

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.731/Hyd/2018**  
(Assessment Year: 2010-11)

M/s. Telukunta Chandra Mohan Rao (HUF) Secunderabad PAN:AAAHT6793H (Appellant)	Vs	Income Tax Officer Ward 10(5) Hyderabad (Respondent)
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For Assessee :	Shri A.V. Raghuram
For Revenue :	Smt. V. Rajitha, DR

Date of Hearing:	10.09.2018
Date of Pronouncement:	12.09.2018

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-6, Hyderabad, dated 5/2/2018. The assessee has raised the following grounds of appeal:

*"On the facts and in the circumstances of the case, the order of the Id. Commissioner of Income Tax (Appeals)-6, Hyderabad, dismissing the appeal of the Appellant is perverse, illegal and unsustainable on facts and in law.*

*2. The Commissioner (Appeals) erred in sustaining the action of the Assessing Officer in bringing to tax the alleged capital gains in the A.Y under consideration.*

*3. Without prejudice, the Commissioner (Appeals) erred in upholding the action of the Assessing Officer in adopting the cost of land surrendered for development at Rs.5.98 crores. The Commissioner (Appeals) ought to have appreciated that what the appellant got on surrender of land is the super structure, which should be the basis for*

*arriving at the value of land surrendered in the development agreement.*

*4. Without prejudice to above ground, the Commissioner (Appeals) further failed to appreciate that the value adopted by the Assessing Officer at Rs.5.98 crores is composite value of the land and super structure which could not have been taken in entirety for the purpose of determining the value of land surrendered. The authorities below ought to have appreciated that only value of the super structure should have been taken.*

*For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal”.*

2. At the time of hearing, the learned Counsel for the assessee submitted that the assessee along with other family members had entered into an agreement with M/s.Saptagiri Constructions for development of the property bearing No.9-1-219/232, St. Mary's Road, Secunderabad, for construction of a multi-storeyed commercial complex consisting of shops, showrooms, offices, parking places and other commercial units etc, vide the development cum GPA agreement, registered vide document No.40/2000 on 10.01.2000. The AO observed that the capital gains has arisen to the assessee on the signing of the development agreement and therefore, the capital gains should be brought to tax during the relevant A.Y. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us by raising the above grounds of appeal. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that the case of the other co-owners had come up before the Tribunal in ITA Nos.1583 to 1592/Hyd/2017 and this Tribunal at para 8.1 has clearly held

that the capital gains is chargeable to tax only in the A.Y 2003-04 as it was held that the actual transfer took place in the year 2003. Therefore, according to him, the capital gains cannot be brought to tax in the A.Y 2010-11.

3. The learned DR, on the other hand, supported the orders of the authorities below.

4. Having regard to the rival contentions and the material on record, we find that the Coordinate Bench in the case of other co-owners has held as under:

*"8.1 Before us, the question raised is, in the case of 'JDA' transaction, at what point of time, capital gain arises. It is settled law that in the year in which the possession of the property is passed on to the developer is the year in which the provision of capital gains get attracted. In the case of Potla Nageswara Rao (supra) the Hon'ble AP High Court held as under:*

*"The element of factual possession and agreement are contemplated as transfer within the meaning of the aforesaid section. When the transfer is complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the assessment year when the agreement T. Prabhakar Rao (HUF) and others.*

*was entered into and possession was given. Here, factually it was found that both the aforesaid aspects took place in the previous year relevant to the assessment year 2003-04."*

*From the above decision, when the transfer is complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the AY when the agreement was entered into and possession was given. Therefore, in the given case, the assessee has entered into 'JDA' in the year 10/01/2000 and possession was handed over for development. But due to occupation of the property by the tenants, the developer was able to vacate the tenants only in the year 2003. Hence, it can be construed that the actual vacant possession was handed over to the developer only in 2003. Therefore, the actual transfer took place in the year 2003. The provisions of capital gains are attracted in the year 2003. Hence, the stand of the AO to charge the capital gains in the year 2010-11 is not proper. Secondly, the reason for bringing to tax in the year 2010-11 was the letter of the developer to announce that the building is ready for occupation without complying to the 'JDA' and approval norms. Even though the same was*

*brought to the notice of the AO, according to us, the reason for reopening the assessment is on faulty ground”.*

5. Respectfully following the same, the appeal of the assessee is allowed and it is held that the capital gain is taxable in the year 2003 when the actual vacant position of the land was given to the Developer.

6. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 12<sup>th</sup> September, 2018.

**Sd/-**  
**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 12<sup>th</sup> September, 2018.

***Vinodan/sps***

Copy to:

- 1 Shri A.V.Raghuram & P Vinod, Advocates, 610 Babukhan Estate, Basheerbagh, Hyderabad
- 2 ITO Ward 10(5) IT Towers, AC Guards, Masab Tank, Hyderabad
- 3 CIT (A)-4, Hyderabad
- 4 Pr. CIT – 6, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*