

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.440/Viz/2017  
(निर्धारण वर्ष/ Assessment Year: 2009-2010)

Smt. Maganti Annapurna  
W/o M. Raja Sekhar  
Prop : M/s Maganti Systems  
Plot No. 234B, Block-D  
Autonagar  
Visakhapatnam  
[PAN : ALCPM6261C]

Vs. Income Tax Officer  
Ward-5(1)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं./I.T.A.No.477/Viz/2017  
(निर्धारण वर्ष/ Assessment Year: 2009-2010)

Income Tax Officer  
Ward-5(4)  
Visakhapatnam

Vs. Smt. Maganti Annapurna  
W/o M. Raja Sekhar  
Prop : M/s Maganti Systems  
Plot No. 234B, Block-D  
Autonagar  
Visakhapatnam  
[PAN : ALCPM6261C]

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri G.V.N. Hari, AR  
: Shri V. Appala Raju, DR

सुनवाई की तारीख / Date of Hearing

: 12.09.2018

घोषणा की तारीख/Date of Pronouncement

: 26.09.2018

## **आदेश /ORDER**

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

These appeals are filed by the assessee and the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-2, Visakhapatnam vide I.T.A.No.37/2014-15/CIT(A)-2/VSP/2017-18 dated 22.06.2017 for the assessment year 2009-10.

2. The assessee filed petition for admission of revised grounds of appeal stating that in original grounds which were filed along with the appeal memo in Form No.36, the assessee had not raised the ground relating to the invalidity of issue of notice u/s 148, even though agitated the issue before the Ld.CIT(A) and the Ld.CIT(A) was pleased to admit the ground and upheld the validity of reassessment. While filing the appeal, the assessee was under the bonafide impression that no ground was raised with regard to the issue of notice u/s 148, in appeal memo in Form 36, hence the ground relating to issue of notice u/s 148 was not raised. After re look of the Ld.CIT(A) order it was found that the Ld.CIT(A) has adjudicated the issue with regard to the notice u/s 148, thus the assessee intend to

challenge the order of the Ld.CIT(A) on upholding the validity of issue of notice u/s 148 also, hence filed the revised grounds which reads as under:

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) is not justified in holding that the appellant had paid amount over and above the consideration stated in the document evidencing the purchase of villa from MIs Vizag Profiles Limited.
3. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining to the extent of Rs.47,99,995/- the addition made by the assessing officer towards alleged excess consideration paid.
4. The learned Commissioner of Income Tax (Appeals) is not justified in granting liberty to the assessing officer to consider the balance cash payments of Rs.25,00,017/- and Rs.12,81,183/- for addition for the assessment years 2010-11 and 2011-12 as such direction is beyond the scope of appeal before him.
5. Any other ground that may be urged at the time of appeal hearing.

We have heard both parties and admit the revised grounds for adjudication.

3. Ground No.1 and 6 are general in nature which does not require specific adjudication.

4. Ground No.2 is related to the validity of issue of notice u/s 148. The Ld.AR argued that the Ld.CIT(A) ought not to have upheld the notice issued u/s 148 which is void ab initio. We have gone through the Ld.CIT(A)'s

order and grounds of appeal filed before the Ld.CIT(A) in form No.35. The assessee has not raised the grounds relating to the issue of notice u/s 148 either in the form 35 i.e. memo of appeal or before the Ld.CIT(A) or in a separate petition for admission of additional ground with regard to validity of issue of notice u/s 148. . However, the Ld.CIT(A) has made a passing remark with regard to the validity of initiation of proceedings u/s 147 of the Income Tax Act (hereinafter called as 'Act') but no ground was raised by the assessee and adjudicated by the Ld.CIT(A). Therefore, the grounds raised by the Ld.AR with regard to the issue of notice u/s 148 was neither born from the Ld.CIT(A) order nor from the appeal memo under Form 35. The assessee also did not file petition for admission of additional ground. Hence, this ground is dismissed as infructuous.

5. Ground Nos. 3 and 4 are related to the addition of Rs.1,03,11,095/- with regard to the unexplained investment in purchase of villas from M/s Vizag Profiles Group company. The assessee is an individual. For the assessment year 2009-10 the assessee filed the return of income admitting total income of Rs.5,45,760/- on 31.03.2010. A search u/s 132 was conducted in the case of M/s Vizag Profiles Group and during the post search investigation it has come to the notice of the department that the

assessee had invested the amounts for purchase of villas in Green City Project of Vizag Profiles Group as under:

Civil works - Rs.56,44,800/-

Land - Rs.28,28,000/-

Payment outside the books of accounts in cash Rs.91,27,000/-

The details of the information received by the AO from the investigation wing relating to the assessee are reproduced as under:

(a) Annexure -13- copy of page No.47 of paper book (seized document)

Sl. No.	Name & Address of the Party	PAN	Financial Year of Transaction	Recorded in books of account by Vizag Profiles Group as per document		Unaccounted Cash Portion (in Rs.)	Information forwarded to the Jurisdictional Assessing Officer
21.	Smt.M.Annapurna W/o Sri M.RajaSekhar H.No.91,92,93&94, Green City Near Apparel Export Park, Vadlapudi(Post) Visakhapatnam-530046	ALCPM6261C	2008-09	56,44,800	28,28,000	91,27,000	The Income Tax Officer Ward-5(1)Visakhapatnam

(b) Annexure -II- copy of page No.49 of paper book

Sl.	Particulars	PAN	Cost of Project	Registered Value of Construction	Registered Land Value	Cash	Cash portion received in FY 2008-09
4.	M.Annapurna, 93 & 94		88,00,000/-	28,22,400/-	14,14,000/-	45,63,600	2800034
5.	M.Annapurna, 91 & 92		88,00,000/-	28,22,400/-	14,14,000/-	45,63,600	1999961

Basing on the information received from the investigation wing, the AO had issued the notice u/s 148 and taken up the case for assessment. The AO issued notice to the assessee directing him to explain the sources for investment made. The assessee explained that she had not made any payment over and above the registered sale deed of Rs.84,74,000/- (excluding the stamp duty) and actual payment up to 31.03.2009 was Rs.72,88,905/- and further stated that stamp duty of Rs.4,89,900/- was paid directly and not included in the above sums. Not being convinced with the explanation of the assessee the AO held that the assessee had made the payment of Rs.1,76,00,000/- towards the purchase of two villas and accordingly made the difference amount of Rs.1,03,11,095/- (1,76,00,000-72,88,905) as addition to the returned income.

6. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and stated that that she has not paid any amount over and above the sale consideration registered in the sale deeds. The assessee submitted that the said properties were purchased from Vizag Profiles Ltd. vide sale deeds dated 28.07.2008 registered vide document No.1879/08 and 1880/08 for a consideration of Rs.25,76,000/- each aggregating to Rs.51,52,000/- and it was also agreed that the assessee had to pay

Rs.16,61,000/- towards additional construction as per the additional construction agreement dated 23.03.2010. The total consideration was Rs.84,74,000/- apart from stamp duty and the said consideration was paid as under :

F.Y.	Amount paid to Vendor (Rs.)	Stamp Duty (Rs.)	Total (Rs.)
2008-09	67,99,005	4,89,900	72,88,905
2009-10	8,00,000	--	8,00,000
2010-11	--	--	--
2011-12	5,00,000	--	5,00,000
2012-13	3,50,000	-	3,50,000

6.1. The Ld.CIT(A) observed that as per sale deed dated 28.07.2008 the assessee had purchased plot No.91 & 92 with 404 sq.yds and building with plinth area of 2688 sq.ft. vide document No.1880/08 (b) plot Nos. 93 & 94 with 404 sq.yds and building with plinth area of 2688 sq.ft vide document No.1879/08 for stated consideration of Rs.25,76,000/- each aggregating to Rs.51,52,000/- and stamp duty of Rs.4,89,900/- paid separately. The Ld.CIT(A) observed from the sale deed that the consideration recorded in the sale deed was already paid by the assessee as on the date of registration whereas as per the details furnished by the assessee, she had made payment of Rs.9 lakhs only as against the registered sale consideration of Rs.51,52,000/-and there was difference of Rs,42,52000/-

recorded over and above the actual payment. Further the Ld.CIT(A) observed that the total payment made by the assessee was Rs.67,99,005/- for the F.Y 2008-09. Since there was difference in actual payment and the payment registered sale deed, the Ld. CIT(A) presumed that that the assessee has paid the consideration over and above the sale price recorded in the sale deed in cash and did not believe the contention of the assessee that the payments were made subsequent to the registration and accordingly directed the AO to make the addition of Rs.47,99,995/-i.e (28,00,034+19,99,961) as noted in Annexure-II page No.49 of paper book seized in the premises of the searched person. For ready reference, we extract relevant part of the order of the Ld.CIT(A) which reads as under :

*"6.2 I find that as per the registered sale deeds dated 28.2.2008 documented consideration for both properties aggregating to Rs.51,52,000/- was paid already before the date of registration. But as per the information furnished by the assessee, only an amount of Rs. 9 lakhs was paid In June, 2008 in cheque and all other payments were made subsequent to the date of registration. It is quiet improbable that the vendor would convey the title to the vendee without receiving the entire consideration or without endorsing the vendee's liability to pay. The endorsement in the registered sale deeds raise a strong presumption that the recitals stated therein are correct and as agreed between the parties. In these factual scenario it has to be reasonably inferred that some part of the consideration had passed in cash as found and accepted during the search in the vendor's case. Besides, it was noted that as per the assessee, the payments made during the year to VPL was Rs.67,99,005/- while the documented consideration was Rs.51,52,000/-. In this regard, it is to be noted, that the agreement for additional construction was entered only on 23.3.2010, much after a year from the date of registration. Therefore the contention that the extra amount paid during the year was towards the extra work is untenable. All these indicate that the consideration for the two villas was not as per the registered sale deeds and that consideration over and above the documented consideration was paid by the assessee. Taking into account, the totality of all*

*these 'facts along with the Information obtained during search, I am unable to accept the assessee's contention that she did not pay any consideration other than the cheque payments stated by her and that the contents of information available with the Department gathered during the search was false, Accordingly these pleas are rejected.*

*6,4 It is further noted that as per information available with the AO, the cash portion of consideration was received in different years as follows;*

*F.Y. 2008-09 Rs.47,99,995/-  
F.Y.2009-10 Rs.25,00,017/-  
F.Y.2010-11 Rs.12,81,183/-*

*However, the AO has made the entire addition towards unexplained investment for this year only which is not justified. The materials on record clearly indicate that excess consideration paid for this year was Rs.47,99,995/- only, and therefore, the AO is directed to restrict the addition towards unexplained investment to Rs.47,99,995/- only. The AO would be at liberty to consider assessment of the other amounts in the relevant years as per law."*

7. 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 Ld.CIT(A) misdirected himself to confirm the addition of Rs.47,99,995/- by relying on the payments recorded in the registered sale deeds as well as the subsequent additional construction agreements dated 23.03.2010 under which the assessee is required to pay a sum of Rs.32,32,000/-@16,16,000/- each for extra work. The issue involved in this appeal is unaccounted investment made by the assessee amounting to Rs.91,27,200/-. The Ld.AR argued that the Ld.CIT(A) directed the AO to make the addition of Rs.47,99,995/- for the financial year 2008-09 without considering the material available on record. In this regard, the Ld.AR argued that though

the amount was recorded in the registered sale deed @ Rs.51,52,000/- as on 28.07.2008 the assessee made the payment of Rs.9 lakhs and subsequently made the balance amount as per the details furnished and the payment schedule of the assessee is in synch with the Vizag Profiles Group account. The Ld.AR further submitted that the entire payment of Rs.67,99,005/- was paid during the F.Y.2008-09. The Ld.AR has given reconciliation statement which is made available in page No.101 of the paper book, wherein, the complete details of the date wise payments were furnished by the assessee along with account copy of the vendor which is in synch and reconciled. In respect of the seized material the Ld.AR argued that it was dumb document and there was no tangible material to support the unaccounted payment stated to have been made by the assessee. Therefore, argued that though there was difference with regard to the payments recorded and the actual payments at the time of registration since the assessee made the payments in accordance with the reconciliation and the entire payment was made during the financial year 2008-09 i.e Rs.67,99,005/- with stamp duty of Rs.4,89,900/- aggregating to Rs.72,88,905/- argued that there is no case for inferring the seized material against the assessee and making the addition on account of

unexplained investment. Hence, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

8. On the other hand, the Ld.DR supported that there was material available in the seized document in page No.47 and 49 indicating unexplained investment made by the assessee for purchase of property to the extent of Rs.91,27,200/- which is further supported by the seized material in page No.49 of the paper book, wherein the year wise details were furnished by the searched person. Therefore, argued that the AO has rightly made the addition of Rs.1,03,11,995/- which required to be upheld.

9. We have heard both the parties and perused the material placed on record. In this case, the AO received the information from the investigation wing showing that the assessee had made the cash payment of Rs.91,27,000/- for purchase of two flats in the Green City Project developed and promoted by Vizag Profiles Projects Pvt. Ltd (VGP in short). This was supported by the Annexure II seized during the course of search indicating year-wise payments in page No.49 of the paper book showing payments of cash portion received from 2008-09 to 2010-11. Both the, loose sheets of page No.47 and 49 was seized from the premises of Vizag Profiles Ltd., but not from the premises of the assessee. The Authorized officer has recorded

the statement from MD, VGP Group during the course of search on 19.04.2012 which reads as under.

*Q. On the day of the search and seizure operation dt.03.04.2012, you were asked to submit the details of purchase and sale of green city project. However, no information has been produced till date. Please produce the same.*

*A. We will produce the details of purchase and sale of Green City Project by Monday i.e. 23.04.2012 along with copies of documents.*

*Q. Please mention the percentage of payments received in cheque and cash against sale of flats and villas in Green City Project? What percentage of receipts are entered in your regular books of account?*

*A. 60% to 75% of the sale receipts are received in cheque and the rest in cash. The element of cash receipt is not entered in the regular books of account.*

*Q. Depending upon the number of villas/flats sold, can you quantify the cash component, which is received against sale of flats / villas in Green City Project for various years?*

*A. I will quantify the amount of cash component which are not entered in the regular books of account and submit the same on 23.04.2012 along with other information."*

9.1. On the basis of the above information, the AO concluded that the assessee had paid the unaccounted cash towards purchase of the flats. Plain reading of the statement recorded from Mr. B.Suresh, Managing Director of Vizag Profile group of companies reveals that they are in the habit of receiving the sales receipts to the extent of 60% to 75% through cheque and rest in the cash. He also admitted that the cash receipt was not accounted in the regular books of accounts. In response to the question

No.23, he has stated that he would quantify the component of cash which is not entered in the regular books of accounts and submit the same on 23.04.2012. Whether the AO has recorded any other statement from the Vizag Profiles on 23.04.2012 or not was not enlightened either by the Ld.AR or DR. Therefore, the issue is to be decided on the basis of the seized material found during the course of search and the statement recorded on 19.04.2012. Loose sheet was found in the premises of Vizag Profiles Ltd., but not in the premises of the assessee. Therefore, the presumption u/s 292C is not available to the department to hold that the assessee has made the payment of unaccounted money over and above the accounted consideration. From the statement of Mr. B.Suresh it is neither clear nor specified what was the actual consideration received from the assessee for sale of two flats to the assessee. Unless there was specific evidence with regard to the receipt of the cash over and above the registered sale deed , it cannot be presumed that the assessee has made the unaccounted payments towards the purchase of the flats. In this case, the assessee has denied having made any payment over and above the sale consideration recorded in the books. Having denied, burden is on the department to prove that the assessee has made the payments to tax the same. In this case, neither the searched party has given a specific statement with regard to the receipt of

money from the assessee nor the AO has collected the details of date wise payments from the Vizag Profiles Ltd. Even there the AO has not ascertained in the statement with regard to the unaccounted payment made by the assessee in the statement. Though the Managing Director has given general statement or the practice of the company with regard to the acceptance of cash component of 25% to 40% , the general statements and the observations cannot be inferred adversely against the third party without the specific information and the relevant evidence. Therefore, we hold that the department has no material to hold that the assessee had made the payment of Rs.91,27,000/- to the VGP and to make the addition of Rs.91,27,000/- as unaccounted consideration. Accordingly we set aside the orders of the lower authorities and delete the addition made by the AO and allow the appeal of the assessee on this ground.

9.2. With regard to the difference in sale consideration in the registered sale deed the Ld.CIT(A) did not make any addition since at the end of the F.Y. the consideration recorded in sale deed, the assessee's books are reconciled with the VGP' s books. The department also did not place any evidence to show that the assessee has made over and above the consideration recorded in the books of account during the year. Therefore

we do not see any reason to interfere with the order of the Ld.CIT(A) on this issue.

10. Ground No.4 is related to the direction given by the Ld.CIT(A) to consider the cash payments of Rs. 25,00,017/- and Rs.12,81,183/- as addition for the assessment years 2010-11 and 2011-12, the same is not related to the impugned appeal under consideration. Therefore, this ground is infructuous for the year under consideration and the assessee is at liberty to go on appeal in the relevant assessment year. Accordingly this ground of the appeal is dismissed.

11. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed..

The above order was pronounced in the open court on 26<sup>th</sup> September, 2018.

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 26.09.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

*I.T.A. Nos.440 /Viz/2017 & 477/Viz/2017*

*Smt. Maganti Annapurna, Visakhapatnam* 

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

1. निर्धारिती/ The Assessee- Smt.Maganti Annapurna, W/o M. Raja Sekhar  
Prop : M/s Maganti Systems, Plot No.234B, Block-D, Autonagar,  
Visakhapatnam
2. राजस्व/ The Revenue – Income Tax Officer, Ward-5(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-2, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, VISAKHAPATNAM