

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.495/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2008-09)

Kilim Pydireddy (Individual)
Srikakulam
[PAN No.AEQPK8787C]
(अपीलार्थी / Appellant)

ITO, Ward-2,
Srikakulam
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri P.S. Murthy, DR
सुनवाई की तारीख / Date of hearing : 21.02.2018
घोषणा की तारीख / Date of Pronouncement : 28.02.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-2, Visakhapatnam vide ITA No.38 & 39/2015-16/CIT(A)/2/W-2/SKLM/2016-17 dated 1.9.2016 for the assessment year 2008-09.

2. The assessee has raised following grounds of appeal:
1. *The order of the learned Commissioner of Income Tax (Appeals)-2, Visakhapatnam is contrary to the facts and also the law applicable to the facts of the case.*
 2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the assessment done is beyond the scope of S.147 of the Income Tax Act, 1961.*
 3. *Without prejudice to the above,*
 - a. *The learned Commissioner of Income Tax (Appeals) erred in denying the existence of HUF and in upholding the assessment of capital gains in the individual status of the appellant.*
 - b. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the action of the assessing officer in computing the capital gains under the provisions of S.50C of the Act at Rs 28,71,214/- as against Rs.22,55,114/admitted by the appellant in HUF status.*
 4. *Any other ground that may be urged at the time of appeal hearing.*

3. Ground Nos.1 & 4 are general in nature, which does not require specific adjudication.

4. Ground No.2 is related to the validity to reopening of assessment which is not pressed by the assessee, hence this ground is dismissed as not pressed.

5. Ground No.3 is related to the assessment of HUF income in individual status and taxing the capital gains by invoking the provisions u/s 50C of the Act. In this case, the assessee filed return of income in the capacity of HUF admitting capital gains of ₹ 22,55,114/- on 31.7.2008. During the relevant assessment year, the assessee had sold a property consisting of vacant house site admeasuring 444.44 Sq.yds.

with survey No.2 of Maddilapalem and Survey No.7 of Resapuvanipalem vide registered document Nos.3413/07, 3414/07 & 3415/07 dated 30.4.2007 for a total consideration of ₹ 62,67,000/- and the market value of the same was ₹ 66,69,000/- in HUF status. Since the assessee has not filed the return of income in the individual status, the assessing officer reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act and held that the impugned property was belonging to the assessee in individual capacity and the property was not acquired by the HUF, hence, held that the admission of income by the assessee in HUF status is incorrect. The AO was of the view that the income resulting in sale of immovable property should have been admitted as capital gains in the hands of the assessee in individual capacity. Accordingly, the A.O. reopened the assessment and completed the reassessment by invoking the provisions of section 50C of the Act and completed the assessment on total income of ₹ 36,26,725/- in individual capacity but did not allow the credit for the taxes paid in HUF status.

6. Assessee went on appeal before the CIT(A) and the Ld. CIT(A) upheld the assessment made by the A.O. in individual capacity and directed the A.O. to give credit for the taxes paid in HUF status while determining tax liability in individual hands. However, while giving effect to the consequential order, the Ld. A.O. did not allow the credit as

per the dates of payments of the tax in HUF status and the credit was allowed in the consequential order which resulted in huge tax burden due to interest in the case of individual. Hence, the assessee is aggrieved and filed appeal before this Tribunal.

7. During the appeal hearing, the Ld. A.R. of the assessee supported the return of income filed in HUF capacity and argued that the assessment should be made in the hands of the HUF but not in the hands of individual, since the property was acquired by the father of the assessee in HUF status. Per contra the Ld. D.R. supported the order of the lower authorities.

8. We have considered the arguments of both the parties and perused the material placed on record and gone through the orders of the authorities as well as returns filed by the assessee in the capacity of HUF as well as individual. The assessee has paid the taxes in HUF capacity on various dates. For a query from the bench, the Ld. A.R. submitted that the assessee has paid advance taxes in HUF status, if the same is allowed credit in the hands of the individual while determining the tax liability he would not press the remaining grounds. We are of the considered opinion that the prayer of the Ld. A.R is reasonable and meet the ends of justice. As per law payment of taxes should be given the credit as per the dates of the payment of tax. In the instant case, the

assessee has paid the advance tax in HUF status. Since the assessment was made in individual status the credit should be allowed in individual status as per the original dates of payment. Accordingly, we direct the A.O. to allow the prepaid taxes as per the dates of payment while determining the tax liability in the individual hands. Accordingly, the order of the Ld. CIT(A) is modified and the appeal of the assessee is partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

The above order was pronounced in the open court on 28th Feb'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Kilim Pydi Reddy (Indl), D.No.7-10-2/5, Saibulu Thota, Srikakulam-532 001.
2. प्रत्यार्थी / The Respondent – The ITO, Ward-2, Srikakulam
3. आयकर आयुक्त / The CIT-2, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-2, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM

Sl. No.	Description	Date	Initials
1.	Date of dictation by the Author	22.02.2018	Sr.PS
2.	Draft placed before the Dictating Member	23.02.2018	Sr.PS
3.	Draft placed before the Second Member		Sr. PS
4.	Draft approved by the Second Member		Sr. PS
5.	Date of approved order comes to the Sr. PS		Sr. PS
6.	Date of pronouncement of order		Sr. PS
7.	Date of file sent to the Bench Clerk		Sr. PS
8.	Date on which file goes to the Head Clerk		Hd. Clk
9.	Date of dispatch of order		Sr. PS