

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No. 202/Bang/2020
Assessment year : 2010 – 11

M/s Green Orchard Farm Houses, No. 10/1, Lakshminarayana Complex, Palace Road, Bangalore – 560052 PAN : AAGFG4507Q	Vs.	DCIT Circle – 2 (2), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shree Binod Kumar Singh, CIT DR
Date of hearing	:	07.10.2020
Date of Pronouncement	:	22.10.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

This appeal is filed by the assessee and the same is directed against the order of learned CIT

(A) – 11 Bengaluru dated 06.01.2020.

2. The assessee has raised following grounds :-

- The learned C.I.T. (A) has erred in passing the order in the manner which he did.*
- The learned C.I.T. (A) is wrong in law by confirming the additions of the Assessing Officer and passing the order without considering the submissions of the Appellant.*
- The learned C.I.T. (A) has not considered the Arbitration Award dated 02.09.2015 while passing the order. The order clearly states the fact that the agreement of sale dated 01.06.2009 stands cancelled and also the registered sale deeds executed stand cancelled. The arbitration award ordered to execute sale deeds pertaining to approx. 79 acres in favor of Manipal University in lieu of the advance received.*
- The learned C.I.T. (A) ought to have appreciated the fact that the appellant has disclosed the income of Rs. 150 crores in the financials as per*

the Arbitration Award in AY 16-17. The assessment proceeding for this assessment year has been completed with NIL additions.

5. The learned C.I.T. (A) has erred by not considering the fact that the same income cannot be taxed twice both in AY 10-11 as well as AY 16-17.

6. The learned C.I.T. (A) ought to have appreciated that as per the "Guidance Note on Recognition of Revenue by Real Estate Developers" issued by the ICAI, "so long as such acts, which the seller is obliged to perform, have not been performed, no revenue shall be recognized."

7. The learned C.I.T. (A) has erred by recognizing revenue on the Appellant without considering the fact that the Appellant herein is not being reimbursed by the buyer for any costs.

8. The learned C.I.T. (A) has erred in not considering the submission of the Appellant that according to Accounting Standard "AS-7", the Appellant's case falls within the phrase "outcome of a contract cannot be reliably estimated" and consequently qualifies as a fit case for non-recognition of revenue.

9. The learned C.I.T. (A) ought to have considered that the Appellant has completed the transfer of 50 acres which works out to be 15% of the contracted quantity of 190 acres, thereby restricting the revenue of the Appellant to the extent of 15% of the monies received and is further subject to deduction towards the proportionate cost of the purchases.

10. Without prejudice, the disallowance is excessive, arbitrary, unreasonable and ought to be deleted.

11. The learned C.I.T. (A) erred in allowing the interest levied by the A.O. u/s 234B and 234C of the Act.

12. For these and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed.

3. We first take note of relevant brief facts. We find that on 01.06.2009, the assessee entered into an agreement of Sale with M/s Manipal University and on the very first page of this agreement, copy available on pages 25 to 38 of the paper book, it is stated that the assessee and its nominees are the registered owners of the land to the extent of 190 Acres details of which are given in Annexure – 'A' of this agreement available on pages 37 and 38 of the paper book. It is also noted on page 3 of this agreement that the assessee being vendor offered to sell the entire 190 Acres of lands available in one block and the rate agreed was Rs. 2 Crores per Acre of land as residentially converted lands with good and marketable title. As per this agreement, the buyer paid to the assessee Rs. 1 Crore as a token advance by cheque and also paid on the same day another Rs. 99 Crores by way of 6 Cheques of various amounts and out

of these six cheques, four cheques are in the name of the present assessee totalling Rs. 95,84,50,000/- and two cheques are in favour of two different nominees of the assessee totalling Rs. 3,15,50,000/-. As per para 4 of this agreement, it is specified that the buyer will pay 2nd instalment of Rs. 100 Crores within 6 months from the date of the vendor conveying and registering about 50 Acres of land provided the assessee vendor fulfils all the conditions contained in this agreement. Thereafter on 03.06.2009, the assessee executed 4 sale deeds conveying 50 Acres of land to the buyer as per copy of Four Registered Sale Deeds available on pages 56 to 134 of the paper book. Thereafter on 20.03.2010, the buyer wrote a letter to the assessee copy available on pages 191 to 192 of the paper book in which it is stated that the assessee has failed to fulfil many of the terms and obligations of the agreement and it is also stated in this letter that in view of clause 14 of the agreement dated 01.06.2009, the buyer terminates this agreement dated 01.06.2009 and also cancels the sale deeds already executed and asked the assessee to refund the amount of 100 Crores plus Rs. 10 Crores being the amount spent by the buyer on account of legal fees, stamp duty and registration expenses together with a compensation of Rs. 100 Crores being opportunity cost of the buyer. As noted on page 9 of the Arbitration Award dated 02.09.2015, one more letter dated 15.01.2011 was written by the buyer to the present assessee being vendor that despite promises to refund the money, the vendor has not refunded the money and if the money is not refunded within 45 days, the purchaser will initiate legal action. Subsequently, O. S. No. 2963/2011 was filed before City Civil Judge, Bangalore by the purchaser praying for refund of money and appropriate compensation and costs. Later the assessee filed I. A. No. 2 u/s 8 of the Arbitration and Conciliation Act, 1996 seeking reference of the parties to arbitration in terms of clause 12 of

the agreement. As per the order passed on 31.07.2012, the court referred the matter to Sole Arbitrator Justice Ramakrishna (Retd.). Later, the parties have filed Compromise Petition under Order 23 Rule 3 of Code of Civil Procedure read with section 30 of the Arbitration and Conciliation Act, 1996 and prayed for passing the award in the terms of the said Compromise Petition. The Arbitration Award was passed on 02.09.2015 in view of the settlement between the parties. As per this award, it is held that the agreement dated 01.06.2009 with respect to sale of 190 Acres of lands was cancelled and all the four sale deeds executed in June 2009 as per Schedule 'A' of the Award were also cancelled and it was noted that the present assessee being vendor is liable to refund Rs. 150 Crores to the Purchaser and regarding the manner of refund of this amount, it was held that 79 Acres 21.89 Guntas of Contiguous land as described in Schedule 'B' of the Award shall be conveyed by the assessee vendor to the purchaser. Out of this 79 Acres 21.89 Guntas of land, it was specified that 52 Acres 21.39 Guntas of Contiguous land as described in Schedule 'C' of the Award shall be conveyed by the assessee vendor to the purchaser within 7 days under a separate Registered Sale Deed towards an amount of Rs. 102 Crores and 27 Acres 0.50 Guntas of Contiguous land as described in Schedule 'D' of the Award shall be conveyed by the assessee vendor to the purchaser within 120 days under a separate Registered Sale Deed towards an amount of Rs. 48 Crores and thereafter, nothing remains payable by the assessee to the purchaser. Thereafter, first sale Deed was executed on 21.09.2015 for 48 Acres 32.65 Guntas for a consideration of Rs. 92,12,26,415/-. Thereafter on 16.01.2016, second sale Deed was executed for 3 Acres 28.11 Guntas for a consideration of Rs. 6,98,82,710/-. Thereafter on 31.03.2016, another sale Deed being third sale deed was executed for 27 Acres 0.5 Guntas for a consideration of Rs.

50,88,90,875/- . Total Area conveyed as per these three sale deeds executed in F. Y. 2015 – 16 was 79 Acres 21.26 Guntas with a value of Rs. 150 Crores.

4. This is the claim of the assessee before us that since, all four sale deeds executed in F. Y. 2009 – 10 were cancelled as per the Arbitration Award dated 02.09.2015, it should be held that there was no sale of land in F. Y. 2009 – 10 relevant to the present Assessment Year 2010 – 11 and entire sale of land has taken place in F. Y. 2015 – 16 relevant to A. Y. 2016 -17. Learned AR of the assessee also submitted that in that year, the assessee has duly disclosed the capital gain on sale of 79 Acres 21.26 Guntas land with a value of Rs. 150 Crores and therefore, no capital gain on sale of land is taxable in the present year. At this juncture, this was a query of the bench as to whether there is some common lands in the sale deeds executed in F. Y. 2009 – 10 and F. Y. 2015 – 16 and in reply, it was submitted by the learned AR of the assessee that there are some common pieces of land in these sale deeds executed in F. Y. 2009 – 10 and F. Y. 2015 – 16 but it is not relevant because all the sale deeds executed in F. Y. 2009 – 10 were cancelled as per Arbitration Award dated 02.09.2015.

5. In reply, learned DR of the revenue supported the orders of the lower authorities. He also submitted that this is a finding of the learned CIT (A) in para 13 of his order that as per the Arbitration Award, the assessee was asked by the arbitrator to convey fresh set of lands and on implementation of this Arbitration Award, what has happened is this that the assessee has replaced land sold originally by different land due to certain circumstances and this is similar to a replacement of a defective item sold by a non defective item and what has happened in F. Y. 2015 – 16 is not a sale but a replacement of land originally sold by a different land

belonging to the assessee with no additional or fresh sale consideration and he confirmed the assessment order. He submitted that under these facts, the order of CIT (A) should be confirmed.

6. We have considered the rival submissions. As per the undisputed facts as noted above, it is seen that the assessee has entered into an agreement of sale of 190 Acres of land stated to be already owned by the assessee and its nominees at an agreed price of Rs. 2 Crores per Acre with M/s Manipal University on 01.06.2009 and received total advance of Rs. 100 Crores on the date of agreement itself and Rs. 50 Crores later. In F. Y. 2009 – 10, the assessee executed four sale deeds also conveying 50 Acres of Land for Rs. 100 Crores @ Rs. 2 Crores per Acre as per the agreement and vacant possession of this much land was also handed over by the assessee vendor to the buyer M/s Manipal University and in this manner, the sale to the extent of 50 Acres of land was complete in all respects in F. Y. 2009 – 10 itself. We also find that the assessee could not carry out the balance requirements of the said Agreement of sale dated 01.06.2009 and the buyer M/s Manipal University complained to the assessee as early as on 20.03.2010 that the assessee has not carried out the entire sale agreement dated 01.06.2009 and asked the assessee to refund the amount along with expenses and compensation but the assessee continued to enjoy the fruits of the said Agreement of sale deeds dated 01.06.2009 and money was not refunded by the assessee. The Arbitration award dated 02.09.2015 is on the basis of compromise reached between the parties i.e. the present assessee being vendor and M/s Manipal University being the purchaser and as per the same, it was agreed that the agreement dated 01.06.2009 and four sale deeds executed in F. Y. 2009 – 10 for conveying 50 Acres of land at a value of Rs. 100 Crores are cancelled and the assessee was asked to execute

fresh sale deeds for conveying 79 Acres 21.89 Guntas of Contiguous land as described in Schedule 'B' of the Award for a consideration of Rs. 150 Crores and in this manner, the account between the assessee vendor and buyer M/s Manipal University will be squared up.

7. First, we compare the description of various pieces of land transferred in F. Y. 2009 – 10 with various Pieces of land transferred in F. Y. 2015 – 16 and for this, we reproduce the details of that, which is as under:-

A) Details of Four sale Deeds Executed in F. Y. 2009 – 10.

1) List of Total lands being part of Sale Deed dated 03.06.2009 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Govindpura	7	3	2.00	58
2	Govindpura	8	3	6.00	
3	Govindpura	10	3	26.00	
Total			9	34.00	

Total price is Rs. 19.70 Crores as per page 64 of the Paper Book.

2) List of Total lands being part of another Sale Deed dated 03.06.2009 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Govindpura	8	3	5.00	82
2	Govindpura	9	2	32.00	
Total			5	37.00	

Total price is Rs. 11.85 Crores as per page 88 of the Paper Book.

3) List of Total lands being part of another Sale Deed dated 03.06.2009 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Vasudev Pura	5	5	17.00	101

2	Vasudev Pura	6	5	21.00	
3	Vasudev Pura	7	3	24.00	
4	Vasudev Pura	8	5	9.00	
5	Vasudev Pura	9	5	2.00	
Total			23	73.00	
Total Guntas	converted	in Acre	24	33.00	

Total price is Rs. 49.65 Crores as per page 105 of the Paper Book.

4) List of Total lands being part of another Sale Deed dated 03.06.2009 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Govindpura	1	5	9.00	120
2	Govindpura	31	4	7.00	
Total			9	16.00	

Total price is Rs. 18.80 Crores as per page 126 of the Paper Book.

Total Area & Value as per these Four Sale Deeds is 50 Acres, Rs. 100 Crores.

B) Details of Three Sale Deeds Executed in F. Y. 2015 – 16.

1) List of Total lands being part of Sale Deed dated 21.09.2015 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Vasudev Pura	2	0	28.84	150
2	Vasudev Pura	3	4	29.81	
3	Vasudev Pura	4	5	0	
4	Vasudev Pura	5	5	17.00	
5	Vasudev Pura	6	4	18.00	

6	Vasudev Pura	7	3	24.00	
7	Vasudev Pura	8	5	9.00	
8	Vasudev Pura	9	5	2.00	
9	Kanchanahalli	12	7	11.00	
10	Kanchanahalli	11/2	7	13.00	
Total			45	152.65	
Total Guntas	converted	in Acre	48	32.65	

Sale Value is Rs. 92,12,26,415/- as per page 146 of paper Book.

2) List of Total lands being part of Sale Deed dated 16.01.2016 :-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Vasudev Pura	10	0	24.69	170
2	Vasudev Pura	12	0	32.05	
3	Vasudev Pura	13	0	25.41	
4	Vasudev Pura	14	0	21.85	
5	Vasudev Pura	15/3	0	17.75	
6	Vasudev Pura	16/3	0	15.01	
7	Vasudev Pura	17/3	0	8.07	
8	Vasudev Pura	18	0	1.27	
9	Vasudev Pura	19	0	2.01	
Total			0	148.11	
Total Guntas	converted	in Acre	3	28.11	

Sale Value is Rs. 6,98,82,710/- as per page 164 of paper Book.

3) List of Total lands being part of Sale Deed dated 31.03.2016:-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas	Page No./ Paper Book
1	Govindpura	4	3	25.50	188
2	Govindpura	5	6	6.00	
3	Govindpura	14	6	4.00	
4	Govindpura	16	6	18.00	
5	Govindpura	17		27.00	
Total			25	80.50	
Total Guntas	converted	in Acre	27	0.50	

Sale Value is Rs. 50,88,90,875/- as per page 183 of paper Book.

Total Area and value as per these three Deeds is 79 Acres 21.26 Guntas, Rs. 150 Crores.

8. Now, we take note of those pieces of land which are common in various sale deeds executed in F. Y. 2009 – 10 and in F. Y. 2015 – 16. The same are as under:-

List of lands being part of Sale Deeds of F.Y. 2009 - 10 & 2015 - 16 both:-

S. No.	Village	Survey No.	Area in Acres	Area in Guntas
1	Vasudev Pura	5	5	17.00
2	Vasudev Pura	6	4	18.00
3	Vasudev Pura	7	3	24.00
4	Govindpura	8	5	9.00
5	Govindpura	9	5	2.00
Total			22	70.00
Total Guntas	converted	in Acre	23	30.00

9. We find that 23 Acres 30 Guntas land is same and therefore, the sale of this much land stands even after arbitration award, cancellation of agreement dated 01.06.2009 and cancellation of four sale deeds executed in F. Y. 2009 – 10. The details of such land is as per the above charts prepared on the basis of Arbitration Award, Sale Deeds executed in F. Y. 2009 – 10 and Sale Deeds executed in F. Y. 2015 – 16.

10. As per the request of the assessee before us, we find that the assessee wants us to hold that the effect of the Arbitration Award dated 02.09.2015 should be given in A. Y. 2010 – 11 and there should be no taxation of capital gain in that year in respect of sale of 50 Acres of land sold in A. Y. 2010 – 11 for which, Registered Sale deeds were also executed in that year, full payment of Rs. 100 Crores was also received by the assessee in that year itself and vacant possession was also given by the assessee to the buyer M/s Manipal University in that year only. We find that in the facts of the present case, the assessee is at fault because although the assessee stated in the agreement that the contiguous land of 190 Acres is already owned by it along with its nominees but still, the assessee did not complete the agreement by executing sale deeds in addition to 50 Acres for which, the sale deed were executed by it in F. Y. 2009 – 10 and this is not a case where the buyer is defaulting in payment or not willing to fulfil the agreement for any reason. This is also not a case that any portion of land out of 190 Acres stated to be already owned by the assessee along with its nominees was acquired by any government authority and because of that, the assessee was unable to fulfil the balance requirements of agreement dated 01/06.2009. In our considered opinion, up to the date of Arbitration award, sale of 50 Acres of land completed in F. Y. 2009 – 10 was not disturbed in any manner and the present assessee was enjoying its fruits also in the form of Rs. 100 Crores

received by it along with Rs. 50 Crores extra as advance for balance land and not refunded in spite of the claim of the buyer made in F. Y. 2009 – 10 itself. Be that as it may because this aspect that the assessee enjoyed the fruits is not going to impact our decision in the present case regarding this aspect as to whether the sale of 50 Acres land in F. Y. 2009 – 10 is taxable in A. Y. 2010 – 11 or not.

11. We concentrate on this request of the assessee that because of cancellation of Four sale Deeds executed in F. Y. 2009 – 10 as per Arbitration Award dated 02.09.2015, it should be held that no sale of land took place in F. Y. 2009 – 10 although all ingredients of sale being execution of Registered Sale Deeds, Payment of consideration by the buyer to the vendor and handing over of the possession by the vendor to the buyer were completed in F. Y. 2009 – 10 itself and the vendor continued to enjoy the sale consideration received and the buyer continued to enjoy the possession of 50 Acres of land and prima facie, the fault is of the assessee vendor in not executing the balance sale deeds and still, the assessee vendor wants benefit out of its own fault by postponing the payment of tax on capital gain on sale of 50 Acres of land from A. Y. 2010 – 11 to A. Y. 2016 – 17. In our considered opinion, this is not justified but we have to ensure that full effect is given to Arbitration Award dated 02.09.2015 and consequent cancellation of four sale deeds executed in F. Y. 2009 – 10 and execution of three new sale deeds in F. Y. 2015 – 16.

12. In this regard, we are of the considered opinion that under these facts of the present case, this cannot be said that as per the effect of Arbitration Award dated 02.09.2015 and consequent cancellation of Sale Deeds, there was no sale in A. Y. 2010 – 11 and the ends of

justice will be met and full effect will also be given to Arbitration Award dated 02.09.2015 and consequent cancellation of four sale deeds executed in F. Y. 2009 – 10 and execution of three new sale deeds in F. Y. 2015 – 16 if we hold that sale of 50 Acres of land for Rs. 100 Crores was complete in F. Y. 2009 – 10 relevant to A. Y. 2010 – 11 and therefore, resultant capital gain on this entire sale is liable to tax in A. Y. 2010 – 11 and on account of cancellation of those four sale deeds as per the Arbitration Award dated 02.09.2015, it should be held that out of the said 50 Acres of Land, land equal to 26 Acres 10 Guntas is deemed to be Bought Back by the Assessee on 02.09.2015 for same consideration Rs. 2 Crores per Acre because same lands to the extent of 23 Acres 30 Guntas are sold by various sale deeds executed in F. Y. 2015 – 16 also and in fact, sale of only 26 Acres 10 Guntas of land is not ultimately made as per various sale deeds executed in F. Y. 2015 – 16 and for such deemed buy back of 26 Acres 10 Guntas of land, Cost of acquisition should be considered at Rs. 2 Crores per Acre (Total Cost Rs. 52.50 Crores) with date of acquisition as 02.09.2015 for computing capital gain, when any land out of this 26 Acres 10 Guntas Land is sold by the assessee in future. In our considered opinion, this will give full effect to cancellation of four sale deeds executed in F. Y. 2009 – 10 and execution of three new sale deeds executed in F. Y. 2015 – 16 as per which, 23 Acres 30 Guntas of the same lands were transferred by the assessee vendor to the buyer M/s Manipal University and 55 Acres 31.89 Guntas of new lands (Out of Total 79 Acres 21.89 Guntas of Contiguous land for Rs. 150 Crores as per three Sale Deeds executed in F. Y. 2015 – 16) were transferred at the balance consideration of Rs. 102.50 Crores being Total sale consideration of Rs. 150 Crores minus sale consideration of 23 Acres 30 Gunta Land @ Rs. 2 Crores per Acre Rs. 47.50 Crores because this much land is not deemed to be bought back by

the assessee as these are part of sale deeds executed in F. Y. 2015 – 16 also. We Order accordingly.

13. As per our above decision, we have ensured that full effect is given to the arbitration award dated 02.09.2015. Since, by excluding 23 Acres 30 Guntas of common land, we have held that the remaining 26 Acres 10 Guntas of land is deemed buy back by the assessee on 02.09.2015 being the date of the Arbitration Award. Effect to cancellation of Executed Sale Deed as per Arbitration award is fully given once we hold that the land which is not ultimately sold as per new sale deeds executed in F. Y. 2015 – 16 is deemed buy back by the assessee on the date of arbitration award. Regarding double taxation of capital gain in respect of 23 Acres 30 Guntas land which is common in the sale deeds executed in F. Y. 2009 – 10 & 2015 – 16, this is up to the assessee (if so advised) to make claim before the department and since, that year is not before us, we do not feel it proper to give any direction in respect of that year.

14. In the result, this appeal of the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K.)

Judicial Member

Bangalore,

Dated: 22nd October, 2020.

/NS/*AKG

Sd/-

(A.K. GARODIA)

Accountant Member

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.