

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, 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.400/Viz/2017
(निर्धारण वर्ष/Assessment Year:2007-08)

Bondalapati Prasad Babu
D.No.15-10-19/1
Maharanipeta
Visakhapatnam
[PAN :AFDPB2358E]

Vs. Income Tax Officer
Ward-2(2)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Shri G.V.N.Hari, AR
: Shri Deba Kumar Sonowal, DR

सुनवाई की तारीख / Date of Hearing

: 07.08.2018

घोषणा की तारीख/Date of Pronouncement

: 17 .08.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order passed u/s 263 by the Principal Commissioner of Income Tax (Pr.CIT)-1, Visakhapatnam vide F.No.Pr.CIT-1/VSP/263/2016-17 dated 30.03.2017 for the assessment year 2007-08.

2. In this case, the assessment was completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter called as 'Act') by an order dated 27.03.2015. The Assessing Officer (AO) observed that the assessee has sold property bearing No.15-10-19/2B located in TS No.143/26, Maharanieta, Visakhapatnam for a consideration of Rs.7,25,000/- to Smt.Raavi Neelima and the Sub-Registrar office(SRO) value of the property was Rs.10,25,000/-. The property sold by the assessee comprises of superstructure with RCC roof in second floor with a plinth area of 876 sft and also super structure in third floor with 300 sft. The property was acquired by the assessee from his father after his demise and subsequently, constructed the building in the said plot of land. However, the assessee has not filed the return of income disclosing the capital gains arising out of transfer of the capital asset. Since the assessee has failed to furnish the return of income, the AO having reason to believe that the income chargeable to tax has escaped assessment issued the notice u/s 148 and taken up the case for assessment. During the assessment proceedings, the assessee filed return of income admitting total income of Rs.1,30,350/- and filed the return of income. The AO examined the details filed by the assessee and completed the assessment accepting the income returned.

Subsequently, the Ld.Pr.CIT has taken up the case for revision u/s 263 and found that the assessee acquired the property by way of inheritance from his father and should have admitted the sale of land under the head 'long term capital gains', since he was holding the land for more than 3 years. The Ld.Pr.CIT further observed that computation of capital gains works out as under :

A) Long term capital gains on sale of plot:

Sale consideration for 48.67 sq.yards of site : Rs.5,35,370/-
 (48.67 sq.yards x Rs.11,000/-)

Cost of acquisition of 48.67 sq.yards : Rs.2,920/-
 (48.67 sq.yards x Rs.60/-)

[Cost of the site is taken @ Rs.60/- per sq.yard as per ITAT order in ITA No.424/Vizag/2009 dated 27.09.2010, in the case of Smt. C.Girija, Visakhapatnam Vs. Addl.CIT, Range-1, Visakhapatnam]

Less: Indexed cost of 48.67 sq.yd site
 (Rs.2,920 x 519/100) Rs.15,156/-

Long Term Capital Gains : **Rs.5,20,214/-**

B) Short term capital gains on sale of construction Portion

Sale consideration of superstructure : Rs.4,89,509/-

Less : Cost of construction of superstructure
 [876.06 sft (RCC) X Rs.370 + 300 sft(ACC) X Rs.230]
Rs.3,93,120/-

[Since the assessee has not furnished any documentary

evidences for the cost of construction of building, the structure rates prescribed by the Manual of Stamp Duty & Registration in A.P. vide C&IG Proceedings No.MV1/10370/03, dated 14.08.2004 are adopted.]

Short term capital gains

Rs.96,389/-

Against the long term capital gains of Rs.5,20,214/- and the short term capital gains of Rs.96,389/-, the assessee has admitted short term capital gains of Rs.22,350/-. Therefore, the Ld.Pr.CIT was under the impression that the assessment made by the AO was erroneous and prejudicial to the interest of the revenue, hence, issued the show cause notice as to why the assessment should not be revised u/s 263 of the act.. In response to the notice issued by the Ld.Pr.CIT, the assessee though appeared, expressed his inability to produce the evidences for cost of construction. Therefore, the Ld.Pr.CIT has held that the order passed by the AO u/s 143(3) was erroneous and prejudicial to the interest of the revenue and accordingly directed the AO to recompute the Long term capital gains on sale of land adopting the rate at Rs.60/- per sq.yard and cost of construction at Rs.370/- in respect of 876.06 sft and Rs.230 in respect of 300 sft.

3. Aggrieved by the order passed u/s 263, the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the assessee had furnished the complete details before the AO which was examined by the AO and completed the assessment. The assessee could not furnish the details before the Ld.Pr.CIT due to lapse of time. Since the AO has already examined the details and completed the assessment, the Ld.Pr.CIT is not permitted to revisit the same issue again and substitute his opinion regarding the cost of construction and the cost of acquisition of the land for the purpose of revision u/s 263. Apart from the above, the Ld.AR argued that the assessee has admitted the capital gains under 'short term capital gains' and the tax rate for short term capital gains is 30% and no indexation benefit is available. Whereas, in the case of long term capital gains, the tax rate is 20% and indexation benefit is available. Therefore, admission of income under the head 'short term capital gains' instead of 'long term capital gains' though erroneous, is not prejudicial to the interest of the revenue. Further, the Ld. AR also argued that the Ld.Pr.CIT has directed the AO to adopt the cost of acquisition of 48.67 sq.yards at Rs.60/- per sq.yard by relying on the order of the Tribunal in the case of Smt.C.Girija Vs. ACIT-1 vide ITA No.424/Vizag/2009. The said land was

located Ward-2, Waltair, Block 1 to 8, whereas in the assessee's case, the property was located at TS No.143/26 at Maharanipecta, Visakhapatnam. Both the land rates are quite different and the land rates at Waltair cannot be made applicable to the land located at Maharanipecta. The computation made by the Ld.Pr.CIT is against the factual position of the land rates at Maharanipecta and the rates applied by the Pr.CIT are incorrect, accordingly objected for adoption of Rs.60/- per sq.yard. With regard to the cost of construction, the Ld.Pr.CIT has directed the AO to adopt the super structure rate at Rs.370/- for 876.06 sft (RCC) and Rs.230/- per sq.ft for 300 sft (ACC), relying on the Stamp duty and Registration structure rates, which is also incorrect. The Ld.AR argued that the cost of construction during the above period was more than Rs.700/- to Rs.800/- per sq.ft. and submitted that the rates applied by the Ld.Pr.CIT to compute capital gains is also incorrect and against the facts. The Ld.Pr.CIT did not bring any tangible material to hold that the assessment order passed by the AO was erroneous and prejudicial to the interest of the revenue on facts and on law. It was only on guess work and on presumptions the Ld.Pr.CIT held that the order was erroneous and prejudicial to the interest of the revenue and the same required to be quashed.

4. On the other hand, the Ld.DR strongly supported the order of the Ld.Pr.CIT.

5. We have heard both the parties and perused the material placed on record, The assessee is Head Constable working in II Town Police Station, Visakhapatnam. He had sold the property located at D.No.15-10-19/2B located at TS No.143/26, Maharanieta, Visakhapatnam for a consideration of Rs.7,25,000/-. However, 50C value of the property was of Rs.10,25,000/-. Since the assessee did not file the return of income, the AO reopened the assessment by issue of notice u/s 148 to verify the taxability of capital gains on account of the sale of the property. The AO issued the notices and the assessee filed the return of income and furnished the details admitting capital gains at Rs.22,350/- under the head 'short term capital gains' and admitted the total income at Rs.1,30,350/-. As per the assessment order, the AO completed the assessment accepting the income returned after examination of the details. For ready reference, we extract para No.3 of the assessment order, wherein all the facts are discussed by the AO which reads as under :

"3. Assessee finally filed his return of income on 26-03-2015 declaring taxable income at Rs.1,30,350/- which comprises of Income under the heads - Salary & Capital Gains. Since the assessee has filed his return of income a notice under sec.143(2) of the IT Act, 1961 was issued posting the case for hearing. In response to the said notice assessee appeared and submitted that the information called for in the earlier hearings have been furnished and submitted that the provisions of sec.50C of the IT Act, 1961 have already been invoked for the purpose of computing the capital gains and stated that the due taxes have been paid on the Short-term Capital Gain derived by him. After examination of the details and the submissions made by the assessee during assessment proceedings, the assessment is finalized accepting the income declared, by the assessee at Rs.1,30,350/-."

5.1. From the reading of the assessment order, it is clear that the assessee had admitted capital gains under the head 'short term capital gains'. As submitted by the Ld.AR admission of income under the head 'short term capital gains' instead of 'long term capital gains', though erroneous but not prejudicial to the interest of the revenue since the tax rates under the short term capital gains are higher than the long term capital gains and no indexation benefit is available for the short term capital gains. Therefore, on this reason, the Ld.Pr.CIT is not permitted to invoke the jurisdiction u/s 263.

5.2. It is found from the assessment order that the assessee had filed the details and made the submissions in respect of computation of capital gains and the assessment was completed after examination of the details furnished by the assessee. The issue with regard to the computation of capital gains, cost of acquisition of the property, cost of construction, sale

consideration and applicability of 50C were duly verified by the AO before completion of the assessment. Since the issue has already been verified by the AO, the Ld.Pr.CIT is not permitted to revisit the same issue and substitute his opinion in the name of revision. Review of the same issue which was already considered and examined by the AO would amount to difference of opinion not a case for revision u/s 263. Further, having examined the issue by the AO and taken a conscious decision, accepting the cost of construction, after due verification, not applying the rates as observed by the Ld.Pr.CIT would amount to inadequate enquiry, but not lack of enquiry and again on inadequate enquiry, the Ld.Pr.CIT is not allowed to invoke the jurisdiction u/s 263. Hon'ble High court of Karnataka in Commissioner of Income-tax, Bangalore. v.KurlonLtd, [2014] 52 taxmann.com 92 (Karnataka) held that Where assessing authority had already considered all details mentioned in computation statement which was taken from books of account maintained by assessee, revision was not justified. Similar view has been expressed by this Tribunal in G.V.R Associates vs ITO reported in (2017) 49 CCH 0223, Visakapatnam.

5.3. Apart from the above, the Ld.Pr.CIT directed the AO to adopt the land cost at Rs.60/- per sq.yd. taking the basis from the ITAT order in respect of Smt. C.Girija Vs. ACIT (supra). The property under the said case was located at Ward-2, Waltair in Block No. 1 to 8, Visakhapatnam, whereas, the property of the assessee was located at D.No.15-10-19/2B in TS No.143/26, Maharanieta, Visakhapatnam. Both are different locations and the rate applied by the Hon'ble ITAT for the property at Waltair cannot be applied to the property located at Maharanieta which are two different locations and the rates are varied in both the locations. Therefore, on this issue also, the Ld.Pr.CIT has not made out any specific case with tangible information to hold that the assessment made by the AO was erroneous and prejudicial to the interest of the revenue. Similarly, in the case of short term capital gains on sale of the superstructure, the Ld.Pr.CIT directed the AO to apply the rates as prescribed by the Stamps and Registrations Department of Andhra Pradesh vide C&IG proceedings No.MV1/10370/03 dated 14.08.2004 , instead of applying the rates as applicable to CPWD rates. The Income Tax department refers the valuation for cost of construction to the departmental valuation cell, who in turn values the cost of construction applying plinth area rates of CPWD. Apart

from the cost of construction of superstructure, the other additions of interior works, exterior works etc.. and other improvements made by the assessee also required to be taken while estimating the cost of construction of the super structure. The Ld.Pr.CIT merely arrived at the short term capital gains by adopting the Stamp duty and Registration rates of Government of Andhra Pradesh and did not give any credit for the improvements made by the assessee. The AO has accepted the cost of acquisition of the property at Rs.10,02,650/- which was declared by the assessee in the reassessment proceedings, The Ld.Pr.CIT did not bring any tangible material to show that that the cost of acquisition accepted by the AO is erroneous. In the facts and circumstances we hold that the Ld.Pr.CIT has invoked the jurisdiction u/s 263 without any tangible material and on difference of opinion. Therefore, the order passed by the Ld.Pr.CIT u/s 263 is unsustainable, accordingly, we cancel the order passed by the Ld.Pr.CIT u/s 263 and allow the appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

The above order was pronounced in the open court on 17th Aug,
 2018.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिकसदस्य/JUDICIAL MEMBERलेखासदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 17.08.2018 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) न्यायिकसदस्य/JUDICIAL MEMBERलेखासदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 17.08.2018 L.Rama, SPS</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-Bondalapati Prasad Babu, D.No.15-10-19/1, Maharanipeta, Visakhapatnam
2. राजस्व/ The Revenue –Income Tax Officer, Ward-2(2), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
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आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, VISAKHAPATNAM