

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.9/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2013-14)**

Pathakamuri Cecil
D.No.7-159/79, Ravipadu Road
Narasaraopet
Guntur
[PAN :AJXPP2406R]

Vs. Income Tax Officer
Ward-1
Narasaraopet

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri I Kama Sastry, AR
: Smt. Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 30.01.2020

घोषणा की तारीख/Date of Pronouncement

: 07.02.2020

आदेश /ORDER

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

Delay: This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeal) [CIT(A)]-2, Guntur in Appeal No.10157/2016-17 dated 14.08.2018 for the assessment year (A.Y.)2013-14 with a delay of 78 days. The assessee filed condonation petition citing

medical reasons and requested to condone the delay. After hearing both the parties, we condone the delay and admit the appeal of the assessee.

2. All the grounds of appeal are related to the addition of Rs.24,77,367/- u/s 69B of the Income Tax Act, 1961 (in short 'Act'). During the assessment proceedings, the Assessing Officer (AO) found that the assessee has purchased the property in Narsaraopet town old survey No.464, T.S.No.743, Guntur District admeasuring Ac.2.45cts or 11,858 sq.yds of land for a consideration of Rs.45,50,000/- along with Sri Velagapudi Vasudeva Rao on 15.06.2012 vide document No.9571/2012 on 15th June 2012. During the assessment proceedings, the AO called for the details, but the assessee failed to furnish the details. Therefore, the AO treated the assessee as co-owner for 50% share of the property and accordingly taxed 50% of the sale consideration along with stamp duty of Rs.24,77,367/- as unexplained sources u/s 69B of the Act.

3. Against which the assessee filed appeal before the CIT(A) and argued that he had only the interest of 10% in the said property, thus requested to consider his share at 10% instead of 50% assessed by the AO. However, no evidence was brought on record to establish that the assessee was only 10% share holder in the property. The registered document also did not

throw any light in the share holding of the property. Therefore, the Ld.CIT(A) rejected the assessee's contention and held that the AO has rightly taxed the property treating the assessee as co-owner for 50% share in the property. Further, the Ld.CIT(A) observed that the AO has taken the stamp duty of Rs.4,04,734/- instead of Rs.10,54,800/- being the 50% of total stamp duty of Rs.21,09,600/-, hence directed the AO to adopt 50% of the share in the stamp duty along with consideration paid for acquiring the land for making addition u/s 69B of the Act.

4. Against which the assessee filed appeal before us. The first contention of the assessee is that the assessee is only having 10% in the total investment, thus requested to delete the addition made by the AO over and above the 10% of share. In support of his contention the assessee filed copy of agreement dated 31.12.2010 between the assessee and the other co-owners. The agreement was unregistered and the stamp paper was purchased on 24.03.2005. Since the property was registered on 15.06.2012 and the Registered sale deed do not support the purported agreement dated 31.12.2010, the agreement dated 31.12.2010 appears to be an afterthought hence, rejected. On perusal of the sale deed, there was no mention with regard to shares of the parties. Therefore, we hold that

the lower authorities rightly assessed 50% of the share of the property in the hands of the assessee. Accordingly, appeal of the assessee on this ground is dismissed.

5. The next ground is related to the taxing share of 50% u/s 69B of the Act. During the appeal proceedings, the Ld.AR submitted that as per the sale deed dated 15.06.2012, the payments were made for acquiring the land as under :

31.12.2010	15,00,000
08.04.2011	10,00,000
24.09.2012	5,00,000
18.02.2012	10,00,000
15.06.2012	5,50,000
Total	Rs.45,50,000

5.1. The Ld.AR argued that out of the sum of Rs.45.50 lakhs, a sum of Rs.15 lakhs was paid in the F.Y.2010-11, relevant to the A.Y.2011-12, Rs.25 lakhs was paid in the F.Y.2011-12, relevant to the A.Y.2012-13 and Rs.5.50 lakhs was paid in the F.Y.2012-13 relevant to the A.Y.2013-14. Therefore, submitted that only Rs.5.50 lakhs out of the total amount paid and the stamp duty amounting to Rs.21.09 lakhs, aggregating to Rs.26.09 lakhs was the investment made in the year under consideration which required to be brought to tax, but not the entire amount of Rs.45.50 lakhs plus stamp

duty. Thus argued that 50% of the aggregate amount of Rs.26.59 lakhs consideration paid during the year required to be brought to tax in the A.Y.2013-14 in the hands of the co-owners. Therefore, requested to set aside the order of the Ld.CIT(A) and confirm the addition to the extent of Rs.13,29,500/- only.

6. On the other hand, the Ld.DR vehemently opposed and argued that since the impugned property was acquired in the year under consideration, the entire consideration paid by the assessee as well as the stamp duty required to be brought to tax in the assessment year.

7. We have heard both the parties and perused the material placed on record. As per sale deed dated 15.06.2012, co owners have paid the consideration as per the schedule given above and out of which only sum of Rs.5.50 lakhs was paid in the impugned assessment year. Apart from sum of Rs.5,50,000/- stamp duty of Rs.21.09 lakhs was also incurred in the relevant A.Y.2013-14. Therefore, 50% of the consideration paid during the impugned assessment year amounting to Rs.13.295 lakhs required to be brought to tax in the A.Y.2013-14 as per section 69B of the Act. As per section 69B, where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable articles or the

investment made recorded in the books of accounts but offers no explanation, required to be taxed. From the perusal of the sale deed, the assessee has made the investment to the extent of Rs.26.59 lakhs jointly along with other co- owners in the F.Y.2013-14 for which the assessee could not explain the source. Therefore, we hold that the sum of Rs.13,29,500/- (being 50% of 26.59 lakhs) required to be brought to tax and the remaining amount should be deleted. Hence, we set aside the order of the Ld.CIT(A) and direct the AO to verify the actual payments made during the year and decide the issue. The appeal is remitted to the file of the AO for a limited purpose of verifying the actual dates and the actual payment made in the impugned assessment year and to make the addition representing the investment made in the impugned assessment year. Accordingly, the appeal of the assessee is partly allowed for statistical purpose.

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

Order pronounced in the open court on 7th February, 2020.

Sd/-
(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 07.02.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 07.02.2020

L.Rama, SPS

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

1. निर्धारिती/ The Assessee –Pathakamuri Cecil, D.No.7-159/79, Ravipadu Road, Narasaraopet, Guntur
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Narasaraopet
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-2, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam