

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

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

ITA No.1182 & 1183/Bang/2022
Assessment year : 2010-11 & 2012-13

Sri Channakeshava, No.96, Hennur Main Road, Bilishivale Village, Bangalore-560077. PAN - AFKPC 4664 B	Vs.	The Asst. Commissioner of Income Tax, Central Circle-1(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Arvind V Chauhan, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	03.07.2023
Date of Pronouncement	:	09.08.2023

ORDER

Per Beena Pillai, Judicial Member

The present appeals arises out of separate orders date 10/10/2022 passed by the Ld.CIT(A)-11, Bengaluru for assessment year 2010-11 and 2012-13.

2. It is submitted by the Ld.AR that the issues raised by the assessee in both the appeals are identical and on similar facts. For the sake of convenience, we reproduce grounds raised by the assessee in assessment year 2010-11:-

“1. Agricultural income declared by the assessee of Rs. 26 lakhs was in respect of the mango crop yield from 20 acres agricultural land situated at Vaderahalli, Bidarahalli Hobli, Bangalore standing in the name of appellant's father who was dead. The RTC extracts and other material produced was not examined and a further finding was recorded.

2. Site sale turn over reflected in the registered sale deed was not considered and a statement showing proposed agreement value was taken into account which value was pertaining to converted sites. Whereas, the sites which were sold was not converted by not taking into consideration the relevant material and consequently recorded a perverse finding by making an addition of Rs.4,16,31,587/-.

3. The records clearly stated a sum of Rs.65 lakhs had been borrowed and the assessee had repaid a sum of Rs.30 lakhs by cash and cheque. The balance 35 lakhs was repayable was treated as loan repaid when the same had not been done and it was outstanding.”

Brief facts of the case -

3. The assessee is an individual and search u/s 132 of the Act was conducted on 01/10/2013. The case was centralized and notice u/s 153A was issued to the assessee on 05/11/2014 in both the year under consideration. In response to the notice issued, the assessee filed return on 09/12/21015 declaring income of Rs.1,14,04,000/- for assessment year 2010-11 and for assessment year 2012-13, the return was filed on 14/12/2015 declaring income of Rs.79,79,410/-.

3.1. The Ld.AO after scrutiny and considering various submissions of the assessee passed assessment order u/s 143(3) of the Act by making the following disallowances:-

- 1) Agricultural income claimed amounting to Rs.26,00,000/- was disallowed.
- 2) The Ld.AR also brought to tax the difference between the rate/sft as per the registered sale deed and AG value for the assessment year 2010-11.

3.2. The Ld.AO made addition of Rs.4,16,31,385/- being difference in the value pertaining to sale of 75 sites by the assessee and for assessment year 2012-13, the Ld.AO made an addition of Rs.2,43,41,428/- being the difference between the value of sale of 55 sites. For assessment year 2010-11, the Ld.AO also made addition u/s 69 of the Act amounting to Rs.35,00,000/-.

4. Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) upheld the addition made by the Ld.AO on all the issues raised in the respective appeal.

5. The Ld.AR submitted that against the order of the Ld.CIT(A), the assessee preferred the present appeal before this Tribunal belatedly.

5.1. The Ld.AR submitted that during the period of limitation, assessee was not well and was not in a position to attend to the day to day affairs because of which, the delay of 21 days accrued. The Ld.AR submitted that the present appeals passed by the Ld.CIT(A) is dated

10/10/2022 and the appeals has been filed by the assessee on 30/12/2022 thereby causing delay of 21 number of days. He submitted that the delay is unintentional and not condoning the delay would cause distress to the interest of the assessee. he Ld.AR also submitted that, there is no malafide intention on behalf of the assessee, in belatedly filing the present appeal before this *Tribunal*. In support, he placed reliance on the decision of *Hon'ble Supreme Court* in the case of *Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 47*.

6. The Ld.DR on the contrary vehemently did not agree with the reasoning provided by the assessee to be bonafide.

7. We perused the submission advanced by both sides. Admittedly, there is a delay of 21 days in filing the present appeal before this Tribunal. The bonafide reason for such delay was stated by the assessee in the Affidavit dated 07/02/2023 is due to the illness of the assessee and that assessee could not inform his authorized representative regarding the receipt of the impugned orders. We do not find any malafide intention of the assessee in causing such delay to file the present appeal.

7.1 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot

claim to have vested right for injustice being done because of non deliberate delay. We have to prefer substantial justice rather than technicality in deciding the issue. As observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.(supra)*, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the *Tribunal* is capable of removing injustice and to do justice. We are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned.

Respectfully following the above view, we condone the delay of 21 days in filing the appeal before this Tribunal.

7.2. On the merits of the case, the Ld.AR submitted that the assessee has filed an application under Rule 29A of the Act seeking admission of additional evidences viz., RTC certificate and the partition statement that was filed by the family members of the assessee in respect of the agricultural land in 2018 is placed.

7.3. The Ld.Counsel for the assessee submitted that the assessee is also placed a crop validation certificate family tree, report of the Village Accountant and the compromise decree that was passed in respect of the said partition.

He submitted that in order to appreciate the submission of the assessee in respect of the disallowance made pertaining to the agricultural income, these documents are necessary to be verified and looked into.

8. On the second issue the Ld.AR submitted that addition was made on account of sales of lands.

8.1. The Ld.AR submitted that the assessee was keen on forming a residential layout in Bileshivale Village,) 'Dodda Gubbi Village, Bidarahalli Hobli, Charalatti, Jala Hobli, Bangalore East. In the year 2003 to 2006 this area did not come within the jurisdiction of Bruhat Bangalore Mahanagara Palike. Petitioner during these years proceeded to acquire the lands in this area.

8.2. The Ld.AR submitted that the assessee in these lands proceeded to form a residential layout called "Asha Township". This layout had the approval of Gram Panchayat as per the Gram Panchayat Act. The layout was formed in stages and plans were sanctioned in stages. Separate site numbers were assigned to each site. In the assessment Year 2010-11 assessee sold 78 sites.

8.3. However, these properties were never converted from agricultural to residential as it involved huge amount of expenditure which the assessee at that stage was not in a position to afford. Therefore, it is submitted that the site was sold without conversion on as is where is basis. The

Asha Township was developed into a residential layout by investing huge amount in providing roads, drains, parks, club house, over head water tank, borewells, electricity connections, and water connections. The cost of developing this layout in 50 acres 12 gutnas over a period of time costed the assessee more than 20 crores which was spread out during the development period of more than 8 years. The assessee used to develop the area and thereafter sell the sites and re-invested in further extension of the layout from year to year.

8.4. The Ld.AR submitted that the entire Asha Township project took place over a period of 10 years. During the current Assessment Year 2010-11, assessee sold 78 sites. The sale price was declared at Rs.475/- per sq. ft. However, the Assessing Officer has taken the value of this site at Rs.700/- per sq. ft. assessee had not maintained any books of accounts. Hence, he has adopted "percentage valuation method" as per Section 44AD of the Income Tax Act.

8.5. The Ld.AR submitted that a search u/s. 132 of the IT Act was conducted in the premises of one LG Builders & Developers, and other parties including the assessee. Assessee had entrusted the proposed sale of sites "list" to LG Builders & Developers for the purpose of marketing it. However, LG Builders & Developers were insisting that in

order to secure a good marketable title the site should be converted from agricultural to residential before putting it up for sale. LG builders & Developers had projected the estimation sale value of the converted sites at Rs.700 per sq. ft.

8.6. However, the assessee was in dire need of funds. Therefore, he could not spend huge amount of money for the purpose of conversion of these sites from agricultural to residential. Assessee proceeded to sell the sites on as is where is basis without conversion to third parties at the rate of Rs. 125 to 275 per sq. ft. However, after search as per an understanding with the search authority assessee agreed to declare the value at Rs. 475/- per sq. ft. to buy peace with the department.

8.7. The Ld.AR submitted that the Assessing Officer has adopted Rs.700 per sq. ft. based on the proposed estimate as per the list discovered in the office of LG Developers and Builders. Assessee in his statement has specifically denied that any presumptive value can be attached to this list as it was not discovered in his premises. Even though Section 132(4A) presumption is not applicable the Assessing Officer has proceeded to hold that Section 132(4A) of the IT Act presumption has to be applied and the sites should be valued at Rs.700/- per sq. ft. and

quantified the difference in the declared profit at Rs.4,16,31,587/-.

8.8. The Ld.AR submitted that the assessee has purchased number of agricultural properties measuring 50 acres 12 guntas as described above for a total value of Rs.4,60,76,000/- for development of residential layout called "Asha Township". In this assessee has provides roads, drains, parks, club house, over head water tank, borewells, electricity connections, water connections etc., Assessee has invested more than several crores towards the development of the township which has taken more than 10 years. It is submitted that the assessee has been developing and selling these sites in stages.

8.9. The Ld.AR submitted that the assessee was not maintaining any books of accounts. Therefore, the assessee not in a position to arrive at the correct value after deducting the cost incurred for each site. The Ld.AR submitted that the assessee therefore in accordance with Section 44AD of the IT Act, declared the income arising in respect of sale of sites on percentage basis.

8.10. It is submitted by the Ld.AR that, the Ld.AO neither adopted the percentage basis as per Section 44AD of the Act nor considered the value the site after deducting the cost and expenditure incurred for development of the same.

8.11. The Ld.AR has filed before us various documents of the lands having purchased by the assessee, that needs consideration by the authorities below. The Ld.AR submitted that the sale deeds in respect of the land purchased for development of Asha Township, in which the sites were developed. The Ld.AR submitted that the assessee has produced these new documents due to subsequent events and for the purpose of establishing that the assessee had incurred costs in acquisition of lands over which sites were formed. The Ld.AR thus submitted that the documents may be permitted to be produced in the interest of justice and equity and that, if the documents are taken on record no hardship or injury would be caused to the other side.

The Ld.AR thus prayed for admission of these documents.

9. The Ld.DR did not object for the documents to be remanded for necessary verification.

10. Considering the submission of both sides, and the nature of the documents, we admit the additional evidence filed by the assessee and remand both the issue for *de novo* consideration. The Ld.AO is directed to carry out necessary verification to ascertain the submission of the assessee and to consider the claim in accordance with law. Accordingly, grounds raised by the assessee in both

the appeals stands remanded to the Ld.AO for *de novo* consideration.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 9th August, 2023

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, 9th August, 2023
/ vms /

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.