered the contract receipts at Rs.4,88,75,000/- shown in Form 26AS as gross sales receipt from contract and estimated the income at 8% applying the provision of section 44AD of the Act. The assessee went in appeal before the CIT(A) and the Ld. CIT(A) on the issue of capital gain observed that the total receipts reflected in Form No.26AS of Rs.4,88,75,000/- is nothing but transaction relating to sale of immovable property and he directed the A.O. to consider this amount of Rs.4,88,75,000/- as sale consideration and deduct the indexed cost of acquisition out of it and compute the long term capital gain and to be taxed at 20% with Surcharge, Educational cess, interest, etc., if any. Again on this issue, the assessee is in appeal before us by way of above main grounds and additional grounds. The Ld. A.Rs' submission regarding main grounds is as follows:

1. The Appellant begs to submit the following Written Submissions in support of the Appeal filed against the Appellate Order dtd: 28-02-2018 passed by the Ld. CIT(A)-9, Bangalore in ITA No. 10070/BANG/2017-18.
2. The Appellant submits that he is a Kartha of the HUF consisting of the following Co- owners.

- i. The Appellant
 - ii. Smt. Vijaya w/o the Appellant
 - iii. Sri. Thejas Reddy s/o the Appellant
 - iv. Smt. Vathsala daughter in law of the Appellant
3. The Appellant being Kartha of the HUF had inherited the following properties from his ancestors.

Sl. No.	Sy. No. and Location	Extent of Land
1	123, Narayanaghatta Village, Sarjapur Hobli, Anekal Taluk, Bangalore Urban District	1Acre 6 Guntas
2	124, Narayanaghatta Village, Sarjapur Hobli, Anekal Taluk, Bangalore Urban District	2Acres 22Guntas
3	126, Narayanaghatta Village, Sarjapur Hobli, Anekal Taluk, Bangalore Urban District	1Acre 8 Guntas
4	127, Narayanaghatta Village, Sarjapur Hobli, Anekal Taluk, Bangalore Urban District	1Acre 34 Guntas
5	132, Narayanaghatta Village, Sarjapur Hobli, Anekal Taluk, Bangalore Urban District	1 Acre
	Total Extent of Land	7 Acres 30 Guntas

4. The above lands were originally owned by One Nanjundappa s/o Byanna as his ancestral property. On expiry of the aforesaid Nanjunadappa, the lands were devolved upon Smt. Kondamma w/o Late. Nanjundappa. The aforesaid lands were transferred in favour of N. Ramareddy her grandson and the

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katha was also transferred in the name of N. Ramareddy.

5. On expiry of N. Ramareddy, the aforesaid lands were succeeded by the Appellant as per mutual understanding between himself and his two sisters Smt. Renuka and Smt. Girija who have released their rights in favour of the Appellant. Thus the Appellant had succeeded to the aforesaid lands and hence the properties were acquired by means of inheritance and therefore, the aforesaid lands collectively belonged to all the four co-owners named above.

6. The Appellant and the other three co-owners have not entered into any partition but collectively decided to dispose off the lands measuring 6 Acre 30 Guntas and retained 1 Acre in their possession. Therefore all the family members being co- owners have executed a registered sale deed dated 11-07-2013 in favour of One Sri. Ratheesh Nambiar for a Sale Consideration of Rs. 2,70,00,000/-.

7. The Appellant's 1/4th Share of the sale consideration amounts to Rs. 67,50,000/- and the remaining sale consideration of Rs. 2,02,50,000/- belonged to the other 3 Co-owners. A copy of the Sale Deed is submitted as per the Paper Book.

8. The Appellant out of the Sale Consideration of Rs. 67,50,000/- being his 1/4th Share had invested a sum of Rs. 39,94,280/- (Sale Consideration Rs. 37,50,000/- + Stamp Duty Rs. 2,06,250/- and Registration Fee Rs. 38,030/- = Rs. 39,94,280/-) in purchasing a Residential apartment bearing No. G-02, BBMP Katha No. 621/140/137/105/1/55/9/2 in the apartment known as "Creative Environs" situated in Sy. No. 55/9, Arlukunte Village, Begur Hobli, Bangalore South Taluk. A Copy of the Sale Deed dtd: 15-10-2013 is submitted along with the Paper Book.
9. The Ld. AO in the Assessment Order on para 2 and Page 2 of the Assessment Order has held a sum of Rs. 6,73,75,000/- as sale consideration of the property sold by the Appellant and his family members mainly on the ground that the Appellant has not furnished any reply to the proposal sent by the AO. The Appellant having been aggrieved with the amount of Sale Consideration adopted by the AO at Rs. 6,73,75,000/- filed an Appeal before the Ld. CIT(A)-9, Bangalore, who in turn has passed an Appellate Order dtd: 2802-2018 directing the AO to adopt the Sale Consideration of Rs. 4,88,75,000/- for the purpose of Capital Gains as reduced by the indexed cost of acquisition, as against the actual sale consideration of Rs. 2,70,00,000/- as per the Registered Sale Deed dtd: 11-07-2013. Therefore the Appellant submits that the Ld. CIT(A) was not justified to direct the AO to adopt the Sale Consideration of Rs. 4,88,75,000/-, as against the sale consideration of Rs. 2,70,00,000/- out of which

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the Appellant's 114th share amounts to Rs. 67,50,000/-. Hence the Appellant submits that his 114th share amounts to Rs. 67,50,000/- out of the total sale consideration of Rs. 2,70,00,000/- and the balance sale consideration of Rs. 2.02,50,000/- belongs to the other 3 co-owners of the Property. Accordingly the Appellant prays that his 114th Share of Sale Consideration of Rs. 67,50,000/- requires to be considered for the purpose of Capital Gains as against the amount of Rs. 4.88,75,000/- directed by the Ld. CIT(A) to be adopted for the purpose of levy of Capital Gains Tax based on TDS Details in 26AS Format relating to a sum of Rs. 1,85,00,000/-, Rs. 1,43,75,000/- and Rs. 1,60,00,000/- found recorded in the 26AS Format which is not correct.

10. The Appellant further submits that out of the Sale Consideration of Rs. 67,50,000/- a sum of Rs. 39,94,280/- inclusive of Stamp Duty and Registration Fee, was invested in purchasing a New Residential House situated at Ground Floor bearing No. G-02, BBMP Katha No. 621/140/137/105/1/55/9/2 in the apartment known as "Creative Environs" situated in Sy. No. 55/9, Arlukunte Village, Begur Hobli, Bangalore South Taluk and accordingly the Appellant is entitled for the deduction u/s. 54F of the Act and the same was neither considered by the AO nor by the Ld. CIT(A). Therefore the Appellant prays that this Hon'ble Bench be pleased to pass orders directing the Authorities below to allow the

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deduction of Rs. 39,94,280/- admissible u/s. 54F
of the Act in the interest of justice and equity.

Regarding additional grounds, the Ld. A.R's submissions are as follows:

1. The Appellant begs to submit the following additional submissions in support of the Additional Grounds of Appeal as under.
2. The Appellant's family had inherited the Agricultural Lands detailed below

SI. No.	Sy. No. and Location	Extent of Land
1	123, Narayanaghatta Village, Sarjapur Hobli,	1 Acre 6 Guntas
2	124, Narayanaghatta Village, Sarjapur Hobli,	2 Acres 22 Guntas
3	126, Narayanaghatta Village, Sarjapur Hobli,	1 Acre 8 Guntas
4	127, Narayanaghatta Village, Sarjapur Hobli,	1 Acre 34 Guntas
5	132, Narayanaghatta Village, Sariapur Hobli.	1 Acre
	Total Extent of Land	7 Acres 30 Guntas

3. The Appellant and his Son Sri. Tejus Reddy had entered into a MOU dtd: 01-05-2013 with a developer Company M/s. Nambiar Builder Pvt Ltd for the development of the aforesaid lands. The aforesaid lands were mentioned in Schedule 1 to 5 of MOU dtd: 01-05-2013. In lieu of MOU dtd: 01-05-2013, the Appellant was entitled for the consideration -mentioned below.

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- i. 14 Sites measuring 56,000 sq.ft of Saleable Area (each site measuring 4000 sq.ft siteable/saleable area) Each covering Buildup area of 75% of Saleable area.
- ii. The Appellant was entitled for the share of 14 Villas anywhere in the Schedule "A" Property and he shall have sole discretion to choose his share.
- iii. Non refundable deposit:-The Appellant was entitled to non refundable deposits of Rs. 5,00,000/- per Acre amounting to Rs. 38,75,000/- in respect of 7 Acres 30 Guntas.

4. The Appellant and his Son have entered into another MOU dtd: 27-06-2013 in continuation with an MOU dtd: 01-05-2013, with the developer Company M/s. Nambiar Builder Pvt Ltd and excluded Schedule Property mentioned in item No. 5 in MOU dtd: 01-05-2013. In the aforesaid Supplementary MOU dtd: 27-06-2013 the Appellant and his Son were entitled to 12 Villa Sites against 14 accepted in MOU dtd: 01-05-2013.

5. The Appellant and his Son have entered into Second Supplementary MOU dtd: 12-08-2013 wherein it was mentioned that a Sale Deed has been executed in favour of the Ratheesh Nambiar in respect of item No. 1 to 4 of the Schedule property with the consent of the Second Party being M/s. Nambiar Builders Pvt Ltd and Buy Back option was provided to purchase the villas agreed to be allotted in favour of the Appellant.

6. The Appellant submits that the aforesaid MOUs dtd: 01-05-2013, 27-06-2013 and 12-08-2013 did not materialize

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owing to certain constraints that the developer Company M/s. Nambiar Builders Pvt Ltd .was not entitled to own-up in view of the restrictions of the Land Reforms Act according to which the agricultural lands in Karnataka are to be sold only to an agriculturist. Further a part of the aforesaid lands was a buffer zone. Therefore the Nambiar Builders Pvt Ltd., have backed out from the agreed conditions mentioned in the aforesaid MOUs and alternatively the aforesaid lands mentioned in SI. No. 1 to 4 of the Schedule annexed to aforesaid MOUs were later sold in favour of an Individual Sri. Ratheesh Nambiar vide Sale Deed dtd: 11-07-2013. In view of the Appellant submits that the land transaction agreed vide aforesaid MOUs was not materialized and the land was not transferred in favour of the Developer Company M/s. Nambiar Builders Pvt Ltd and therefore there was no transfer of the Asset and hence there is no liability to the Capital Gain Tax. However the Developer Company has deducted the TDS in respect of the payments made to the Appellant and his Sister Smt. Girija with whom the developer Company M/s. Nambiar Builders Pvt Ltd had entered into a separate MOU dtd: 27-06-2013. According to the MOUs the Developer Company has deducted the TDS on the deemed consideration payable to the Appellant and to his Sister Smt. Girija. The payments made and tax deducted are furnished as under

Sl.No.	Name of the payer and deductor of TDS	Name of the payee	Consideration	TDS deducted
1	M/s. Nambiar Builders Pvt. Ltd.	Sri Jaya Prakash	1,43,75,000	1,43,750
2	M/s. Nambiar Builders Pvt. Ltd.	Sri Jaya Prakash	1,60,00,000	1,60,000
3	M/s. Nambiar Builders Pvt. Ltd.	Smt. Girija	1,85,00,000	1,85,000
		Total	4,88,75,000	4,88,750

7. The Ld. CIT(A) has confirmed the addition on the basis of the consideration mentioned above amounting to Rs. 4,88,75,000/-. The Appellant submits that the sale transaction agreed upon in the aforesaid MOUs was not materialized and the land was not transferred in favour of the Developer Company M/s. Nambiar Builders Pvt Ltd. Therefore the Appellant was not liable for Capital Gain tax on the deemed consideration of Rs. 4,88,75,000/- which was confirmed by the CIT(A) on the basis of the 26AS statement without appreciating the fact that the lands agreed upon as per the aforesaid MOUs for development by the Developer Company was ultimately sold by the Appellant and his family members in favour of an Individual Sri. Ratheesh Nambiar vide Sale Deed dtd: 11-07-2013 for a sale consideration of Rs. 2,70,00,000/-. The Sale Deed dtd: 11-07-2013 was executed by the Appellant and his family members since the lands sold were inherited

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from the ancestors. Therefore the Appellant submits that the lands sold for a consideration of Rs. 2,70,00,000/- belongs to the HUF members collectively.

8. Under these facts and circumstances the Appellant prays that the consideration of Rs. 4,88.75.000/- confirmed by the CIT(A) on the case of the TDS is not justifiable in law since the property agree to be developed by the Developer M/s. Nambiar Builders Pvt Ltd who have deducted the TDS was not materialized and the land was not transferred in favour of the said Company and therefore the Appellant is not liable for Capital Gain Tax in the absence of transfer of property. Therefore the addition confirmed by the Ld. CIT(A) is liable to be deleted in the interest of equity and justice.

9. The Appellant submits herewith a Genealogical Tree in support of the contention that the lands sold in favour of the individual Sri Ratheesh Nambiar vide Sale deed dtd: 11-07-2013 were ancestral property and the lands sold were the same lands which were agreed for development with the Developer Company M/s. Nambiar Builders Pvt. Ltd. as per MOU dtd: 01-05-2013, Supplementary Agreement dtd: 27-06-02013 and Second Supplementary Agreement dtd; 12-08-2013.”

6. The Ld. D.R. submitted that the CIT(A) properly considered the sale transactions and quantified it at Rs.4,88,75,000/- and it is supported by form No.26 AS reproduced by the Ld. CIT(A) in para 9 page 4 of the CIT(A) order. According to the Ld. D.R., there is no error in the order of the CIT(A) and the same to be confirmed. Regarding status the Ld. D.R. submitted that the assessee itself offered the return of income in the capacity of

individual. Being so, the A.O. and CIT(A) included the capital gain in the hands of present assessee as an individual only without prejudice to the above arguments. Regarding additional ground, it was submitted that the issue may be remitted to the A.O. to consider the exact sale consideration on the basis of sale deed.

7. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Admittedly in this case, the CIT(A) determined the sale consideration on the basis of Form 26AS without seeing the actual sale deed entered by the assessee with concerned parties. In our opinion, sale consideration cannot be determined only on the basis of Form 26AS. The provisions of s.2(47)(v) can be applied only if there is a written contract coupled with the transfer of possession in terms of s.53A of the Transfer of Property Act. In English law, the contract to which the doctrine of part-performance applies may be oral. However, s. 53A of the Transfer of Property Act expressly requires that the contract must be in writing by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. Thus s. 53A does not recognize an oral contract. The writing is an essential sine qua non for the applicability of the doctrine of part-performance. The lower authorities must have considered the relevant sale deed so as to compute the correct value of sale consideration and during the year of assessment. Being so, the assessment framed on the basis of Form 26AS is set aside. However, we make it clear that if the revenue finds that there is material evidence in support of the transfer of land by assessee to M/s. Nambiars Pvt. Ltd. who had deducted TDS in anticipation of transfer of land in this A.Y. under consideration that to be brought to tax. In other words, if

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the revenue finds that there was a transferable land by the assessee in favour of the deductor of TDS i.e. Nambiars Pvt. Ltd. in the A.Y. by executing a proper sale deed towards transfer of the impugned property, the same may be examined in accordance with law. At this stage, we refrain from committing anything on status of the assessee in whose name capital gain to be taxed as we have set aside the assessment. It is kept open.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16th Apr, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th Apr, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.