IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No. 916/Bang/2017
Assessment year: 2012-13

Armatic Engineering (P) Ltd., No.8, 27th Cross, BSK 2nd Stage, Bangalore – 560 070. **PAN: AABCA 2132P**	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.V. Gowthama, CA
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.02.2021
Date of Pronouncement	:	25.02.2021

O R D E R

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals)-1, Bangalore 27.03.2017 for the assessment year 2012-13 on the following grounds of appeal:-

"1. The learned Commissioner of Income Tax erred in confirming the order passed by the learned Assessing Officer in respect of capital gains adopted on the basis of guideline value as per Stamp Duty Authorities.

2. The learned Assessing Officer ought to have understood that the Appellant Company has handed over the old land & building to the Developer during Financial Year 2007-08 relevant to Asst. Year 2008-09. Since the land & building was handed over to the Developer with irrevocable Power of Attorney, as per

the jurisdiction High Court order, in the case of Dr. Dayalu and others, transfer having taken place as per provisions of Sec.2(47)(v), the capital gains should have been brought to tax during Asst. Year 2008-09 and not during Asst.Year 2012-13.

3. The learned Commissioner of Income Tax erred in not considering the fact that the Developer for the purpose of their Bank requirement, registered the same land, which was taken under Joint Development Agreement, for which the Stamp Duty & Registration charges was paid based on the guideline value as per Karnataka Stamp Act. Therefore, there cannot be tax payable twice on the sale of same land.

4. The learned Commissioner of Income Tax ought to have noticed that there was no consideration paid while registering the Sale Deed and in the Sale Deed there has been a reference to Joint Development Agreement. Hence once the Capital Gain Tax is payable at the time of Joint Development Agreement, there cannot be again Capital Gain tax at the time of executing Sale Deed.

5. The learned Commissioner of Income Tax vas wrong in confirming that the capital gain arises during Asst. Year 2012-13 based on the fact that the Sale Deed was registered with the Sub-Registrar during the year under consideration.

6. The learned Assessing Officer should have re-opened the assessment for Asst. Year 2008-09 because as per the order of Hon'ble High Court of Karnataka in Dr. Dayalu's case, since irrevocable Power of Attorney together with the possession was handed over to the Developer during Asst. Year 2008-09 and the Appellant shifted their manufacturing unit to a rural place, which is near Harohalli on Kanakapura Road, Bangalore, for which the Appellant was eligible for rebate under Section 54G of Income Tax Act.

7. For the above and any other grounds that may be advanced at the time of hearing, the Appellant prays that, Appeal be allowed."

2. The assessee is a Private Limited Company, engaged in manufacture of Engineering Products. It filed return of income declaring net

taxable income of Rs.(-)55,39,774 on 30.09.2012. The assessment order was passed by the AO with a net taxable income of Rs.3,34,65,142 , which is entirely deemed Capital Gains brought to tax by the learned Assessing Officer.

3. The brief facts of the case are that the assessee in order to explore the possibility of commercial conversion of their factory building entered into a Development Agreement dated 24.10.2007 with a Developer by name, Park Inc., for demolishing & constructing a commercial complex to be rented out jointly by the Developer as well as the assessee company. Though Registered JDA was entered with M/s. Park Inc. on 24.10.2007, the said Park Inc. got the Plan approved for demolishing of old building and constructing commercial complex only during Sept.2008. Therefore, as per provisions ofSec.2(47)(v), the JDA has come into effect in Sept.2008. As per the jurisdictional High Court order of Dr. Dayalu the Capital Gains in respect of the property given under JDA should have been considered as taxable during Asst. Year 2009-10.

4. However, the assessee company offered the Capital gains during Asst. Year 2012-13 under the bonafide understanding that developed property was physically handed over to the assessee during financial year 2011-12 only. As per the jurisdictional High Court Order, the capital gains was required to be taxed during the Asst. Year 2008-09.

5. Further, the assessee submitted that as Apex Court's order, since while completing any assessment, the beneficial advantage of the assessee should have been considered on priority. Now, while taxing Capital Gains during Asst. Year 2012-13, it is quite prejudicial to the interest of the assessee because Guideline Value of the property under consideration is substantially more than deemed consideration said to have been passed on to the assessee. The Developer had already registered

Joint Development Agreement (JDA) & since the intention of the assessee & Developer is only to hold land & building and share the rent received equally, there was no need to register any Sale Deed. But the Developer in order to get his name recorded with the Sub-Registrar's record, registered the Sale Deed on 18.07.2011, wherein the valuation as per Guideline issued by Government of Karnataka is Rs.3,50,90,000/- and the same has been adopted for the purpose of Capital Gain. By virtue of provisions of Sec.2(47)(v) read with Transfer of Properties Act 1953, the Joint Developer has already become part owner on the date of execution of Joint Development Agreement.

6. Therefore, the assessee submitted that the capital gains should have been taxed in the year of commencement of construction after registering the Joint Development Agreement. The Guideline value prevailing as on that date is much lower than the value adopted by the assessee for determining the Capital Gain. The assessee objected to the Assessing Officer's adopting the higher value as per Guidelines assessed by the Stamp Valuation Officer. The assessee contended that on receipt of the objection from the assessee, the AO should have referred the matter to the Valuation Cell to determine fair market value of the property as on date of registration of Sale Deed. This is without prejudice of the contention to the assessee that that the Capital Gains should have been taxed in the year of sanction of Plan under Joint Development Agreement. However, the AO did not refer the matter to the Valuation Officer.

7. Further, the assessee submitted that it was entitled for deduction u/s.54G of the Act, in respect of the reinvestment in the factory land & building near Harohally, which the assessee is rightly entitled to, which was not allowed by the AO.

8. As per provisions of Sec.71(2) of the Act, the loss offered by the assessee during the year under consideration i.e. AY 2012-13 of Rs.55,27,132/- which has been determined by the AO with minor variation, should have been reduced from Capital Gains and only net Capital Gains should have been brought to tax. It was contended that the AO has not considered the amount of loss to be reduced from the Capital Gains amount. Aggrieved by the above variation, the assessee went in appeal before CIT(Appeals).

9. The CIT(Appeals) observed that the assessee has got registered the sale deed on 18.7.2011 relevant to FY 2011-12 (AY 2012-13), as such capital gain has to be brought to tax in the year of registration of Sale Deed.

10. Further, regarding the AO's failure to refer valuation of capital asset to the Valuation Officer, it was observed by the CIT(A) that the AO is correct in following the market value as determined by Stamp Valuation Authority u/s. 50C of the Act. Regarding the denial of claim u/s. 54G, the CIT(A) observed that investment is required to be done within 3 years from the date of deemed sale of factory and shifting of factory and in this case, the capital gain has arisen due to registration of Sale Deed on 18.7.2011, as such the assessee is not entitled to deduction u/s. 54G. Against this, the assessee is in appeal before us.

11. Before us, the contention of the ld. AR is that the assessee had a land & factory building at BSK II Stage, Bangalore. It entered into a Joint Development Agreement on 24.10.2007 in respect of the land & factory building with one, M/s. Park Inc. for demolishing the land & building and constructing the commercial complex on a joint development basis. As per Joint Development Agreement, the Developer is allowed to have 50% of the land and on the balance 50% of the land a commercial complex is

constructed to be handed over to the asse company and as per the further understanding, both Developer and Appellant will rent out the constructed property on rental basis. Due to various constraints, the developer could only get the Plan approved for demolishing the old building and constructing the commercial complex during September 2008. Therefore, as per provisions of Sec.2(47)(v), the Joint Development Agreement has come into effect in September 2008. If at all any capital gains is required to be taxed, as per the jurisdiction High Court order in the case of *CIT v. Dr. Dr. T.K. Dayalu, (2011) 202 Taxman 531 (Kar)*, the capital gains would arise only during Asst. Year 2009-10. The property, after development, was handed over to the assessee Company during financial year 2011-12. The assessee while submitting the return of income, had included 50% of the cost of construction of the assessee's portion as sale consideration, based on that fact, developed property was handed over to the assessee during the financial year under consideration. However, the legal position of taxing the capital gains as per provisions of section 2(47)(v) and the jurisdiction High Court Order, the capital gains should have been brought to tax during Asst. Year 2009-10, based on the guideline value prevailing at that point of time and not at the time of taking possession of the property.

12. The ld. AR relied on the following judgments:-

(1) ITO v. Shafiq Mohammed Shah, 82 taxmann.com 6 (Chennai Trib.)

(2) Pr. CIT v. Dr. Amrik Singh Basra, 82 taxmann.com 186 (P&H)

(3) Pr. CIT v. Dr. Charanjit Singh, 85 taxmann.com 144 (P&H)

(4) Hussan Lal Puri v. ITO, 38 taxmann.com 7 (Chandigarh Trib)

(5) CIT v. Bharat General Reinsurance Co. Ltd., 81 ITR 303 (Del)

13. The ld. DR submitted that though JDA was entered into by the assessee on 24.10.2007, the condition laid down in section 53A of the Transfer of Property Act was not satisfied in the AY 2008-09 and willingness to postpone the contract has not been made by the Developer and only on fulfilment of the condition laid down in section 53A of the Transfer of Property Act, the capital gain has to be charged. He submitted that in this case the condition laid down in section 53A of the Transfer of Property Act was complied only in AY 2012-13, as such capital gain was rightly brought to tax in this assessment year only.

14. We have heard both the parties and perused the material on record. In this case, JDA was entered into by the assessee with the Developer, M/s. Parc Inc. on 24.10.2007. At the same time, the assessee has given a General Power of Attorney (GPA) to the Builder/Developer. Now the question before us is whether the capital gain is to be charged in AY 2008-09 on entering into JDA/GPA or in AY 2012-13 when the assessee got his share of constructed area. For this purpose, we have to go through the contents of the JDA. As per JDA, the assessee permitted the Developer to enter the schedule property and to commence and complete development of schedule property by constructing commercial building as per sanctioned plan. As per clause 2.2 of JDA, this permission cannot be construed as delivery of possession u/s. 53A of the Transfer of Property act r.w.s. 2(47)(v) of the I.T. Act. As per clause 7.1.1, the assessee is entitled for a sum of Rs.75 lakhs interest free refundable deposit which has been paid by the developer to the assessee as follows:-

Rs.40,00,000 by Cheque bearing No.354583 dated 27.8.2007
Rs.35,00,000 by Cheque bearing No.561730 dated 12.7.2007
both cheques on HDFC Bank.

15. As per clause 8.1, commencement of construction should start not later than 60 days from the date of execution of allocation agreement. As per clause 8.2, the construction should be completed within 24 months from the date of issue of Commencement Certificate by BBMP. However, as per clause 8.4, the grace period to start construction has been given as 3 months.

16. There is a GPA dated 24.10.2007 in favour of the Developer wherein as per clause 8 the assessee has given the authority to appear before various authorities so as to get the required permission for construction. By Clause 9 of GPA, assessee has given right to the developer to sell or dispose by way of sale, lease, mortgage, exchange or otherwise 50% undivided share, right, title, interest and ownership in the land in the schedule property or such proportional undivided share proportionate to the super built up area that will be allotted to the share of the aforesaid developers in accordance with Agreement dated 24.10.2007. The other clauses of the GPA authorizes the Developer to do the following:-

> 10. To received advances and balance of sale price from any Purchaser/s and issue proper and valid receipts and discharges therefor in respect of undivided share in the schedule property.
>
> 13. To deliver possession of the portion/s of the schedule property; with or without building to the nominee/s and assignee/s o the Developer and/or Purchasers of land share and/or built-up areas to the extent referred to in clause 9.
>
> 14. To sign and execute necessary documents, declarations, affidavits, undertakings and other documents required for completion of sale and/or transfer and/or alienation of schedule property to the extent referred to in clause 9 or in respect of any matter relating to schedule property and to do all other

acts, deeds and things that may be necessary for achieving the purposes mentioned therein.

16. To sign and execute necessary documents, forms, affidavits and declarations that may be required for transfer of khatas and mutation in the names of the buyers of the land share and/or built up areas in the Schedule property and take such steps as are required for such transfer or mutation in the name/s of the transferee/s in respect of the areas referred to in clause 9

17. To negotiate on terms for and grant Lease, Sub-Lease or Under Lease or part with possession of undivided share right, title and interest in the property described in the schedule to the extent referred to in clause 9 with or without built-up areas in who or in portions or in any other manner on such terms and conditions as developer deems fit in favour of any transferee/s or in favour of its nominee/s or assignee/s.

18. To receive rents, premiums, advances, earnest monies, deposits and other sums from the Transferee/s and execute agreement/s to lease and or lease deed/s and other conveyances in favour of such persons and issue proper and valid receipts and discharges therefor in respect of schedule property to the extent referred to in clause 9.

20. To present any Agreement/s, Lease Deeds or other Conveyances in respect of the Schedule Property or portions thereof for registration to the extent referred to in clause 9, admit execution and receipt of consideration before the Sub-Registrar having authority for and to get the same registered in the manner required under law and to do all acts, deeds and things which our said attorney shall consider necessary by way of Lease or otherwise to the said Transferee/s or in any other manner as our attorneys may deem it fit as fully and effectually in all respects as we could do the same ourselves.

21. To realise rents, issues and other profits and accept Surrender of Leases and tenancies and to evict all trespassers and unauthorised occupants and tenants of the aforesaid share referred to in Clause 9 in respect of the Schedule Property.

22. To sign and give notice/s to tenants/ Lessee/s and other occupants of the Schedule Property in the aforesaid part of the Schedule Property referred to in para-9 with or without building thereof enforcing the rights under Lease Deeds if any and/or enforce rights of a Lessor under Transfer of Property Act or under any other Rent Control and other enactments including for his eviction and to repair or abate any nuisance and enforce all remedies open in respect thereto.

23. To raise, borrow funds from banks, bankers, financial institutions and other public by creating equitable or other mortgages on security of the said 50% undivided share in the Schedule Property referred to in Para-9 above with or without built areas therein and Development Rights in the Agreement dated 24/10/2007, sign and execute requisite mortgage deeds and other conveyances required therefor on such terms and conditions as our attorney deems it fit and get the same registered before the jurisdictional Sub-Registrar in the manner prescribed under law, and for the said purposes sign and execute necessary forms, declarations and affidavits etc., but without involving us or our successors or balance share in the land and building in the Schedule Property in any liability in respect of the said borrowing, mortgages or other commitments.

24. To sign and execute any Rectification Deeds, Modification Deeds and Confirmation Deeds and other documents in relation to the documents executed by our Developers in favour of the transferees of the DEVELOPERS' CONSTRUCTED AREA and get the same registered in the manner required under law.

25. To deliver possession of DEVELOPERS' CONSTRUCTED AREA along with proportionate share in the land in Schedule Property in whole or in portions or in the form of undivided shares in favour of the purchasers/ transferees/ lessees thereto.

26. To sign and execute any deeds of cancellation of agreements and other documents executed by the Developers in respect of his share of DEVELOPERS' CONSTRUCTED AREA and his

share of land in Schedule Property and get the same registered in the manner required under law.

17. Thus, when we read JDA along with GPA, it shows that assessee had clearly parted with the ownership of Developer's share of property in favour of Developer, M/s. Park Inc. vide these conveyance. A combined reading suggests that assessee delivered not only the legal possession of the property, but also the total control and possession of the property in favour of Developer. GPA has granted the Developer possessive right by the assessee. From the act of giving control and management of the property in favour of the Developer which is clearly mentioned in the above clauses of GPA, it is quite clear that the GPA is not a mere licence to enter the land for doing some preliminary act in relation to the development work, but the power of control of the land which is an incidence of possession has been conveyed to the Developer under the GPA. The Developer having duly registered GPA cannot be regarded as merely a licensee or an agent subject to the control of the Owner. His possession cannot be characterized as precarious or tentative in nature. The fact that the GPA and JDA being registered is an express declaration to the effect found in the GPA itself is not without significance. The Developer's rights under GPA shows that the Developer has better control and possession in the said property which on a higher pedestal than a mere Developer who apportions built-up area with the land Owner. The Developer has better right to enter the land and control the same which he derived from the GPA. The land owner may have a right to inspect the land to oversee the construction which is only to the limited extent, compared to the Developer's rights. Exclusive possession is not necessary for the purpose of satisfying the condition laid down in section 2(47)(v) of the Act. In our opinion, the registered GPA executed by the assessee along with JDA in favour of the Developer must be regarded as a transaction in the eye of law, which allows not only possession of the property, but also various

rights as mentioned above and it could be rightly considered as part performance of the contract as per section 53A under the Transfer of Property Act. In other words, JDA along with GPA which grants to the Developer overall control of the property in his hands, even if that means no exclusive possession by the Developer, still it could be construed as "possession" in terms of clause (v) of section 2(47) of the I.T. Act.

18. In the instant case, having regard to the terms of the JDA and GPA executed on 24.10.2007, it could be regarded as "transaction involving the allowing of the possession" of land to be taken in part performance of the contract and therefore, the "transfer" within the meaning of section 2(47)(v) of the Act must be deemed to have taken place on the date of execution of JDA along with GPA on 24.10.2007. Since the JDA along with GPA was executed on 24.10.2007 relevant to FY 2007-08, capital gain must have arisen in the relevant AY 2008-09, and not in the AY 2012-13.

19. Thus, in our opinion, the assessee being the owner of the property entered into JDA along with GPA with the Developer in terms of which the Developer was given the possession of the property along with bundle of rights and assessee is entitled to receive 50% area of super built-up area in the building; 50% of the car parking areas in Basement floor and Ground Floor and other levels wherever they are provided in Schedule Property; 50% of the Terrace rights; and 50% of all the benefits arising out of the development and built as per the specifications detailed in the Annexure attached thereto. The assessee was liable to pay capital gains tax in the year in which the said JDA along with GPA was signed and not afterwards. This view of ours is fortified by the order of Tribunal in *Hussan Lal Puri v. ITO, 38 taxmann.com 7 (Chandigarh Trib.).*

20. Further in the case of *CIT v. Dr. T.K. Dayalu, 202 Taxman 531 (Karn),* the Hon'ble High Court of Karnataka based on the judgment of the

Hon'ble Bombay High Court in the case of *Chaturbhuj Dwarkadas Kapadia v. CIT (2003) 260 ITR 491 (Bom)* held as follows:-

> "Having regard to the finding of fact that possession of the property has been handed over on 30th May, 1996, and cash part of the agreement also received on that date, appropriate assessment year in which the capital gain is to be taxed is 1997-98 and not in the year when the entire project was completed in 2003-04."

21. The Hon'ble jurisdictional High Court in the case of *Dr. T.K. Dayalu (supra)* further held as follows:-

> "The Hon'ble Supreme Court (sic) has referred to the contention of the assessee and the earlier judgments of the Supreme Court cited by him and held that those judgments were prior to introduction of the concept of deemed transfer under section 2(47)(v) of the Act and if the contract, read as a whole, indicates passing of or transferring of complete control over the property in favour of the developer, then the date of the contract would be relevant to decide the year of chargeability. Therefore, in these appeals, we hold that capital gain is to be taxed in the year 1997-98 and not in the year 2003-04 as contended by the assessee. Accordingly, we answer the substantial questions of law framed in ITA No.3209/2005 in favour of the revenue and substantial questions of law framed in ITA No.3105/2005 against the assessee …… "

22. The Hon'ble Bombay High Court in *Chaturbhuj Dwarkadas Kapadia* v. *CIT* [2003] 260 ITR 491/ 129 Taxman 497 held that the date relevant for attracting capital gain having regard to the definition under section 2(47) of the Act is the date on which possession is handed over by the developer and has observed as follows:-

> "Under section 2(47)(v), any transaction involving allowing of possession to be taken over or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act would come within the ambit of section 2(47)(v). That, in order to

> attract section 53A, the following conditions need to be fulfilled. There should be a contract for consideration; it should be in writing; it should be signed by the transferor; it should pertain to transfer of immovable property; the transferee should have taken possession of the property; lastly, the transferee should be ready and willing to perform his part of the contract. That even arrangements confirming privileges of ownership without transfer of title could fall under section 2(47)(v). Section 2(47)(v) was introduced in the Act from the assessment year 1988-89 because prior thereto, in most cases, it was argued on behalf of the assessee that no transfer took place till execution of the conveyance. Consequently, the assessees used to enter into agreements for developing properties with the builders and under the agreement with the builders, they used to confer privileges of ownership without executing conveyance and to plug that loophole, section 2(47)(v) came to be introduced in the Act."

23. Further, the argument of the ld. DR is that the assessee itself included capital gain for the assessment year under consideration, as such assessee cannot challenge the same. In our opinion, though the assessee has offered capital gain in the AY 2012-13, but there is no estoppel under the Income-tax Act. The assessee having itself challenged the validity of taxing the capital gain during the AY 2012-13 and the CIT(Appeals) having rejected the same without giving a categorical finding, in our opinion, the assessee had objected the taxing of capital gain in AY 2012-13, which was mainly offered while filing return of income. Further, it is incumbent upon the revenue authorities to find out whether particular income was assessable in a particular year or not. Merely because the assessee wrongly included the income in its return of income for a particular year, it could not confer jurisdiction to the department to tax that income in that assessment year, even though legally such income did not pertain to that year.

24. It is pertinent to mention t*he CBDT Circular No. 14(XL-35) of 1955, dated 11.4.1955* as per which the lower authorities should have guided the

assessee as to the correct proposition of the law regarding taxability of capital gain. For clarity, we reproduce the contents of the said Circular:-

> " Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assesses on whom it is imposed by law, officers should —
>
> (a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;
>
> *(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".*

25. Further, the Hon'ble Delhi High Court in the case of *CIT v. Bharat General Reinsurance Co. Ltd., 83 ITR 303 (Del)* held as follows:-

> "It was true that the assessee itself had included that dividend income in its return for the year in question, but there was no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quit apart from it, it was incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it could not confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. Therefore the income from dividend was not

> assessable during the assessment year 1958-59, but it was assessable in the assessment year 1953-54. It could not, therefore, be taxed in the assessment year 1958-59."

26. Further, the Hon'ble Bombay High Court in the case of *Nirmala L. Mehta vs. A. Balasubramaniam, C.I.T. (2004) 269 ITR 1 (Bom)* held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.

27. The Hon'ble Supreme Court in the case of *CIT, Madras vs V. MR. P. Firm, Muar reported in 56 ITR 67(SC)* held as under:-

> "If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income-tax Officer has no power to impose tax on the said income."

28. Further, in the present case, only for the purpose of loan required from the Bank, the Developer registered a Sale Deed on 18.07.2011, wherein it is also clearly mentioned that the property is already in Developer's possession as per the Registered Development Agreement dated 24.10.2007 and the present Sale Deed made was only for confirming the right already held by the Joint Developer by executing the Sale Deed. The Sub-Registrar while registering the Sale Deed adopted the Guideline value to determine stamp duty and Registration charges. However, since tax on capital gain on the same property transaction would be for assessment year 2008-09 as per provisions of Income Tax Act, no capital gain arises out of the impugned JDA/GPA during Asst. Year 2012-13.

29. In view of the above, this ground of the assessee is allowed.

30. The next ground is with regard to grant of deduction 54G of the Act. The facts are that the assessee company in order to shift the factory from the present place, which is almost in the heart of the city, entered into Development Agreement for constructing commercial complex. But to continue manufacturing activity, the assessee purchased an industrial land near Harohalli Village on Kanakapura Road and invested substantial amount in constructing the factory and shifted their manufacturing unit into the rural area, which is eligible for deduction u/s.54G of Income Tax Act. The investment made in the new factory premises is as under:

Purchase of land during FY 2007-08	Rs. 62,40,740
Investment made to building during FY 2007-08	Rs. 25,86,571
Further additions during FY 2008-09	Rs.1,02,09,523
Investment made during FY 2009-10	Rs. 15,93,449
Investment made during FY 2010-11	Rs. 2,08,042
Total cost of construction:	Rs.2,08,38,325

31. The AO in the Asst. order for AY 2012-13 rejected entire claim of sec.54G stating that since the investment is required to be done within 3 years from the date of deemed sale of factory and shifting the factory and since as per the AO, the capital gains has arisen due to registration of Sale Deed on 18.07.2011 i.e. FY 2011-12, and hence, according to the AO, the assessee is not eligible for any deduction u/s.54G of Income Tax Act.

32. We have heard both the parties and perused the material on record. This ground is only academic in view of our findings with regard to non-taxability of capital gain in this assessment year i.e. AY 2012-13, however, for the purpose of completeness, we make it clear that assessee could claim deduction u/s. 54G in the appropriate assessment year when the capital gain is subject to tax. It is ordered accordingly.

33. Regarding the issue of applicability of section 50C of the Act, the assessee objected for adopting value of 50C as per guidance value, at the time of assessment, a letter requesting for reference to the valuation itself was also made by letter dated 19.03.2015 addressed to the DCIT. This is as per provisions of sub-section 2 of Sec.50C, where it is stated that if the assessee claims before the Assessing Officer that if the value adopted assessed/assessable by the Stamp Valuation Authority under sub-section-1 exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer. The AO, however, did not refer the issue of valuation to the Valuation Officer.

34. Since while adjudicating ground No.1, we have already held that capital gain is to be taxed not in this assessment year 2012-13, being so, there is no question of application of section 50C of the Act and the registration of Sale Deed was only for the limited purpose of formalizing the bank request, who financed the assessee as discussed in para 28 of this order. In our opinion, there is no applicability of section 50C of the Act in the assessment year 2012-13 since transfer took place not in this assessment year. Thus, this issue is only academic as there was no incidence and chargeability of capital gain in AY 2012-13. Therefore, this ground by the assessee is allowed.

35. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 25th day of February, 2021.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 25th February, 2021.
/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.