

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-B” BANGALORE BENCH**

**BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT**

<b>ITA No.887/Bang/2019</b>
<b>Assessment Year : 2013-14</b>

Shri. Babulal, M/s. Bangalore Sales and Marketing, 2 <sup>nd</sup> Cross, K. V. Temple Street, Sultanpet, Bangalore – 560 053. <b>PAN : AHWPB 4335 L</b>	Vs.	The Income Tax Officer, Ward–2(2)(4), Bangalore.
<b>Appellant</b>		<b>Respondent</b>

Assessee by	:	Smt. Soumya K, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Jr. Standing Counsel

Date of hearing	:	25.01.2021
Date of Pronouncement	:	28.01.2021

**ORDER**

This is an appeal by the assessee against the order dated 20.02.2019 of CIT(A), Bangalore-2, Bangalore, relating to Assessment Year 2014-15.

2. The only issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in treating a sum of Rs.7,12,016/- and Rs.18,01,718/- which were declared as long term capital gain on which exemption under section 54/54F of the Income Tax Act, 1961 (hereinafter called ‘the Act’) was claimed by the Assessee as income under the head Income from Business and consequently denying the deduction under section 54F of the Act to the assessee.

3. The assessee is an individual. He is proprietor of M/s. Bangalore Sales and Marketing, a wholesale paper merchant business. He was also distributing agent for Nandini Ghee manufactured by KMF, Karnataka.

4. On verification of the computation of Capital gain submitted by the assessee, the AO found that the assessee has sold i.e one Plot for Rs. 16,10,000/- and computed the long term capital gains of Rs. 25,455. The AO noticed that assessee had sold one more plot during Assessment Year 2012-13 and computed capital gain of Rs.2,53,450/- and claimed exemption under section 54F of the Act. The AO, therefore, verified the details of sites sold by the assessee and he found that the assessee had purchased one vacant residential purpose converted land of 32 guntas in Assessment Year 2008-09 vide registered sale deed dated 07.09.2007 for Rs.17 lakhs. The total cost of purchase of the land including stamp duty was Rs.18,82,190/-. The assessee paid a sum of Rs.5,79,800/- for approval to convert the larger extent into residential plots of different sizes, besides incurring expenditure of Rs.23,500. The total cost of acquisition of the larger extent of land and its conversion to approved sites was Rs.24,85,515 (Rs.1882190 + Rs.5,79,800 + 23,500). The Mysore Development Authority vide letter 21.05.2010 granted permission to convert the 32 guntas of land into a layout. The assessee divided 32 guntas of land into 9 plots of different sizes. Thereafter, the assessee sold the sites i.e., 1 site in the previous year in Assessment Year 2012-13 and 1 site in Assessment Year 2013-14.

6. The AO took the view that the assessee was engaged in an adventure of the nature of trade and therefore the income declared under the head “capital gains” is to be taxed under the head Income from Business. The assessee took the stand that the land was purchased with an intention of constructing a house for his self-occupation. Since the land was outside Mysore City, the assessee

decided to sell the property and because he could not get a buyer for the whole land, the land was converted into plots of different dimensions and sold. The AO did not agree with the contention of the assessee and he brought the income declared under the head capital gains to tax with the following observations:

*12.As the above explanation is not acceptable, and convincible, the above activity of the assessee has been considered as business activity i.e."Adventure in the nature of Trade" only and all the deductions and exemptions claimed by computing the income under long term capital gains is not allowed. The entire sale consideration of Rs. 16,10,000/- is considered as .business income and reduced the cost of the plot sold during the year proportionatel from the sale consideration. "The proportionate cost of the plot sold worked out as under:*

*i. Total area of the land 26,000 Sft and the total Cost is Rs. (18,82,190 + 79,825 + 23,500) = Rs. 24,85,515/-*

*ii. Total cost for 6300 Sft works out to*

$$Rs. \frac{2485515 \times 6300}{26000} = 6,02,260/-$$

*26000*

$$Rs. 16,10,000 - 6,02,260 = Rs. 10,07,740/-$$

*13.In view of the above discussions and calculations, the business profit from the activity of sale of plots is computed at Rs. 10,07,740/- and brought to tax under income from business for the Asst.Year 2013-14."*

7. On appeal by the assessee, the CIT(A) confirmed the order of the AO. Aggrieved by the order of the AO, the Assessee has preferred the present appeal before the Tribunal.

8. We have heard the submission of the learned AR who reiterated submissions made before the revenue authorities and relied on a decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Hotel Sreeraj ITA No.282/2002 dated 6.12.2007 and ITAT Rajkot Bench in the case of ACIT Vs. Narendra J.Bhimani ITA No.411/Rjt/2012 dated 31.1.2018. The learned DR

relied on the decision of the Hon'ble Supreme Court in the case of Raja J.Rameshwar Rao Vs. CIT 42 ITR 179 (SC) wherein it was held that when a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing as his stock-in-trade; he is carrying on business and making a profit. He also relied on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. B.Narasimha Reddy 150 ITR 347 (Karn.).

9. We have carefully considered the rival contentions. The Assessee purchased 32 Guntas of land on 7.9.2007. The land was originally agricultural land but was converted to non-agricultural use by order of Deputy Commissioner, Mysore District, Mysore dated 22.6.2006. Even prior to purchase the land use became non-agricultural. The Assessee applied for and obtained permission for division of 32 guntas into plots of different sizes on 12.10.2010. In previous year relevant to AY 2012-13 he sold one plot (on 16.3.2012) and in AY 2013-14, he sold two plots (on 20.7.2012 & 26.12.2012 respectively). In AY 2015-16, three plots were sold by the Assessee (on 2.2.2015 and 6.3.2015). In response to the query of the AO with regard to whether the Assessee has indulged in an "Adventure in the nature of trade" when he sold plots of land, the Assessee submitted a letter dated 24.3.2016 before the AO in which he has clearly explained that he was a trader in paper and KMF products and has not indulged in any business of selling sites. The Assessee has also explained that he was planning to construct a house for self occupation but since the land was outside Mysore and due to financial crunch, he decided to sell the entire property. The Assessee has also explained that because of slow down in real estate, he could not find buyers and sold sites over a number of years. Thus the

intention of the Assessee was not to do business in selling sites. The treatment of the larger extent of land in the books of account of the Assessee is as capital asset and not as stock in trade. This plea of the Assessee has not been disbelieved by the AO nor is there any material brought on record to disprove the claim of the Assessee.

10. The definition of business in the Act is an inclusive definition and includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The Supreme Court in *G.Venkataswamy Naidu* (1959) 35 ITR 594 (SC) held that even if there is absence of regularity, frequency or continuity in the transaction/s even an isolated transaction can be regarded as carrying on of business and as an adventure in the nature of trade for the purpose of treating it as business carried on. The supreme court in several cases laid down tests to determine as to when a single or isolated activity can be regarded as resulting in "Adventure in the nature of trade". The principles for determination of the question whether a particular transaction/s would constitute an adventure in the nature of trade and, if so, what tests would apply to arrive at a decision had also been examined by the Supreme Court in the case of *G.Venkataswami Naidu* (supra) and it was held that

"it is impossible to evolve any formula which can be applied in determining the character of isolated transaction which come before the Courts in tax proceedings. It would besides be inexpedient to make any attempt to evolve such a rule or formula. Generally speaking, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases on the border line that cause difficulty. If a person invests money in land intending to hold it, enjoys its income for some time, and then sells it at a profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade. Cases of realisation of investments consisting of purchase and resale, though profitable are clearly outside the domain of adventures in the nature of trade. In deciding the character of such transactions several factors are treated as relevant. Was the purchaser a trader and were the purchase of the commodity and its resale allied to his

usual trade or business or incidental to it ? Affirmative answers to these questions may furnish relevant data for determining the character of the transaction. What is the nature of the commodity purchased and resold and in what quantity was it purchased and resold? If the commodity purchased is generally the subject-matter of trade, and if it is purchased in very large quantities, it would tend to eliminate the possibility of investment for personal use, possession or enjoyment. Did the purchaser by any act subsequent to the purchase improve the quality of the commodity purchased and thereby made it more readily resaleable ? What were the incidents associated with the purchase and resale? Were they similar to the operations usually associated with trade or business? Are the transactions of purchase and sale repeated ? In regard to the purchase of the commodity and its subsequent possession by the purchaser, does the element of pride of possession come into picture? A person may purchase a piece of art, hold it for some time and if a profitable offer is received may sell it. During the time that the purchaser had its possession he may be able to claim pride of possession and aesthetic satisfaction; and if such a claim is upheld that would be a factor against the contention that the transaction is in the nature of trade. These and other considerations are set out and discussed in judicial decisions which deal with the character of transactions alleged to be in the nature of trade. In considering these decisions it would be necessary to remember that they do not purport to lay down any general or universal test. The presence of all the relevant circumstances mentioned in any of them may help the Court to draw a similar inference ; but it is not a matter of merely counting the number of facts and circumstances pro and con ; what is important to consider is their distinctive character. In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction; and so, though we may attempt to derive some assistance from decisions bearing on this point, we cannot seek to deduce any rule from them and mechanically apply it to the facts before us. In this connection it would be relevant to refer to another test which is sometimes applied in determining the character of the transaction. Was the purchase made with the intention to resell it at a profit? It is often said that a transaction of purchase followed by resale can either be an investment or an adventure in the nature of trade. There is no middle course and no half-way house. This statement may be broadly true ; and so some judicial decisions apply the test of the initial intention to resell in distinguishing adventures in the nature of trade from transactions of investment. Even in the application of this test, distinction will have to be made between initial intention to resell at a profit which is present but not dominant or sole; in other words, cases do often arise where the purchaser may be willing and may intend to sell the

property purchased at profit, but he would also intend and be willing to hold and enjoy it if a really high price is not offered. The intention to resell may in such cases be coupled with the intention to hold the property. Cases may, however, arise where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it. The presence of such an intention is no doubt a relevant factor and unless it is offset by the presence of other factors it would raise a strong presumption that the transaction is an adventure in the nature of trade.

Even so, the presumption is not conclusive ; and it is conceivable that, on considering all the facts and circumstances in the case, the Court may, despite the said initial intention, be inclined to hold that the transaction was not an adventure in the nature of trade. We thus come back to the same position and that is that the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all the relevant facts and circumstances."

11. The Supreme Court has also laid down that cases of commercial commodities stand on different footing from land. A transaction of purchase of land cannot be assumed without more to be a venture in the nature of trade *Janki Ram Bahadur Ram Vs. CIT (1965) 57 ITR 21 (SC)* and *P.M.Mohammed Meerakhan Vs. (1969) 73 ITR 735 (SC)* It was also held that land is not generally or ordinarily a trading commodity unlike, for example, manufactured articles that are normally the subject-matter of trade. Land, on the other hand, is often the subject-matter of investment *CIT Vs. Kasturi Estates (P) Ltd. (1966) 62 ITR 578 (Mad)*.

12. In cases of purchase and sale of land as laid down by the Hon'ble Supreme Court in the case of *Raja J.Rameshwar Rao (supra)*, a decision on which the learned DR placed reliance, the intention at the time of purchase will be a relevant factor. When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and

divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing as his stock-in-trade; he is carrying on business and making a profit. In the present case however the intention at the time of purchase was to construct a house for self occupation and that intention was given up due to the fact that the land was outside Mysore city and due to financial crunch. Therefore the tests laid down in the decisions support the plea of the Assessee that he did not do any adventure in the nature of trade when he sold the larger extent of property after dividing them into smaller sites. The dates of acquisition of the property and its conversion into sites and obtaining approval and the dates of sale by the Assessee all go to show his intention at the time of acquisition was not with a view to indulge in an adventure in the nature of trade. The case of B.Narasimha Reddy (supra) is a decision on facts of that case. In paragraph 12 of the decision of the Hon'ble Karnataka High Court, the circumstances of the case have been spelt out and those circumstances are present in the present case.

13. For the reasons given above, I hold that the gain on sale of land is to be regarded as income under the head "capital gain". Consequently, the Assessee should be entitled to all the deductions permissible while computing income under the head "Capital Gain".

14. The appeal of the Assessee is accordingly, allowed.

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

Sd/-  
**(N.V VASUDEVAN)**  
**Vice President**

Bangalore,  
Dated : 28.01.2021  
/NS/\*



Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.