

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF AUGUST 2012

PRESENT

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA NO.1133/2006 C/W.ITA. 1148/2006 & ITA.1150/2006

ITA.NO.1133/2006

BETWEEN :

1. THE COMMISSIONER OF
INCOME TAX, CENTRAL CIRCLE,
C.R.BUILDING,
QUEENS ROAD,
BANGALORE.

2. THE ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE – 9(1),
C.R.BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI.M.THIRUMALESH, ADV)

AND:

SHRI.KRISHNAPPA,
NO.1691, ANJANEYA TEMPLE STREET,
KENGARI SATELLITE TOWN,
BANGALORE – 560 060.

...RESPONDENT

(BY SRI.R.RAMAMURTHY, ADV)

ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 24-03-2006 PASSED IN ITA.NO.1276/BANG/2003, FOR THE ASSESSMENT YEAR 1996-1997, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA.NO.1276/BANG/2003 DATED 24-03-2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST.COMMISSIONER OF INCOME TAX, CIRCLE-9(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

ITA.NO.1148/2006

BETWEEN :

1. THE COMMISSIONER OF
INCOME TAX, CENTRAL CIRCLE,
C.R.BUILDING, QUEENS ROAD,
BANGALORE.

2. THE ASSISTANT COMMISSIONER
OF INCOME TAX, CIRCLE 9(1)
C.R.BUILDING, QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI.K.V.ARAVIND, ADV)

AND:

SHRI.M.R.J.AKSHMANAPPA
NO.518, KENGERI,
SATELLITE TOWN,
4TH CROSS, KENGERI,
BANGALORE.

...RESPONDENT

(BY SRI.S.PARTHASARATHI, ADV)

ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 24-03-2006 PASSED IN ITA.NO.1116/BANG/2002, FOR THE ASSESSMENT YEAR 1996-1997, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT BANGALORE IN ITA.NO.1116/BANG/2002 DATED 24-03-2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST.COMMISSIONER OF INCOME TAX, CIRCLE-9(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

ITA.NO.1150/2006

BETWEEN :

1. THE COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, C.R.BUILDING, QUEENS ROAD, BANGALORE.

2. THE ASSISTANT COMMISSISNER OF INCOME TAX, CIRCLE- 9(1), C.R.BUILDING, QUEENS ROAD, BANGALORE.

...APPELLANTS

(BY SRI.K.V.ARAVIND, ADV)

AND:

SMT.PARVATHAMMA
NO.518, 4TH MAIN
7TH CROSS,
KENGARI SATELLITE TOWN
BANGALORE.

...RESPONDENT

(SERVICE NOTICE HELD SUFFICIENT V/O DTD 22.09.2010)

ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 24-03-2006 PASSED IN ITA.NO.1277/BANG/2003, FOR THE ASSESSMENT YEAR 1996-1997, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA.NO.1277/BANG/2003 DATED 24-03-2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST.COMMISSIONER OF INCOME TAX, CIRCLE-9(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR HEARING THIS DAY, B.MANOHAR, J, DELIVERED THE FOLLOWING:

JUDGEMENT

Being aggrieved by the order dated 24.3.2006 made in ITA No.1276/Bang/2003, ITA No.1116/Bang/2002 and ITA No.1277/Bang/2003 passed by the Income Tax Appellate Tribunal, Bangalore dismissing the appeals and confirming the order passed by the Commissioner of Income Tax (appeals) Bangalore, the revenue has preferred these three appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') for the assessment year 1996-97.

2. Since the common question of facts and law are involved in these appeals, a common order was passed by the Income Tax Appellate Tribunal in these appeals. Hence all these appeals are

clubbed together and disposed of by this common order:

3. The facts of the case in brief as follows:

The respondent/assessee namely Sri. M R Lakshmanappa in ITA No.1148/2006 filed returns on 4.3.1998 declaring the total income from Real Estate, civil works and lorry hire charges. A survey was conducted in the business premises of the said assessee under Section 133A of the Act on 24.11.1998. During the course of survey, number incriminating documents were found relating to the Real Estate business, which was not reflected in the returns for the assessment year 1996-97. The assessee alongwith his wife, Smt.Parvathamma and Sri Krishnappa entered into a memorandum of understanding (MoU) on 23.3.1995 with Sri N K Mohta for acquiring and delivering agricultural land measuring about 63 acres at the rate of Rs.4 lakh per acre as per the memorandum of agreement and token advance of Rs.20 lakhs has been received. Thereafter, the assessee had acquired and delivered 31.19 acres of land as part performance of MoU to the said Sri N K Mohta at the rate of Rs.4 lakh per acre. The said land was purchased as per the agreement dated 22.2.1993 from Smt.Rathnamma at the rate of Rs.1,61,000/- per acre and 8 acres of land from Sri Mudappa.

4. A notice was issued to the respondents/assesseees and also to the respondents in these appeals. In response to the notice issued under Section 148 of the Act, filed a reply stating that their income is less than Rs.40,000/- and therefore no books of account has been maintained and no returns of income has been filed. The Assessing Authority after considering the MoU entered into between three assesseees and Sri N K Mohta held that the assesseees have earned the profit of Rs.75,22,525/- towards the sale transaction of 31.19 acres of land at the rate of Rs.4 lakhs per acre. Hence, the profit to the each assessee is taken at 1/3rd share of 75,22,525/-, which comes to Rs.25,07,508/-. After giving an opportunity to the assesseees to cross-examine Sri N K Mohta, the Assessing Authority assessed the income earned from the Real Estate business of Rs.25,07,508/- for each assessee and called upon them to pay the income tax on the said amount. Being aggrieved by the assessment order passed by the Assessing Authority, the assessee, Sri M R Lakshmanappa preferred an appeal before the Commissioner of Income-tax (Appeals)-III, Bangalore. The Commissioner of Income-tax (Appeals) after considering the matter in detail and the other relevant records and the plaintiff and written statement filed in OS No.113/1996 filed by Sri N K Mohta for specific performance and also his statement

recorded by the Assessing Authority noticing that Sri N K Mohta has not paid the amount directly to the assessee and he has paid the amount to the land owners held that the said amount cannot be taken as income of the assessee. Accordingly, the Commissioner of Income Tax (Appeals) allowed the appeal by his order dated 3.5.2002. Further the appeals filed by other two assesseees were also allowed following the order dated 3.5.2002.

5. The Revenue being aggrieved by the order dated 3.5.2002 passed by the the Commissioner of Income-tax (Appeals) preferred appeals before the Income-Tax Appellate Tribunal. The Income-Tax Appellate Tribunal after considering the matter in detail dismissed the appeals filed by the revenue and upheld the order passed by the Commissioner of Income-tax (Appeals). The Revenue being aggrieved by the order dated 24.3.2006 passed by the Income-tax Appellate Tribunal has preferred these appeals.

6. The above appeals have been admitted for considering the following substantial questions of law:

1) Whether the Tribunal was right in holding that the agreement holder Mr.B Krishnappa, Mr.Lakshmappa and his wife Mrs.Parvathamma having received a sum of Rs.25,07,508/- in addition to the

registered value for sale of land as admitted by Mr.N K Mohta and purchaser and as per memorandum of understanding dated 23.3.1995 entered into between the parties and other materials detected during survey cannot be treated as the income of the assessee? And

2) Whether the Tribunal was right in holding that a sum of Rs.90,00,000/- paid by N K Mohta in addition to Rs.25,07,508 x 3 = 75,22,525/- as admitted to have been paid in cash to Mr.Krishnappa, Mr.Laxmanappa and his wife Mrs.Parvathamma cannot be treated as their respective incomes?"

7. Sri M Thirumalesh, Advocate appearing for the appellants contended that the order passed by the Income-tax Appellate Tribunal confirming the order passed by the the Commissioner of Income-tax (Appeals) is contrary to law. The survey was conducted in the premises of Sri M R Lakshmanappa. During the course of survey, it was found that the assesseees have entered into MoU with Sri N K Mohta for acquiring and delivering 63 acres of land at the rate of Rs.4 lakh per acre. Pursuant to the said agreement, 31.19 acres of land was delivered and registered in the name of nominee of Sri N K Mohta on 29.5.1995, 4.9.1995 and 6.9.1994 respectively. The assesseees have received a sum of Rs.1,25,90,000/- as sale consideration. The cost of acquisition of 31.19 acres of land is

Rs.50,67,495/- and each assessee has got the income of Rs. 25,07,508/-. During the course of enquiry, the statement of Sri N K Mohta has been recorded, wherein he has stated that he has paid Rs.90 lakh by way of cash to the various parties on the direction of the present assesseees. The said Sri N K Mohta was cross-examined by the counsel appearing on behalf of the assesseees. The said Sri N K Mohta has not disputed the MoU dated 23.3.1995 and registration of 31.19 acres of land. The reasoning assigned by the Income-Tax Appellate Tribunal dismissing the appeals is contrary to law. Even though, the transaction is not yet completed, by registration of 31.19 acres of land, the assesseees have earned the profit of Rs.75,22,525/-. Hence, the order passed by the Income-tax Appellate Tribunal confirming the order passed by the Appellate Tribunal cannot be sustained and sought for setting aside the same, by allowing these appeals.

8. On the other hand, Sri R Ramamurthy, Advocate appearing for the respondents argued in support of the order passed by the Income-tax Appellate Tribunal as well as the CIT(appeals) and contended that the assesseees have entered into an agreement for acquiring and delivering 63 acres of land to Sri N K Mohta at the

rate of Rs.4 lakh per acre. The assessee acquired 23.19 acres of land from Smt.Rathnamma at the rate of Rs.1,61,000/- and 8 acres of land from Sri Mudappa at the rate of Rs.2,60,000/-. During the enquiry, Sri N K Mohta admitted that he has paid Rs.20 lakh by way of cheque as an advance by obtaining necessary security deposit of title deed and Rs.90 lakh has been paid to various parties i.e. land owners on the advise of Sri M R Lakshmanappa. In the cross examination he has stated that he has not paid Rs.90 lakhs in cash either to Sri M R Lakshmanappa or to other assessee. Further OS No.113/1996 was filed for specific performance of MoU dated 23.3.1995. In the plaint, Sri N K Mohta himself has admitted that he has paid the amount to the various land owners. Since the assessee have not received any amount, the question of each assessee earning Rs.25,07,508/- in real estate business does not arise. The Income-tax Appellate Tribunal as well as the Appellate Authority after considering the entire materials, set aside the order passed by the Assessing Authority. Hence, the learned counsel prays that the impugned order does not call for interference and sought for dismissal of the appeals.

9. We have carefully considered the argument addressed by the parties.

10. As per the Memorandum of Understanding dated 23-3-1995, ("MoU" for short) the assesseees have agreed to acquire and deliver 63 acres of agricultural land to Mr.N.K.Mohta at the rate of Rs.4,00,000/- per acre. Pursuant to the said MoU, 31.19 acres of land was registered in the name of nominee of N.K.Mohta. Out of 31.19 acres of land, 23.19 acres of land was purchased from Smt.Rathnatnma and 8.00 acres of land was purchased from Mr.Mudappa at the rate of Rs.1,61,000/- per acre and the said land was sold as per the MoU at the rate of Rs.4,00,000/- per acre. The Assessing Officer taking into consideration the MOU and transaction between the parties, and also the cost of 31.19 acres of land, assessed the profit at Rs.75,22,525/-. Accordingly, each of the assesseees are entitled for 1/3 income which comes to Rs.25,07,805/- and hence the said amount was brought under tax. Sri.N.K.Mohta in his statement has admitted that the transaction in respect of 31.19 acres of land is complete and he has paid the entire amount in respect of 31.19 acres of land at the rate of Rs.4,00,000/- per acre. Apart from that, he has paid Rs.90,00,000/- over and above the said amount to the land

owners as per the directions of M.R.Lakshmanappa.

11. Further, appellant in ITA No.1148/2006 (M.R.Lakshmanappa) in his statement dated 8-2-2002 before the Assessing Officer stated as follows:

“We have received Rs.20,00,000/- as advance out of which, Rs.7,00,000/- has been taken by Sri.B.Krishnappa, and Rs.7,00,000/- I have received and the balance of Rs.6,00,000/- given to Smt.Parwathamma by cheque.”

Further he deposed that

“I have not received the amount from Sri.N.K.Mohta at the rate of Rs.4,00,000/- per acre for 38.24 acres during registration. I have received only a sum of Rs.81.18 lakhs (61.18 lakhs + 20.00 lakhs advance) for this transaction.”

He further deposed that

“I have not got registered the entire property belonged to Smt.Rathnamma of 38.24 acres. I have registered only 30 acres of land which consists of 22 acres of land belongs to Smt.Rathnamma and 8.00 acres belongs to survey of Babusabupalya. I have received Rs.76.50 lakhs for the balance of 30 acres of land from Sri.N.K.Mohta out of the amount due at Rs.1.2 crores.”

Hence, it is clear that in respect of 39.19 acres of land, the transaction is complete and the assesseees have received full consideration from Sri.N.K.Mohta, as per the MOU. For the remaining extent of land, N.K.Mohta has filed a suit and contended that he has paid some amount in respect of the remaining extent of land. The transaction is not yet completed. Hence, we hold that the transaction in respect of 39.19 acres is completed and each of the assesseees have got the income of Rs.25,07,508/- in the said transaction. Hence, the said amount has to be treated as income from the real estate and liable to be brought under tax. Accordingly, we answer substantial question of law No.1 in favour of the revenue.

12. Insofar as, second substantial question of law is concerned, the revenue has failed to prove that the assesseees have received a sum of Rs.90,00,000/- extra money from N.K.Mohta. Sri. N.K.Mohta in his statement before the Assessing Officer stated that he has paid Rs.90,00,000/- of unaccounted money to the various persons at the instructions of Lakshmanappa. However, he has not received the receipts from those persons. In respect of 31.19 acres of land, the transaction is complete and for the remaining extent of land, Sri.N.K.Mohta has filed a suit in O.S.No.113/1996 for specific

performance of Memorandum of understanding in respect of the remaining extent of the land as agreed between the assesseees and Sri.N.K.Mohta. No document has been produced to show that he has paid Rs.90,00,000/- to the assesseees in respect of remaining extent of land. The stray and inconsistent statement made by N.K.Mohta cannot be accepted. In the absence of any document, the statement of N.K.Mohta that he has paid a sum of Rs.90,00,000/- to the assesseees in cash cannot be accepted. Accordingly, we hold the second substantial question of law in favour of the assesseees.

13. Accordingly, we pass the following:

ORDER

All the three appeals are allowed in part. The first substantial question of law is answered in favour of revenue and second substantial question of law is answered in favour of the assesseees and against the revenue.

Sd/-
JUDGE

Sd/-
JUDGE

bkm/mpk/-*