

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI B.R. BASKARAN, HON'BLE ACCOUNTANT MEMBER
& SHRI DUVVURU R.L. REDDY, HON'BLE JUDICIAL MEMBER**

**ITA No. 401/VIZ/2017
(Asst. Year : 2007-08)**

Smt. Saragadam Anuradha, vs. ITO, Ward-1(3),
D.No. 50-12-9, Seethammampeta, Visakhapatnam.
Visakhapatnam.

PAN No. BAUPS 2085 L
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri Deba Kumar Sonawal – CIT DR

Date of hearing : 21/03/2018.
Date of pronouncement : 22/03/2018.

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER

The appeal filed by the assessee is directed against the revision order dated 30/03/2017 passed by Ld. Pr.CIT-1, Visakhapatnam under section 263 of the Act and it relates to the Assessment Year 2007-08.

2. The assessee is aggrieved by the decision of the Pr.CIT in directing the Assessing Officer to assess 1/3rd share of long term capital gain arising out of sale of immovable property in the hands of the assessee.

3. The facts relating to the case are that the assessee along with her father and brother sold a property admeasuring 2300 sq.yards situated at Jaggarajupeta, Visakhapatnam on 25/01/2007 for a sum of Rs.9.00 lakhs. It was noticed that the Sub-Registrar has valued the property at Rs.19,55,000/-. Based on the information so received from SRO, the Assessing Officer noticed that the value determined by the SRO, being higher than the sale consideration, is required to be adopted for computing capital gain. Accordingly he reopened the assessment of the assessee for the Assessment Year 2007-08 by issuing notice under section 148 of the Act.

4. During the course of assessment proceedings, the Assessing Officer enquired about the sale of property and also about the long term capital gain. The assessee filed a reply on 02/12/2014, wherein she stated that she was only a co-signatory in the property and she has received Rs. 1.00 lakh only in respect of this transaction. It was further submitted that she participated in the registration formalities at the request of her father and brother, though she did not have any right or title in the said property. The Assessing Officer accepted the explanations given by the assessee and accordingly completed the assessment.

5. Subsequently, upon examination of the record, Pr.CIT took the view that the assessee is liable to pay tax on 1/3rd of sale consideration. Accordingly, he initiated revision proceedings under section 263 of the Act. The Id. CIT(A) noticed that, as per paragraph 4 of the sale deed, the assessee has received the entire sale consideration of Rs.9.00 lakhs as per the acceptance given by her father and brother. The said recital was in contradiction to the explanations given by the assessee before the Assessing Officer that she received only Rs.1.00 lakh. The Id. CIT(A) further noticed that the sale deed does not mention about the extent of ownership held by the three persons in the property. Under these set of facts, the Id. CIT(A) concluded that all three co-owners held 1/3rd share each. The Id. CIT(A) further noticed that the assessment of other co-owners namely M. Narasinga Rao & M.Gopala Krishna was also reopened by issuing notice under section 148 of the Act and assessment has been completed in their hands by adopting 1/3rd share of SRO value of Rs.19.55 lakhs, as the same is taken as deemed sale consideration under section 50C of the Act. Accordingly, Id. CIT(A) directed the Assessing Officer to take 1/3rd of the deemed sale consideration as belonging to the assessee and accordingly assess the long term

capital gain on the sale of impugned immovable property. The assessee is aggrieved by the direction so given by the Id. CIT(A).

6. The Id. Authorised Representative of the assessee submitted that the Id. CIT(A) has drawn a conclusion that assessee has owned 1/3rd share of property on the basis that the assessee has received the entire sale consideration of Rs. 9 lakhs shown in the conveyance deed. He submitted that the said conclusion was drawn by inference and in any case, the same requires verification of title deeds and other antecedents. The Authorised Representative for the assessee submitted that the contention of the assessee was that she was only signatory to the sale deed and the property did not belong to her. Even if it is considered that the assessee is one of the co-owners of the property, still she is entitled to object to the valuation adopted by the SRO in the assessment proceedings, if the provisions of sec. 50C was proposed to be applied. However, the Id. CIT(A) has given clear cut directions to the Assessing Officer to assess 1/3rd of the long term capital gain and hence, the assessee did not get an opportunity to explain her case that she was not owner of the property and further, if required, to contest the valuation determined by the SRO in terms of the provisions of sec.50C of the Act. Accordingly, the Ld. AR prayed that the direction given by

the Id. CIT(A) may be modified, so that the assessee would get an opportunity to explain her case and to exercise her right provided under law before the Assessing Officer.

7. On the contrary, Id. Departmental Representative supported the order passed by the Id. CIT(A).

8. Having heard rival contentions, we are of the view that there is a merit in the contentions of the assessee. We noticed that during the course of assessment proceedings, the assessee has submitted that she was not the owner of the asset and she became only co-signatory in the conveyance deed at the request of her father and brother. She also submitted that she has received only Rs.1.00 lakh out of the sale consideration. However, the Id. Pr. CIT has pointed out that the assessee has received the entire sale consideration of Rs.9.00 lakhs as per the recitals made in the sale deed. We noticed that the Id. CIT(A) has drawn inference on the basis of conveyance deed examined by him. As submitted by Ld A.R, he did not examine the antecedents of the property sold by the assessee, her father and brother.

9. We notice that there appears to be contradiction between the explanations given by the assessee before the AO and the recitals made in the conveyance deed. Because of this point alone, the revision order passed by Ld. Pr. CIT is required to be upheld. At

the same time, we notice that the Ld. Pr. CIT has drawn his conclusions by drawing certain inferences without referring to the title to the property on the basis of parent documents. There should not be any dispute that the liability to capital gains would arise only on the original owners of the property. Hence, one has to determine as to who was the actual owner of the property, which cannot be determined unless parents documents are examined. Without ascertaining those facts, it may not also be proper to draw conclusions that the assessee may be having 1/3rd share in the property. There is also merit in the contention of the assessee that the value determined by the SRO can be objected before the Assessing Officer under section 50C of the Act. Admittedly, the assessee also did not get an opportunity to exercise her right provided u/s 50C of the Act, if required. Under the set of facts, we are of the view that there is merit in the plea of the Authorised Representative of the assessee that the direction given by the Id. CIT(A) requires modification.

10. Accordingly, we set aside the direction given by the Id.CIT(A) and restore the issue to the file of the Assessing Officer for examining it afresh *denovo*, after affording adequate opportunity to the assessee. We also caution the AO that he should not be influenced by the observations made by the Id. Pr. CIT in the

impugned revision order, i.e., the issue should be examined in objective manner. The assessee is also directed to furnish the details relating to the issue and also other details that may be called for by the Assessing Officer in this regard. The assessee is also free to exercise her right provided under the statute.

11. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order Pronounced in open Court on this 22nd day of March, 2018.

Sd/-
(DUVVURU R.L. REDDY)
Judicial Member

sd/-
(B.R. BASKARAN)
Accountant Member

Dated : 22nd March, 2018.

vr/-

Copy to:

1. The Assessee- Smt. Saragadam Anuradha, D.No. 50-12-9, Seethammapeta, Visakhapatnam.
2. The Revenue - ITO, Ward-1(3), Visakhapatnam.
3. Pr. CIT -1, Visakhapatnam.
4. The D.R., Visakhapatnam.
5. Guard file.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.