

**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.125/Viz/2018  
(निर्धारण वर्ष/Assessment Year : 2009-10)**

Y.Lakshmi Narasimha Murthy  
Flat No.58, Sector-11  
MVP Colony  
Visakhapatnam  
**[PAN : AATPM8260D]**  
**(अपीलार्थी/ Appellant)**

Vs. Asst.Commissioner of  
Income Tax  
Circle-2(1)  
Visakhapatnam

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri CVS Murthy, AR  
प्रत्यर्थी की ओर से / Respondent by : Shri TSN Murthy, CIT DR

सुनवाई की तारीख / Date of Hearing : 25.09.2019  
घोषणा की तारीख/Date of Pronouncement : 30.10.2019

**आदेश /ORDER**

**Per Shri D.S.Sunder Singh, Accountant Member :**

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (Pr.CIT)-1, Visakhapatnam in F.No.Pr.CIT-1/VSP/263/2017-18 dated 14.02.2018 for the Assessment Year (A.Y.) 2009-10.

2. In this case, all grounds of appeal are related to the validity of order passed u/s 263 of the Income Tax Act,1961 (in short 'Act'). In this case, the assessee filed the return of income declaring total income of Rs.5,10,340/- and during the assessment proceedings, the Assessing Officer (AO) found that the assessee had sold the immovable property located at Peethalavanipalem, Visakhapatnam vide document No.4028/2008 dated 16.10.2008 for a consideration of Rs.7,50,000/-, whereas the market value of the said property was Rs.15,84,000/-. The assessment was reopened for the purpose of understatement of income with regard to capital gains. Accordingly, issued notice u/s 148 and taken up the case for assessment. During the assessment proceedings, the AO has referred the valuation of the properties sold to the Executive Engineer, Valuation Cell, Visakhapatnam on 26.10.2016 in order to ascertain the correctness of the property value. Since, the valuation report was not received by the AO before the time limit available for completion of assessments, the AO completed the assessment accepting the income returned by the assessee by order u/s 143(3) dated 30.12.2016 pending receipt of valuation report.

Subsequently, the Ld.Principal Commissioner of Income Tax(PCIT) has taken up the case for revision and observed that the property sold by the assessee vide document 4028/2008 dated 16.10.2008 registered with

the Joint Sub Registrar, Visakhapatnam for a consideration of Rs.7,50,000/- and the market value of the property was Rs.15,84,000/-. Since the assessment was reopened for the purpose of verification of capital gains, the AO ought to have completed the assessment adopting the value as per u/s 50C of the Act, adopting the Stamps and Registration value(SRO). Thus, held that the assessment made by the AO is erroneous and prejudicial to the interest of the revenue, therefore, set aside the assessment with a direction to redo the assessment.

3. During the appeal hearing, the Ld.AR argued that the AO has considered the issue with regard to capital gains and referred the matter to the Valuation Officer. Since the Valuation Officer did not submit the report, the AO has completed the assessment accepting the income returned. Therefore, argued that there is no error in the order passed by the AO, hence, there is no case for revision u/s 263 of the Act.

4. On the other hand, the Ld.DR argued that as per page No.2 of the assessment order, it is clear that the assessment was reopened for the purpose of verification of capital gains and the market value of the property was Rs.15,84,000/-. Though the AO has referred the valuation of the property to the departmental valuation cell, due to non cooperation from

the assessee, the Valuation Officer could not submit the report and the AO instead of completing the assessment adopting the value as per the Stamps and Registration authorities as provided under section 50C of the Act, completed the assessment accepting the income returned, therefore, committed an error by completely omitting the issue for it was reopened without examination and caused prejudice to the revenue due to non taxation of the capital gains representing the difference between the sale consideration and the value as per section 50C of the Act. Therefore, argued that the Ld.Pr.CIT has rightly taken up the case for revision and no interference is called for, hence requested to uphold the order of the Ld.Pr.CIT.

5. We have heard both the parties and perused the material placed on record. In the instant case, the assessment was reopened for the purpose of capital gains. As per page No.2 of the assessment order, the market value of the property (Stamps and Registration Authorities Value) was Rs.15,84,000/- against which the document was registered for consideration of Rs.7,50,000/-. As observed from the order of the Ld.Pr.CIT, the value as per 50C was Rs.22,02,000/- but not 15,84,000/- and there was an error in the notice issued by the AO with regard to valuation

of the property. On going through the assessment order, it is found that the AO neither examined the taxability of capital gains as per section 50C of the Income Tax Act nor adopted the value as per section 50C though there was huge difference between the sale consideration and the value as per SRO. Therefore, the assessment order passed by the AO was erroneous in as much as not examining the issue with regard to market value of the property as per the stamps and registration authority and prejudicial to the interest of the revenue. Therefore, we hold that the Ld.CIT(A) has rightly taken up the case for revision and accordingly, we uphold the order of the Ld.CIT(A).

5.1. Having upheld the order of the Ld.CIT(A), we are of the considered opinion that since, the issue was referred to the valuation cell for ascertaining the correct value u/s 50C of the Act, the issue needs to be remitted back to the file of the AO to examine the market value and to tax the market value or the value determined by the valuation officer as per the provisions of section 50C of the Income Tax Act. Accordingly, the issue is remitted back to the file of the AO and the appeal of the assessee is allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30<sup>th</sup> October, 2019

<p>Sd/-  <b>(वी.दुर्गा राव)</b>  <b>(V. DURGA RAO)</b>  <b>न्यायिक सदस्य/JUDICIAL MEMBER</b>          विशाखापटणम /Visakhapatnam          दिनांक /Dated : 30.10.2019          L.Rama, SPS</p>	<p>Sd/-  <b>(डि.एस. सुन्दर सिंह)</b>  <b>(D.S. SUNDER SINGH)</b>  <b>लेखा सदस्य/ACCOUNTANT MEMBER</b></p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Y.Lakshmi Narasimha Murthy, Flat No.58, Sector-11, MVP Colony, Visakhapatnam
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-2(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
 ITAT, Visakhapatnam