

**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. 352/VIZ/2018
(Asst. Year : 2007-08)**

Smt. Rajulapalli Suhasini,
D.No. 12-24-117, Thota
Veedhi, Bheemunipatnam,
Visakhapatnam District.

vs. DCIT, Central Circle-1,
Visakhapatnam.

PAN No. AGFPR 7302 D
(Appellant)

(Respondent)

Assessee by : Shri C. Subrahmanyam, FCA
Department By : Smt. Suman Malik, Sr.DR

Date of hearing : 02/04/2019.
Date of pronouncement : 05/04/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, dated 27/03/2018 for the Assessment Year 2007-08.

2. Ground Nos.1 & 4 to 7 are not pressed by the Id. AR, therefore same are dismissed as not pressed. The only grounds for adjudication are ground Nos. 2 & 3 which are reproduced as under:-

- "2. *The learned CIT(A) failed to examine the plea of the assessee, when it was brought to his notice that the impugned property sold as it was not having a valid title and was sold with litigation, therefore, its value cannot be on par similar to a property which is having a valid title.*
3. *The learned CIT(A) failed to consider the submission of the assessee that disputed property's value cannot be on par with another property which is free from all encumbrances and legal hurdles."*

3. Facts of the case, in brief, are that assessee is an individual deriving income from real estate business and filed her return of income by admitting total income of Rs. 4,55,310/-. A survey and seizure operation under section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was conducted in the case of Sri Rapeti Govind on 12/09/2007. During the course of search, certain information relating to the sale of property by the assessee for a consideration of Rs. 9,43,875/- against the market value of Rs. 30,20,500/- was noticed. Since there is a reason to believe that there is an escaped assessment in the case of the assessee, the Assessing Officer had issued a notice under section 148 of the Act on 08/08/2009. In response to the notice, the assessee has filed a letter stated that the return of income filed by the assessee on 22/07/2008 may be treated as return of income filed in response to the notice issued under section 148 of the Act. Accordingly, the Assessing Officer has completed the assessment

under section 143(3) r.w.s. 147 of the Act on 31/12/2009 by making an addition of Rs. 26,56,495/- towards short term capital gain and assessed the total income at Rs. 31,11,805/-. Aggrieved by the order of the Assessing Officer, assessee carried the matter in appeal before the Id. CIT(A), who confirmed the order of the Assessing Officer by order dated 28/10/2011. On being aggrieved, assessee carried the matter in appeal before the Tribunal. The Tribunal has set aside the order of the Id. CIT(A) and directed the Assessing Officer to refer the issue to the Departmental Valuation Officer (DVO) to consider the objections raised by the assessee and adopt the fair market value. Accordingly, the Assessing Officer referred the matter to the DVO and computed the short term capital gain as per the DVO and passed the assessment order under section 143(3) r.w.s. 254 of the Act on 15/03/2015 by making addition of Rs. 22,03,295/- and assessed the total income at Rs. 26,58,605/-.

4. On being aggrieved, assessee carried the matter in appeal before Id. CIT(A). The main argument of the assessee before the Id. CIT(A) was "The DVO failed to consider the submissions of the assessee that the disputed property's value cannot be on par with another property which is free from all encumbrances and legal hurdles". The main grievance of the assessee has not been

adjudicated by the DVO, therefore short term capital gain calculated by the Assessing Officer is not correct. The Id. CIT(A) by considering the entire arguments of the assessee, confirmed the order of the Assessing Officer.

5. On being aggrieved, assessee carried the matter in appeal before this Tribunal.

6. Ld. Authorized Representative for the assessee has submitted that the property purchased by the assessee is a disputed property and against it, a suit is pending before the Civil court, therefore, section 50C cannot be applied. He also pointed out from the paper book at page No. 33 which is a report of the DVO that the DVO has only considered in respect of civil dispute and granted deduction at 10% and submitted that he should have been considered more and prayed that some more deduction may be given to the assessee. He relied on the decision of the ITAT, Visakhapatnam Bench in the case of *Smt. Veluri Surya Prakasam Vs. ACIT* in ITA No. 105/VIZ/2018 dated 28/12/2018.

7. On the other hand, Id. Departmental Representative strongly supported the orders passed by the authorities below.

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

9. The case of the assessee is that the assessee has sold the property for a consideration of Rs. 9,43,875/- as against the SRO value of Rs. 30,20,500/-. The Assessing Officer adopted the SRO value and calculated the capital gains. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer. On further appeal, ITAT directed the Assessing Officer to refer the matter to the DVO to ascertain the value of the property. Accordingly, the Assessing Officer referred the matter for valuation to the DVO and the DVO has ascertained the value of the property at Rs. 22,03,295/- after giving deduction at 15%. It is a fact that the property is in dispute and the civil suit is pending, therefore the Id. CIT(A) ought to have been given more than 10% deduction. So far as civil suit is concerned, we find that the DVO after examining the entire property i.e. location, size and shape, he has given 5% deduction on basic rate and due to dispute regarding the property in the Civil Court, deducting has been given at 10%. The Assessing Officer has given total deduction at 15%. After considering the facts and circumstances of the case, we find that the DVO has correctly ascertained the value of the property after considering all the relevant material. The Id. CIT(A) has considered the objections raised by the assessee and confirmed the order of the Assessing Officer, which is reproduced as under:-

"4.1) I have carefully considered the grounds of appeal, facts of the case and findings of the Assessing Officer in the assessment order. This is a case of an individual namely Smt. Rajulapalli Suhasini deriving income from real estate business. The facts in brief in this case are that there was a search & seizure action u/s.132 of the Act in the case of Sri Rapeti Govind on 12.09.2007. During the course of search, information relating to sale of property to Sri Rapeti Govind for a sale consideration the Assessing Officer has issued notice u/s.148 on 08.08.2009. The appellant has filed a letter in response to the notice issued and requested to treat the return filed on 22.07.2008 as the one filed in response to notice u/s.148. The re-assessment proceedings were completed by the Assessing Officer vide order u/s.143(3) r.w.s. 147 on 31.12.2009 by making an addition of Rs.26,56,495/- towards short-term capital gains. The Assessing Officer had adopted market value of Rs.30,20,500/- in respect of sale of asset as per the provisions of Section 50C of the Act and thereby assessing the total income at Rs. 31,11,805 / -.

4.2) Aggrieved on the order of the Assessing Officer, the appellant has filed an appeal before CIT(A), Visakhapatnam and CIT (Appeal) has confirmed the order of the Assessing Officer. Thereafter, the appellant had approached the Hon'ble Tribunal, Visakhapatnam Bench objecting the value adopted by the Assessing Officer as per SRO. The Hon'ble Tribunal has set aside the matter to the file of the Assessing Officer with an observation that when the appellant objects for the valuation of SRO, it is mandatory for the Assessing Officer to refer the matter to DVO. The present assessment order which is in appeal before me is the order passed by the Assessing Officer u/s.143(3) r.w.s 254 of the Act. In this order, the Assessing Officer has referred the matter to the AVO and the AVO has submitted the report considering the objections raised by the appellant and the value given by the AVO vide his report dated 17.04.2006 was of Rs.25,67,300/-. Accordingly, the Assessing Officer has adopted the AVO value of Rs.25,67,300/- instead of Original SRO value of Rs.30,20,500/-. The appellant is still aggrieved with this order of the Assessing Officer and filed an appeal which is the subject matter before me.

4.3) It is the contention of the appellant that the subject property is in litigation in a Civil Suit and no buyers were forthcoming to buy the land at par with the SRO/AVO rate and the AVO has adopted the rate of VUDA which is not applicable in case as it is not a free land without any encumbrances. It is

further contended that the valuation report of AVO is carrying many flaws. It is the contention of the Rant that the AVO has not given any basis for giving 10% discount on rate and further there is no rationality in providing discount of 10%. It is further contended that the AVO should have examined the buyer instead he approached the issue mechanically and the work of the AVO is wild-guess without any basis.

4.4) I have carefully considered the arguments of the appellant, the facts of the case and the findings of the Assessing Officer in the assessment order. In the first place, the contention of the appellant was entertained by the Hon'ble Tribunal, accordingly, the matter was restored to the file of the Assessing Officer to refer the matter to the DVO and to provide an opportunity for the appellant to raise his Valuation Officer in his report clearly mentioned that the defects of the land are within his knowledge and the AVO has considered this aspect in his report. It is also a fact that the impugned land is part and parcel of an approved layout by VUDA. Therefore, the Valuation Officer has adopted the rate of VUDA to the impugned site. The contention of the appellant that the land which has purchased was previously sold by the seller to some other person indicates that the appellant had not made proper enquiry before purchasing the land. Non-exercising his right while buying the property cannot be a cause to get relief. Non-action of the appellant cannot be a valid ground altogether to argue that the value of the property is only Rs.9,43,875/-. No recitals regarding the litigation were apparently available on the final sale deed executed on 17.04.2006 in order to support the lesser price. The appellant had questioned the rationality of giving 10% discount on the basic rate adopted by the AVO. Conversely, there is proof for selling the property at Rs.9,43,875/-. The directions issued by the Hon'ble Tribunal have been considered by the Assessing Officer and the Assessing Officer has rightly adopted the value of Rs.25,67,300/-. Accordingly, the Assessing Officer had calculated the capital gains at Rs.22,03,295/-. In overall circumstances of the case, I do not find any infirmity in the order passed by the Assessing Officer. Hence, the addition made by the Assessing Officer is confirmed."

10. We have gone through the orders of the Assessing Officer as well as Id. CIT(A). We find no reason to interfere with the order

passed by the Id. CIT(A). So far as case law relied on by the assessee is concerned, in that case, the property is adjacent to cemetery, high tension electrical wires are passing over the site and the property is far from village, therefore, the same has no application to the present case. Thus, this appeal filed by the assessee is dismissed.

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

Order Pronounced in open Court on this 05th day of April, 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 05th April, 2019.

vr/-

Copy to:

1. *The Assessee – Smt. Rajulapalli Suhasini, D.No. 12-24-117, Thota Veedhi, Bheemunipatnam, Visakhapatnam Dist*
2. *Revenue-DCIT, Central Circle-1, Visakhapatnam.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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