

W.T.A No.11 OF 2016
C/W W.T.A NO.9 OF 2016
W.T.A NO.10 OF 2016

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.T.A No.11 OF 2016

C/W

W.T.A No.9 OF 2016

W.T.A No.10 OF 2016

IN W.T.A No.11 OF 2016

BETWEEN :

M/S. NOORANI PROPERTIES (P) LTD
'APARANTA', NO.2208, 80 FT ROAD
HAL 3RD STAGE, KODIHALLI
BANGALORE-560 008
REPRESENTED BY ITS
MANAGING DIRECTOR
SURJIT SINGH DHINGRA

... APPELLANT

(BY DR. C.P. RAMASWAMY FOR
SHRI. BALRAM R. RAO, ADVOCATES)

AND :

1. THE COMMISSIONER OF WEALTH TAX
BMTc BUILDING, 80 FT. ROAD
KORAMANGALA
BANGALORE-560 095
2. THE WEALTH TAX OFFICER
WARD-12(2), BMTc BUILDING

80 FT. ROAD
KORAMANGALA
BANGALORE-560 095

... RESPONDENTS

(BY SHRI. K.V. ARAVIND, ADVOCATE)

THIS WTA IS FILED UNDER SECTION 27-A OF WEALTH TAX ACT 1957, ARISING OUT OF ORDER DATED 12.02.2016 PASSED IN WTA NO.43 TO 45/BANG/2014, FOR THE ASSESSMENT YEAR 2004-05 TO 2006-07 PRAYING A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE TRIBUNAL IN WTA NOS. 43 TO 45/BANG/2014 DATED 12.02.2016. C) TO PASS SUCH OTHER ORDERS, AS THIS HON'BLE COURT DEEMS FIT AND PROPER TO MEET THE ENDS OF JUSTICE.

IN W.T.A No.9 OF 2016

BETWEEN :

M/S. VERDE DEVELOPERS (P) LTD
APARANTA NO.2208, 80 FEET ROAD
HAL 3RD STAGE, KODIHALLI
BANGALORE-560 008
REPRESENTED BY
ITS MANAGING DIRECTOR
SURJIT SINGH DHINGRA

... APPELLANT

(BY DR. C.P. RAMASWAMY FOR
SHRI. BALRAM R. RAO, ADVOCATES)

AND :

1. THE COMMISSIONER OF WEALTH TAX
BMTC BUILDING, 80 FT. ROAD
KORAMANGALA
BANGALORE-560 095
2. THE WEALTH TAX OFFICER
WARD-12(2), BMTC BUILDING
80 FT. ROAD
KORAMANGALA
BANGALORE-560 095

... RESPONDENTS

(BY SHRI. K.V. ARAVIND, ADVOCATE)

THIS WTA IS FILED UNDER SECTION 27-A OF WEALTH TAX ACT 1957, ARISING OUT OF ORDER DATED 12.02.2016 PASSED IN WTA NO.48 TO 51/BANG/2014 (IN COMMON ORDER WTA NO.46-51/BANG/2014), FOR THE ASSESSMENT YEAR 2004-05 TO 2007-08 PRAYING A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE TRIBUNAL IN WTA NOS. 48 TO 51/BANG/2014 (IN COMMON ORDER WTA NO.46-51/BANG/2014) DATED 12.02.2016. C) TO PASS SUCH OTHER ORDERS, AS THIS HON'BLE COURT DEEMS FIT AND PROPER TO MEET THE ENDS OF JUSTICE.

IN W.T.A No.10 OF 2016

BETWEEN :

M/S. TRIAD RESORTS AND HOTELS (P) LTD
APARANTA NO.2208, 80 FEET ROAD
HAL 3RD STAGE, KODIHALLI
BANGALORE-560 008
REPRESENTED BY
ITS MANAGING DIRECTOR
SURJIT SINGH DHINGRA

... APPELLANT

(BY DR. C.P. RAMASWAMY FOR
SHRI. BALRAM R. RAO, ADVOCATES)

AND :

1. THE COMMISSIONER OF WEALTH TAX
BMTC BUILDING, 80 FT. ROAD
KORAMANGALA
BANGALORE-560 095
2. THE WEALTH TAX OFFICER
WARD-12(2), BMTC BUILDING
80 FT. ROAD
KORAMANGALA
BANGALORE-560 095

... RESPONDENTS

(BY SHRI. K.V. ARAVIND, ADVOCATE)

THIS WTA IS FILED UNDER SECTION 27-A OF WEALTH TAX ACT 1957, ARISING OUT OF ORDER DATED 12.02.2016 PASSED IN WTA NO.39 TO 42/BANG/2014 (IN COMMON ORDER WTA NO.37-42/BANG/2014), FOR THE ASSESSMENT YEAR 2004-05 TO 2007-08 PRAYING A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE TRIBUNAL IN WTA NOS. 39 TO 42/BANG/2014 (IN COMMON ORDER WTA NO.37-42/BANG/2014) DATED 12.02.2016 C) TO PASS SUCH OTHER ORDERS, AS THIS HON'BLE COURT DEEMS FIT AND PROPER TO MEET THE ENDS OF JUSTICE.

THESE WTAs, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.06.2022 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **P.S.DINESh KUMAR J**, PRONOUNCED THE FOLLOWING:-

JUDGMENT

These appeals by the assessees are directed against common impugned order dated February 12, 2016 passed by the ITAT¹ in W.T.As. No.37 to 42/Bang/2014, W.T.As. No.43 to 45/Bang/2014 and W.T.As. No.46 to 51/Bang/2014 and they have been admitted to consider following questions of law:

¹ Income Tax Appellate Tribunal 'C' Bench

"1. On the facts and circumstances of the case and in law whether the learned Tribunal was correct in law in holding perversely that the appellant continued to be the owner of urban land under section 2(ea) of the Wealth Tax Act, 1957 despite the fact that the appellate (after transferring the land to the developer through JDA dated 05-12-2000) retained only the right to receive 15.3% of the total built up area, which does not fall within the exhaustive definition of "assets" under section 2(ea) of the Wealth Tax Act, 1957?

2. On the facts and circumstances of the case and in law whether the learned Tribunal ignored the binding decisions of this Hon'ble Court rendered on interpretation of section 2(47)(v) of the Income-tax Act, 1961 squarely applicable to the facts of the case and perversely applied ratio rendered in interpretation of section 2(47)(vi) of the Income-tax Act, 1961?

3. On the facts and circumstances of the case and in law whether the learned Tribunal was correct in holding there was no transfer of the urban land by the appellant despite the fact that the developer was put in possession of the said property under Clause 13.2 of the JDA date 05-12-2000?

4. On the facts and circumstances of the case and in law whether the learned Tribunal was correct

in law holding that entries in books of account determine the nature of an asset ignoring the provisions of Clause (b) of Explanation 1 to Clause (ea) of section 2 of the Wealth Tax Act, 1957?. "

2. We have heard Shri. C.P. Ramaswamy, learned Advocate for the assesseees and Shri. K.V. Aravind, learned Senior Standing Counsel for the Revenue.

3. Shri. Ramaswamy submitted that assessee-Companies are owners of different extent of lands situated in Patandar Agrahara village, K.R.Puram Hobli, Bengaluru. They entered into a Development Agreement dated December 5, 2000 with M/s. Classic Infrastructure and Development Ltd.('CIDL' for short), a subsidiary Company of M/s. ITC Ltd. In pursuance of the agreement, they handed over the physical possession of their respective properties along with original title deeds.

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They have cumulatively received a sum of ₹ 28.88 crores as refundable deposit. CIDL did not develop the property, but on the other hand determined the agreement on August 29, 2007. On the same day a Settlement Agreement was entered into between the appellants, CIDL and M/s. ITC Ltd., and the appellants were compelled to convey the properties in question in favour of ITC Ltd.

4. The Assessing Authority took up appellants' cases for scrutiny assessment and issued Notices under Section 17 of the Wealth Tax Act, 1957 for the Assessment Years 2004-05 to 2006-07. In response to the Notices, appellants filed 'NIL' returns. The Assessing Authority initiated proceedings and passed orders under Section 16(3) read with Section 17 of the Wealth Tax Act dated December 30, 2009 and determined the net wealth in the case of:-

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- A.G. Noorani² as ₹ 7.42 crores, ₹ 11.68 crores and ₹ 12.93 crores for the Assessment Years 2004-05, 2005-06 and 2006-07 respectively;
- Verde Developers³ as ₹ 16.32 crores, ₹ 25.35 crores, ₹ 27.73 crores and ₹ 40.66 crores for the Assessment Years 2004-05, 2005-06 and 2006-07 and 2007-08 respectively;
- Triad Resorts⁴ as ₹ 7.48 crores, ₹ 11.53 crores, ₹ 12.62 crores and ₹ 18.55 crores for the Assessment Years 2004-05, 2005-06 and 2006-07 and 2007-08 respectively.

5. Appellants challenged Assessing Authority's orders before CIT⁵ (Appeals) and the same were partly allowed. Feeling aggrieved, appellants approached the ITAT and by the impugned common order ITAT has dismissed those appeals.

² Appellant in WTA No.11/2016

³ Appellant in WTA. No.9/2016

⁴ Appellant in WTA No.10/2016

⁵ Commissioner of Income Tax (Appeals)

6. Shri. Ramaswamy further submitted that appellants had filed additional grounds before the ITAT during the course of hearing of the appeal and the same have not been considered. Appellants also filed miscellaneous petitions registered as M.Ps. No.25 to 35/Bang/2016 and they have been dismissed with certain adverse observations.

7. Shri. Ramaswamy took us through the Master Development Agreement dated December 5, 2000 between appellants and the CIDL and urged that appellants had handed over possession of their lands to the Developer. He submitted that under Clause 13.1 of the agreement, parties were required to file applications before the appropriate authority under Chapter XXC of the Income Tax Act, 1961⁶, and the Department had issued 'No objection' under Section 269UL(1) of the Act

⁶ 'IT Act' for short

dated March 12, 2001 and the name of the transferee mentioned therein is CIDL.

8. Shri. Ramaswamy placed reliance on the following authorities:

- *CIT Vs. Dr. T.K. Dayalu*⁷
- *CIT Vs. Shri. N Vemanna Reddy*⁸
- *Kedarnath Jute Manufacturing Company Ltd. Vs. Commissioner of Income Tax (Central), Calcutta*⁹
- *Kiran Singh Vs. Chaman Paswan*¹⁰
- *P.V. Doshi Vs. Commissioner of Income Tax, Gujarat*¹¹
- *CIT and another Vs. Smt. Meenakshi Devi Avaru (Decd.) through legal heirs*¹²
- *Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana and another*¹³

⁷ ITA 3209/2005 c/w. 3165/2005 decided on 20.06.2011

⁸ ITA No. 591/2008 decided on 18.08.2014

⁹ [1971] 82 ITR 363 (SC)

¹⁰ 1954 AIR (SC) 340

¹¹ [1978] 113 ITR 22 (Guj)

¹² [2019] 410 ITR 306 (Kar)

¹³ [2012] 340 ITR 1 (SC)

9. Thus substance of Shri.Ramaswamy's argument is, possession of the properties in question was transferred to CIDL. Hence they were not liable to pay wealth tax for the assessment year in question. Therefore, the orders passed by the Assessing Authority and subsequent appellate orders are not sustainable in law.

10. In reply Shri. Aravind, learned Senior Standing Counsel for the Revenue submitted that there is no material on record which would establish that the possession of the properties was handed over to the CIDL. Therefore, there is no error in the impugned order. He placed reliance on the following authorities:

- *Commissioner of Income tax Vs. Balbir Singh Maini*¹⁴

¹⁴ [2017] 398 ITR 531 (para 18 & 20)

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- *Seshasayee Steels (P.) Ltd. Vs. Assistant Commissioner of Income Tax, Company Circle VI(2), Chennai*¹⁵

11. We have carefully considered rival contentions and perused the records.

12. Wealth Tax is chargeable under Section 3 of the Wealth Tax Act, 1957. It is a tax in respect of the net wealth of every individual, HUF and Company. Net Wealth is defined in Section 2(n) as 'the amount by which the aggregate value computed in accordance with the provisions of the Act of all assets wherever located. As per Section 2(ea), 'urban land' falls within the definition of 'assets'. It is not in dispute that the appellants own urban land and they are assessable for Wealth tax.

¹⁵ [2020] 421 ITR 46 (para nos. 11,13,14 and 17)

13. Appellants' case is, they had entered into a Joint Development Agreement with the CIDL for development of their lands. A careful perusal of the Master Development Agreement¹⁶ shows that the appellants as owners of properties mentioned in the Schedules – I, II and III had earlier entered into an Agreement on April 18, 1996 with CIDL for development of property measuring 18 acres 23 guntas into an integrated Business Park with an approximate built-up area of 17,00,000 sq. ft. They had also entered into an MOU in April 1996 and a supplemental MOU in June 1996. In supersession of all previous agreements and instruments, appellants and CIDL have entered into the MDA. As per Clause 3 of the MDA, the Developer has paid Rs.28,49,55,543/- to appellants and also agreed to pay further sum aggregating to Rs.28,88,75,000/- refundable or adjustable in accordance with the provisions of the agreement. As per Clause 4 of the

¹⁶ 'MDA' for short

agreement, each appellant was entitled for 15.3% of the built-up area in the respective lands owned by them together with proportionate undivided share in the land. Clause 6 of the agreement shows that after demarcating the appellants' built-up area, the Developer was entitled to sell or deal the remaining built-up area and the proportionate undivided share in the land. Appellants were also entitled to retain their portion or sell the same through the Developer.

14. By its letter dated August 29, 2007, CIDL has determined the MDA dated December 5, 2000, by mutual consent, without any further obligation on any of the parties. It is stated in that letter that appellants had refunded the Security deposit placed by CIDL. Appellants have also entered into a Settlement Agreement with CIDL and M/s. ITC Ltd. They have also executed a Sale Deed in favour of M/s. ITC Ltd. All transactions have taken place on the same day namely August 29, 2007.

15. It was argued by Shri. Ramaswamy that appellants had no choice, but to accept the terms put forth by the M/s. ITC and CIDL. He has also placed for our reference, a letter dated May 19, 2001, written by one Mr. Surjit Singh Dhingra to CIDL. It is stated therein that the NOC from the appropriate authority was faxed and the original was couriered on March 14, 2001 and subsequently, CIDL had taken possession of the properties on March 26, 2001. Shri. Ramaswamy has also placed a photocopy of the Consignment note issued by DTDC Courier company.

16. The ITAT in paras 11 and 12 of its order, adverting to *Wipro Ltd., Vs. DCIT*¹⁷ has held that JDA does not call for any title or transfer of any interest in the immovable property. Further, by referring to *CWT Vs. Bishwanath Chatterji*¹⁸ and *Late Nawab Sir Meer Osman*

¹⁷ 282 CTR (KAR) 346

¹⁸ 103 ITR 356

*Ali Khan*¹⁹, it has held that the Assessee Companies continued to be the owners of the land and liable to pay Wealth Tax.

17. Shri. Aravind, for the Revenue has placed reliance on the following authorities:

- *CIT Vs. Balbir Singh Maini*²⁰
- *Seshasayee Steels (P) Ltd Vs Assistant Commissioner of IT, Chennai*²¹

18. Clause 13 of the MDA requires the parties to submit relevant forms for issuance of 'No Objection' under Chapter XX-C of the IT Act. Clause 13(2) provides for entering upon respective properties to carry out the development and construction.

¹⁹ 162 ITR 888

²⁰ [2017] 398 ITR 531 (Para 20)

²¹ [2020] 421 ITR 46 (Para 2)

19. Shri. Ramaswamy has placed for our consideration, a copy of the 'No Objection' dated March 12, 2001, issued by the appropriate authority under Chapter XX-C and a letter dated May 19, 2001 by Surjit Singh Dhingra stating that CIDL had taken possession of the property on March 26, 2001. The entire case of the Revenue with regard to the 'possession' has been considered by the ITAT in paras No.9 to 12 of the impugned order. The discussion therein, is based on the JDA/MDA dated December 5, 2000. As per Clause 10.1(g), the owners have covenanted to convey proportionate undivided interest in favour of proposed purchaser/nominee of the developer. Annexure-A(viii) to the agreement shows that the owner has granted two Powers of Attorney of the same date in favour of the developer for the purpose of development and sale. Clause 13(1) & 13(2) of the MDA, refer to the transfer of possession.

20. Shri. Ramaswamy has also placed the following documents for consideration:

- a copy of letter dated January 11, 2000, written by CIDL to Shri. S.S. Dhingra;
- reply by Shri. S.S. Dhingra dated January 17, 2000;
- copy of order dated April 17, 1999 in O.S. No.830/1996 in the Court of Additional Civil Judge, Junior Division, Bengaluru;
- copy of Assessment order dated December 22, 2010 of M/s. Triad Resorts and Hotels Pvt. Ltd. for A.Y. 2008-09;
- order passed by CIT(Appeals) dated March 20, 2014 of M/s. Triad Resorts and Hotels Pvt. Ltd. for A.Y. 2008-09.

21. Placing reliance on the above documents, he submitted that the Assessing Officer has recorded in the Assessment order that the boundary wall in the property

in question appears to have been constructed by ITC Group. The CIT(Appeals) has also noted this aspect in his order. The order passed by the Civil Court in O.S. No.830/1996 has been referred to in the letter written by Shri. Dhingra dated January 17, 2000.

22. A combined reading of Clause 10.1(g), Clause 13.1, 13.2 and Clause A(viii) of the Annexure-A together with the 'No Objection' under Chapter XX-C of the IT Act and the letter written by Shri. Dhingra *prima facie* demonstrates that the Developers did have power to alienate their portion of the property; and they had entered into the property. It is a different matter if the project did not progress further. A mere failure of the project does not undo the acts of the parties. Therefore, in our view, the impugned order passed by the ITAT is not sustainable and in the facts and circumstances of this case, it is just and appropriate for the ITAT to have a re-look into the matter in the light of the contents of MDA,

NOC issued under Chapter XX-C and the letter written by
Shri. Dhingra.

23. In view of the above, the following:

ORDER

- (a) Appeals are **allowed**.
- (b) Orders dated (i) 12.02.2016 in WTA Nos.43 to 45/BANG/2014, (ii) 12.02.2016 in WTA Nos.48 to 51/BANG/2014(in common order WTA Nos.46 to 51/BANG/2014) and (iii) 12.02.2016 in WTA Nos.39 to 42/BANG/2014 (in common Order WTA Nos.37 to 42/BANG/2014) of ITAT are set-aside.
- (c) Matters are referred to the ITAT for fresh consideration in accordance with law, in the light of the observations contained in this judgment.
- (d) In view of the tenor of the (i) order dated 11.08.2016 passed by ITAT in M.P Nos.29 to 31/Bang/2016, (ii) order dated 11.08.2016 passed by ITAT in M.P Nos.32 to 35/Bang/2016 and

(iii) order dated 11.08.2016 passed by ITAT in M.P Nos.25 to 28/Bang/2016, we direct that the appeals shall be heard by a different Bench other than the Members who have heard the Misc. petition.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS