

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

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.491/Viz/2016  
(निर्धारण वर्ष/Assessment Year:2010-11)

Dasari Sanyasaiah Setty  
D.No.6-85-1, Priya Gardens  
Behind Swamy Kalyanamandapam  
Simhachalam  
Visakhapatnam  
**[PAN :AARHS1567H]**

Vs. Asst.Commissioner of  
Income Tax  
Circle-4(1)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri G.V.N.Hari, AR  
: Shri K.C.Das, DR

सुनवाई की तारीख / Date of Hearing

: 07.08.2018

घोषणा की तारीख/Date of Pronouncement

: 29.08.2018

**आदेश /ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-2, Visakhapatnam vide I.T.A.No.37/2013-14/CIT(A)-2/C-4(1)/VSP/2016-17dated19.10.2016 for the assessment year 2010-11.

2. The assessee filed the appeal with the following grounds:

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 notice issued u/s 148 of the Act is not in accordance with law and is liable to be quashed as invalid and further he ought to have held that the re-assessment proceedings are liable to be quashed as void-ab-initio.*
3. *Without prejudice to the above,*
  - a. *The learned Commissioner of Income Tax (Appeals) is not justified in directing the assessing officer to re-compute the capital gains by adopting the cost of acquisition being fair market value as on 01.04.1981 per acre at Rs.40,000/- as against Rs.1,00,000/- claimed by the appellant.*
  - b. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance of Rs.21,67,658/- towards exemption u/s 54F of the Act in as much as the appellant does not own more than one residential house other than the one being acquired.*
4. *Any other ground that may be urged at the time of appeal hearing.*

3. Ground No.1 and 4 are general in nature which does not require specific adjudication. Hence these grounds are dismissed as not pressed.

4. Ground No.2 is related to the validity of the notice issue u/s 148 of the Income Tax Act, 1961 (hereinafter called as 'Act'). No such ground was raised by the assessee before the Ld.CIT(A) and no petition was filed by the assessee before this Tribunal for admission of the additional ground. The Ld.AR also did not make any argument, therefore, this ground is dismissed as not maintainable.

5. Ground No.3 consists of two issues, one is related to the computation of capital gains adopting the fair market value (FMV) of Rs.40,000/- per acre as against Rs.1,00,000/- claimed by the assessee as on 01/04/1981. The second issue is related to the deduction u/s 54F of the Act.

5.1. Ground No.3(a) is related to the computation of capital gains adopting the cost of acquisition being the fair market value as on 01.04.1981 at Rs.40,000/- per acre, as against the claim of the assessee at Rs.1,00,000/- per acre. During the assessment proceedings, the Assessing Officer (AO) found that the assessee had sold the property of 5.30 acres of urban land situated at Survey No.161/1, Vepagunta, Pendurthi along with Dasari Satyanarayana, which was ancestral property received from the grandfather for a consideration of Rs.3,46,00,000/-. The assessee being 50% share holder, received his share of Rs.1.73 crores. While calculating the capital gains, the assessee adopted FMV as on 01.04.1981 at Rs.1,00,000/- per acre and accordingly claimed the indexed cost of acquisition and admitted the capital gains. The AO conducted the enquiries with the Joint Sub Registrar, Visakhapatnam(SRO) for Survey No.161/1 and found that the SRO value of the land at Survey No.161/1 was

not available as on 01.04.1981. However, the SRO supplied the information as on 01.04.1987 at Rs.9,000/- per acre for the above said property. The AO taking the basis of SRO value at Rs.9,000/- as on 01.04.1987, made reverse working applying the price index and determined the FMV at Rs.6,430/- per acre accordingly worked out the total cost of acquisition of 5.30 acres at Rs.34,079/- and computed the 50% of the share of the indexed cost of acquisition at Rs.1,07,690/- as on 01.04.1981 and computed the capital gains.

6. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and furnished additional evidence u/s 46A pertaining to the cost of acquisition made by the VUDA, wherein the VUDA has acquired a piece of land belonging to the assessee in the year 1986 determining the cost at Rs.1,06,610/- per acre. The Ld.CIT(A) admitted the additional evidence and forwarded the same to the AO under Rule 46A for his comments/objections. The AO submitted the remand report stating that no information is available with regard to market value of the property as on 01.04.81 and further submitted that the said land acquisition was in 1988 which was prospective of 8 years from the date to be reckoned and related to the different survey number hence not applicable to the assessee.

However, the AO conducted the independent search and found from the website of the sub registrar office that some instances of registrations took place in the vicinity of the area and opined that the market rate would be between Rs.25,000/- to Rs.50,000/- per acre. The Ld.CIT(A) considered the values of properties in the area and found that in survey No.164/5 the value in May 1986 was Rs.1,06,610/- per acre and the property in survey No.164/3 the value in 1986 was Rs.75,000/- per acre and the value adopted by Tegala Murali as on 01.04.1981 was at Rs.20,000/- per acre and viewed that it is fair to estimate the value of the land at Rs.40,000/- per acre and accordingly directed the AO to recompute the capital gains. For the sake of clarity and convenience, we extract relevant part of the order of the CIT(A) in para No.7.1 which reads as under :

*“7.1. The material on record indicate that there is no specific information as to the value of the impugned property situated in survey No.161/1 as on 01.04.1981. The assessee relied on value of properties with reference to property in survey No.164/5 whose value in May 1988 was Rs 1,06,610/- per acre and the property in survey No.164/3 whose value in 1986 was Rs.75,000/-per acre. It was also contended that these properties though in different survey numbers are comparable to assessee's impugned property which was said to be in the vicinity and in the same village. Even if such contention were to be accepted, it is relevant to note that the value in 1986 was only Rs.75,000/- per acre and therefore the value in 1981 would be much lesser and not Rs.1,00,000/- per acre as claimed by the assessee. It is also noted that in the case of one TegalaMurali assessed in Circle-4(1) in PAN: ACPMM7787G has adapted value at Rs.20,000/- per acre as on 01.04.1981 in respect of 5.45 acre of land situate in survey No.26/1 in Vepagunta area. Considering these information, I consider it fair and reasonable to estimate the value of the impugned property as on 0104.1981 at Rs.40,000/- per acre. Accordingly, the AO is directed to recompute the capital gains.”*

7. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld.AR argued that the fair market value as on 01.04.1981 was at Rs.1,00,000/- per acre which is fairly reasonable and be accepted. The AO and the Ld.CIT(A) would have accepted the fair market value claimed by the assessee at Rs.1 lakh per acre. In 1986, the VUDA has acquired land of the assessee for a consideration of Rs.1,06,610/- per acre and the land values in 1981 have increased steeply and there was no land available for purchase for less than Rs.1,00,000/- per acre. Therefore, the Ld.AR argued that the rate adopted by the assessee is fair and reasonable and requested to adopt the cost of acquisition to Rs.1,00,000/-.

8. On the other hand, the Ld.DR supported the orders of the Ld.CIT(A).

9. We have heard both the parties, perused the material placed on record. In this case, the assessee sold 5.30 acres of urban agricultural land along with co-owner Sri Dasari Satyanarayana situated at Survey No.161/1, Vepagunta, Pendurthi for a consideration of Rs.3,46,00,000/- and the assessee's share was 1.73 crores being 50% share. The assessee has

adopted the cost of acquisition being fair market value as on 1.4.1981 at Rs.1,00,000/- per acre. Either during the assessment proceedings or before the Ld.CIT(A), the assessee could not establish and submit any evidence to support his claim of fair market value as on 01.04.1981 at Rs.1,00,000/- per acre. The Sub Registrar Office also informed the AO that no information is available with regard to the valuation in Survey No.161/1, Vepagunta as on 01.04.1981. However, the Sub Registrar Office has supplied the information with regard to the value as on 01.04.1987 at Rs.9,000/- per acre. Taking the basis from the Sub Registrar value as on 01.04.1987, the AO worked backwards by applying price index and arrived at the value as on 1.4.1981 at Rs.6,430/- per acre and accordingly allowed the cost of acquisition of the assessee's share at Rs.1,07,690/-. Against the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) estimated the fair market value as on 01.04.1981 at Rs.40,000/- per acre. During the appeal hearing, the Ld.AR vehemently supported the claim made by the assessee. The Ld.AR could not place any evidence to show the fair market value (FMV) as on 01.04.1981. The Sub Registrar value as on 01.04.1987 was Rs.9,000/- per acre, hence, fair market value as per Sub Registrar office should be less than the sum of Rs. 9,000/- per acre as on 01.04.1981. Though the SRO value cannot be taken as FMV, the same

is a guideline for arriving the FMV. In this case, there was no material available for the property situated at 161/1 as on 1.4.1981 to arrive at FMV. The assessee submitted the values of the properties acquired by the VUDA in the year 1986 at Rs.1,06,610/-. The value of 1986 cannot be made applicable to the FMV as on 01.04.1981. The Ld.CIT(A) found that the value of the property sold in S.No.161/3 in 1986 was at Rs.75,000/- per acre. Another evidence brought out by the Ld.CIT(A) was in the case of Tegala Murali, PAN : ACPMM7787G at Rs.20,000/- per acre as on 01.04.1981 in respect of 5.45 acres of land situated in Survey No.26/1 in Vepagunta area. Considering all the evidences and information, the Ld.CIT(A) determined the fair market value as on 01.04.1981 at Rs.40,000/- per acre. During the appeal hearing, the Ld.AR could not place any evidence to show that the FMV of the property sold by the assessee as on 01.04.1981 was more than Rs.40,000/- per acre. Therefore, we hold that the FMV determined by the Ld.CIT (A) is fair and reasonable, therefore we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the assessee on this ground is dismissed.

11. Ground No.3(b) is related to the disallowance of exemption claimed by the assessee u/s 54F of the I.T.Act. In this case, the assessee claimed

exemption u/s 54F of the Act for Rs. 21,67,658/- for acquiring the new flat. The AO found that the assessee owns more than one residential house at Flat No.101, Jaya Enclave, Visakhapatnam, D.No.9-33/1, Gopalapatnam and another at 53 & 54 Priya Garden, Simhachalam, Visakhapatnam. As per the provisions of Section 54F of the act, if the assessee owns more than one residential house, the assessee is not entitled for the exemption u/s 54F of the Act. Since the assessee owns more than one residential house, the AO denied the exemption u/s 54F and disallowed the claim made by the assessee u/s 54F. During the assessment proceedings, the Ld.AR submitted that the assessee owns only one residential house at 101, Jaya Enclave, Visakhapatnam but not more than one residential unit as observed by the AO. The assessee submitted that house in 53 & 54, Priya Gardens, Simhachalam was not owned by the assessee and it was owned by his wife and the third house at D.No.9-33/1, Gopalapatnam, Visakhapatnam was not a residential house and argued that it was a commercial property. Therefore, the assessee argued that he is entitled for the exemption u/s 54F of the Act. However, the AO rejected the assessee's claim stating that the house in the name of his wife also constitutes the property of HUF since the assessee's wife Smt.Ratna Kumari has no independent sources of income and she happened to be member of HUF. In the absence of any

source of income to his wife the AO suspected that property was acquired from the funds of the HUF. The AO further observed that though the house at Gopalapatnam, Visakhapatnam is commercial property, but built as residential house and assessed under the head property therefore, viewed that the assessee owns more than one residential house, and accordingly rejected the claim made by the assessee.

12. Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) was also under the impression that the property in the name of the assessee's wife Smt.Ratna Kumari belonged to the HUF. The Ld.CIT(A) held that having no independent sources of income and the assessee's failure to establish that she has constructed the house from her own funds, the said house to be presumed to be belonging to the HUF and the assessee is not eligible for deduction u/s 54F. Accordingly dismissed the appeal of the assessee on this issue.

12.1. With regard to the another house D.No.9-33/1, Gopalapatnam claimed to be commercial property, the Ld.CIT(A) viewed that the assessee failed to prove the said property as a commercial property and not a residential house. Since the rents are received from letting out of the

property was assessed as income from the property, there is no case for allowing deduction u/s 54F. Accordingly, dismissed the appeal of the assessee.

13. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the assessee owns only one house i.e. Flat No.101, Jaya Enclave, Visakhapatnam. The second house at 9-33/1,Gopalapatnam, Visakhapatnam a commercial property and cannot be treated as a residential house. The first floor of the property was let out to Union Bank of India and the second floor was let out to Shri D.Satyanarayana Setty for Lakshmi Agencies, business concern and the ground floor was let out to Doctor for his profession. The property was assessed as a commercial property and the rents received were commercial rents and the property was used for commercial purpose. Though the rents are assessed as income from property, the said property cannot be held to be residential house. The Ld.AR further argued that whether the property is commercial or residential the income is offered as income from house property as per the Act. Since the property was used for commercial purpose and let out for commercial purpose to commercial entities, the same should be

excluded from the residential house and requested to allow the exemption u/s 54F of the Act. With regard to the property of his wife the Ld.AR argued that the said house belonged to his wife and to be excluded from the HUF.

14. On the other hand, the Ld.DR supported the orders of the Ld.CIT(A).

15. We have heard both the parties and perused the material placed on record. In this case, the revenue's argument is that the assessee owns three residential houses, therefore, deduction u/s 54F is not allowable u/s 54F of the Act. As per section 54F of the Act, the assessee would be eligible for claiming the deduction u/s 54F, if the assessee does not own more than one residential house at the time of transfer of property. In this case, according to the AO the assessee owns 3 houses, therefore, the assessee is not entitled for exemption u/s 54F. The assessee explained that the house located at 53 & 54 was belonging to the assessee's wife and the same cannot be included in its properties. It is undisputed fact that the house was registered in the name of the assessee's wife which is evidenced from the assessment order. The AO has expected the assessee to prove that the property was constructed from the sources of the assessee's wife but not from the sources of HUF. The contention of the revenue to establish the sources of

the assessee's wife for construction is illogical and untenable. The facts show that the property at 53&54, Priya Gardens, Simhachalam was registered in the name of the assessee's wife and the property was enjoyed by the assessee's wife and the same is not disputed by the department. Once the property was registered in the name of the assessee's wife, the same should not be considered in the hands of the assessee and reject the claim of the assessee for deduction u/s 54F of the Act. It is for the department to establish that the property No.53 and 54, Priya Gardens is constructed from the sources of the assessee and it was the property of the HUF. The same exercise was not done by the AO. Therefore, we are unable to accept the argument of the department to hold that the property was belonging to the assessee. Accordingly, the said argument is untenable and rejected.

15.1. The next issue is property at D.No.9-33/1, Gopalapatnam, Visakhapatnam. As per the submission of the assessee, the property is let out for commercial purposes and used for the commercial purposes, but not for residential purposes. The Ld.AR also submitted that ground floor was occupied by Doctor for his clinic, the first floor was occupied by Union Bank and the second floor was occupied by Shri D.Satyanarayan Setty for

his business. The assessee admitted rents at commercial rates. The assessee filed property tax receipt and according to the property tax receipts, the usage of the buildings was shops and public use. Therefore, as per the evidence available on record, the second property at Gopalapatnam is commercial property, but not a residential property. From the above discussion, it reveals that one property belonged to the assessee's wife and the second property was a commercial property and the assessee owns only one residential house. As per Section 54F of the Act for claiming the deduction u/s 54F, the assessee should be either individual or HUF. The long term capital gains should result in transfer of capital asset not being a residential house. The assessee should acquire property within one year before or two years after the transfer of the property in case of purchase and three years after the date of transfer in case of construction. The assessee should not own more than one residential house, other than the new asset. The word used in the section is the residential house but not the commercial property. The property at D.No.9-33/1, Gopalapatnam is being used and assessed as commercial property, the same cannot be treated as residential house. Similarly, the property, of the wife cannot be attached to the assessee for the purpose of disallowing the deduction u/s 54F. Therefore, the assessee has satisfied all the conditions laid down in

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*Dasari Sanyasaiah Setty, Visakhapatnam*

Section 54F of the Act, hence, we hold that the assessee is entitled for deduction u/s 54F. Accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

16. In the result, appeal of the assessee is **partly allowed**.

The above order was pronounced in the open court on 29<sup>th</sup> Aug, 2018.

Sd/-  
(वी.दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**JUDICIAL MEMBER**  
विशाखापटणम /**Visakhapatnam**  
दिनांक /Dated : 29.08.2018  
L.Rama, SPS

Sd/-  
(डि.एस.सुन्दर सिंह)  
**(D.S. SUNDER SINGH)**  
लेखासदस्य/**ACCOUNTANTMEMBER**

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

1. अपीलार्थी / The Appellant- Dasari Sanyasaiah Setty, D.No.6-85-1, Priya Gardens, Behind Swamy Kalyanamandapam, Simhachalam, Visakhapatnam
2. प्रत्यार्थी / The Respondent - Asst.Commissioner of Income Tax, Circle-4(1) Visakhapatnam
3. The Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
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Sr. Private Secretary  
ITAT, VISAKHAPATNAM