

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 194/VIZ/2016
(Asst. Year : 2008-09)**

Dr. G. Gopala Krishna vs. ITO, Ward-2(2),
(Deceased) Legal Heir : Rajahmundry.
Dr. G. Venkata Krishna,
C/o Vimalamma Hospital,
78-12-1, Gandhipuram-2,
Rajahmundry.

PAN No. ABQPG 0911 R (Appellant) (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri M.R. Bangari – Sr.DR

Date of hearing : 15/05/2018.
Date of pronouncement : 18/05/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Rajahmundry, dated 26/02/2016 for the Assessment Year 2008-09.

2. Facts of the case, as noted by the Assessing Officer, in brief are that during the course of assessment proceedings, the Assessing Officer has noted that the assessee has shown capital

gain of Rs. 4,03,575/-. From the perusal of the details filed, it was noticed that the assessee along with his two sons namely, Dr.G. Venkata Krishna & Dr. G. Murali Krishna had transferred, the property in question, in favour of M/s. Sri Ramdas Paper Boards (Pvt.) Ltd. The Assessing Officer also noted that prior to that, an agreement for sale dated 06/03/2006 was executed by the above said persons in favour of (1) Sri S. Chandra Reddy, (2) Smt. S.Krishna Kumari, (3)Sri S. Ashok Reddy and (4) Sri S. Chaitanya Reddy vide registered document No. 3416/2006 on 10/04/2006. The Assessing Officer gathered information from the Joint Sub-Registrar, Rajahmundry and he has noted that subject matter of the property was finally sold on 07/02/2008 to M/s. Sri Ramdas Paper Boards (Pvt.) Ltd. by duly executing the sale deed by the assessee and his sons along with other parties as referred above, for an amount of Rs. 26.00 lakhs and that the market value as on the date of execution of sale deed i.e. on 07/02/2008 was Rs.6,160 per sq.yrd. Therefore, the Assessing Officer adopted the value of sale consideration as per the market value and accordingly, determined the long term capital gain of Rs.9,91,116/-. The assessee has contended before the Assessing Officer that the SRO's value as on the date of sale agreement i.e.

10/04/2006 of Rs. 26.00 lakhs has to be taken into consideration for the purpose of calculation of long term capital gain and the SRO value of Rs. 57,47,000/- cannot be taken into consideration, the date on which finally property was sold i.e. 07/02/2008. Before the Assessing Officer, assessee has relied on the judgment of the ITAT, Visakhapatnam Bench in the case of *M/s. Lahiri Promoters Vs. ACIT* in ITA No.12/Vizag/2006, dated 22/06/2010. The Assessing Officer after considering the explanation given by the assessee, determined the capital gains by taking into consideration of SRO's value as on 07/02/2008, which is the date the property was finally sold to M/s. Sri Ramdas Paper Boards (Pvt.) Ltd. So far as case-laws relied on by the assessee in the case of *M/s. Lahiri Promoters (supra)*, the Assessing Officer has observed that the facts are different in the case on hand, hence, no application.

3. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

4. On being aggrieved, the assessee is in appeal before the Tribunal.

5. Ld. counsel for the assessee has submitted that the SRO's value on the property as on 10/04/2006 has to be considered for

capital gain and not the date of finally sold the property i.e. 07/02/2008 on the ground that this is a registered agreement and also assessee along with all proposed vendees signed the document.

6. On the other hand, Id. Departmental Representative has relied on the orders of the authorities below.

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. The only issue involved in this appeal is whether SRO's value has to be adopted as per the registered sale agreement or finally sold the property as on 07/02/2008. The assessee along with two sons had entered into an agreement with Sri S. Chandra Reddy and three others of his family members on 10/04/2006 to sale the scheduled property to the extent of 500 sq.yds and received an amount of Rs. 30,000/- as an advance. As per the above registered agreement, the vendees have to pay the entire balance amount and register the sale deed within a period of one month. The above referred transaction is not materialized. Subsequently, on 07/02/2008 the assessee along with his two sons and also the agreement holders i.e. S. Chandra Reddy & 3 others executed the sale deed in favour of M/s. Sri Ramdas Paper Boards (Pvt.) Ltd.,

on 07/02/2008 for a sale consideration of Rs. 26.00 lakhs. The Assessing Officer gathered details from the Sub-Registrar, Rajahmundry and he has determined the SRO's value as on the date of registration i.e. on 07/02/2008 of Rs. 57,47,000/- and calculated the capital gains. The case of the assessee is that the assessee has entered into a registered sale agreement with the vendees and sold the property to the third party i.e. M/s. Sri Ramdas Paper Boards (Pvt.) Ltd., hence, the SRO value of Rs. 26.00 lakhs, the date on which sale agreement is executed, has to be considered. We find that there is no merit in the arguments advanced by the Id. counsel for the assessee for the reason that the date of registration is only valid for one month and the property was sold altogether to a new vendee i.e. M/s. Sri Ramdas Paper Boards (Pvt.) Ltd., near about two years. Therefore, in the eye of law, the agreement is not in force on the date of sale. Therefore, the Assessing Officer has rightly adopted the SRO's value as on the date of sale of Rs. 57,47,000/-, which was confirmed by the Id.CIT(A). We find no infirmity in the order passed by the Id.CIT(A). So far as case-laws relied on by the Id. counsel for the assessee in the case of *M/s. Lahiri Promoters* (supra) and *Smt. Chalasani Naga Ratna Kumari Vs. ITO* in ITA No.

639/Vizag/2013, dated 23/12/2016, have no application to the facts of the present case. Thus, this ground of appeal raised by the assessee is dismissed.

9. The second ground of appeal relating to negative balance in the cash book. The Assessing Officer, in the course of the assessment proceedings, on verification of cash book of the assessee, noted negative balance during the period from 02/11/2007 to 14/11/2007 and the peak of such negative balance was arrived at Rs. 2,61,926/-. When Assessing Officer asked the assessee to explain the reasons, it was submitted that the assessee's son Dr. G. Venkata Krishna & daughter Dr. G. Madhavi were staying along with the assessee and that their cash balance was in the custody of the assessee and that the impugned expenditure was met out of the cash balance. The assessee also filed affidavit in support of such contention. The Assessing Officer has considered the explanation of the assessee and observed that all the three parties i.e. assessee, assessee's son & assessee's daughter were assessed to tax and are maintaining books of account and therefore the assessee's explanation that the impugned expenditure was met out of the cash balance belonging to his son, daughter & HUF was found unacceptable. Accordingly,

the Assessing Officer has added the amount of Rs. 2,61,926/- to the total income of the assessee.

10. On appeal before the Id. CIT(A), it was submitted that the assessee's son and daughter-in-law had sufficient cash balance to explain for the impugned difference and therefore the impugned addition was not justified. The Id. CIT(A) considered the explanation given by the assessee and observed that all the other entities whose cash was claimed to be handed to the assessee, are maintaining cash books and no entry has been shown that the money was given to the assessee, and accordingly confirmed the order of the Assessing Officer.

11. Before us, Id. counsel for the assessee reiterated the submissions which were made before the Id. CIT(A), but not filed any evidence. Therefore, by considering the facts and circumstances of the case, we find that Id. CIT(A) gave a categorical finding that the assessee has not filed any evidence to show that the impugned expenditure was incurred from the cash available of the assessee's son & daughter-in-law and no entry is made in their books of account. Therefore, we find no reason to interfere with the order of the Id. CIT(A). Thus, this ground of appeal raised by the assessee is dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 18th day of May, 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 18th May, 2018.

vr/-

Copy to:

1. The Assessee – Dr. G. Gopala Krishna (Deceased) Legal Heir : Dr. G. Venkata Krishna, C/o Vimalamma Hospital, 78-12-1, Gandhipuram-2, Rajahmundry.
2. The Revenue – ITO, Ward-2(2), Rajahmundry.
3. The CIT, Rajahmundry.
4. The CIT(A), Rajahmundry.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

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

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