

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

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA No. 556/VIZ/2017
(Asst. Year : 2013-14)**

Yenugula Chandra Rao,
Prop : M/s. Rajanu Jewellers,
D.No. 11-49-336B, Sivalayam
Street, Vijayawada.

vs. ITO, Ward-1(1),
Vijayawada.

PAN No. AADPY 5910 C
(Appellant)

(Respondent)

Assessee by : Shri M.Madhusudana Rao, CA
Department By : Smt. U.Mini Chandran, Sr.DR

Date of hearing : 16/12/2019.
Date of pronouncement : 07/02/2020.

ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Vijayawada, dated 28/09/2017 for the Assessment Year 2013-14.

2. Facts of the case, in brief, are that assessee has filed his return of income by declaring total income of Rs. 3,95,240/-. The return filed by the assessee was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') and thereafter selected for scrutiny and after following due procedure, assessment was completed u/sec. 143(3) of the Act. In the

assessment order, the Assessing Officer has noted that on verification of 50C data for the F.Y. 2012-13 received from DIT (Intelligence), Hyderabad, it is noticed that assessee has sold an immovable property bearing D.No. 36-11-7, admeasuring 405 sq.yds. located at Koneru Rama Kotaiah Street, Vijayawada on 11/06/2012 for Rs. 23,41,000/-. The Government value for the purpose of payment of stamp duty was Rs.78,97,000/-. The difference in Government value and the document value is Rs.55,56,000/-. It is further noticed that the assessee has not shown any capital gain from this transaction for the A.Y. 2013-14. Therefore, a notice u/sec. 142(1) dated 24/11/2015 was issued to the assessee to furnish the details of computation of capital gains. In response thereto, assessee filed a reply dated 26/02/2016 by stating that he had sold the property jointly with his wife Mrs.Yenugula Kumari at D.No. 36-11-7 at Mogalraja Puram, Vijayawada on 23/07/2004 to Paturi Krishna Babu through Sale Agreement-cum-GPA registration. Later, GPA holder sold the property on 28/05/2012 to third party, hence, no tax liability to him for the Financial Year 2012-13. The Assessing Officer has considered the explanation and rejected the same by observing that agreement of Sale-cum-GPA dated 23/07/2004 is not a sale deed but an agreement for sale coupled with GPA. The assessee

had not received the entire sale consideration of Rs. 23,41,000/-, in fact, received 23,21,000/- by leaving balance of Rs. 20,000/- which is to be received later. It was mentioned in the document of Sale Agreement-cum-GPA that on payment of the balance amount of Rs. 20,000/-, regular sale deed will be registered in the name of the purchasers of the property or in the name of the persons desired by the purchasers. It was further mentioned that the property will be handed over to the purchasers at the time of registration of the sale deed after duly determining the boundaries for the said property. Accordingly, long term capital gain was computed at Rs.39,48,500/- and added the same in the hands of the assessee.

3. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

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

5. Ld.AR submitted that the property was sold by the assessee along with his wife on 23/07/2004 and received full consideration except Rs. 20,000/- and handed over the possession to the GPA holder on the same day. Therefore, transfer took-place on the date of execution of Sale Agreement-cum-GPA i.e. on 23/07/2004 and not on 28/05/2012. He further submitted that if at all capital

gains has arisen, it has to be considered on the date of execution of Sale Agreement-cum-GPA i.e. transfer of property and submitted that the order passed by the Assessing Officer and confirmed by the Id. CIT(A) is not correct.

6. Ld.DR strongly supported the orders of the authorities below.

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

8. The assessee along with his wife has sold the property to Shri Paturi Krishna Babu on 23/07/2004 for a sale consideration of Rs.23,41,000/-, in which he received Rs.23,21,000/- and the remaining balance amount of Rs. 20,000/- has to be received later. According to the Assessing Officer, the same property was sold subsequently on 28/05/2012. The stamp duty value as on the date of subsequent sale i.e. on 28/05/2012 was Rs.78,97,000/-, therefore as per section 50C capital gains has to be calculated from the date of subsequent sale made by the purchaser Shri Paturi Krishna Babu on the ground that assessee has not received full consideration i.e. he only received Rs.23,21,000/- and Rs.20,000/- was not received and possession was also not given to the GPA holder and therefore it has to be taxed in the hands of the assessee on subsequent sale i.e. on 28/05/2012. I have gone through the registered Sale Agreement-

cum-GPA document, dated 23/07/2004 by which assessee has sold the subject matter of the property for a sale consideration of Rs.23,41,000/- through Sale Agreement-cum-GPA and received Rs.23,21,000/- on the same day and handover the possession to GPA holder and he received remaining balance amount of Rs.20,000/- on 26/07/2004.

9. From the above, it is very clear that assessee has sold the property as a Sale Agreement-cum-GPA in 2004 and full consideration has been received on 26/07/2004 and the possession of the land was given to the purchaser Sri Paturi Krishna Babu S/o Paturi Radha Krishna, therefore as per section 2(47)(v), transfer has been completed and possession is given to the party. In the present case, assessee has received full consideration on 26/07/2004, therefore it can be concluded that the property has been transferred to Sri Paturi Krishna Babu on 26/07/2004. From 27/07/2004 onwards the entire land is in the possession and ownership of Shri Paturi Krishna Babu, therefore the capital gains as per section 50C as on the date of sale i.e. 28/05/2012 has to be taxed in the hands of Shri Paturi Krishna Babu. So far as assessee is concerned, the capital gains has to be taxed in the hands of the assessee by considering the transfer has taken place on 26/07/2004 as per section 50C of the Act. In

view of the above, the Assessing Officer is directed to tax the capital gains according to law. Hence, I set aside the order passed by the Id.CIT(A) and allow the appeal of the assessee partly.

10. In the result, appeal filed by the assessee is partly allowed.

Order Pronounced in open Court on this 07th day of Feb., 2020.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 07th February, 2020.

vr/-

Copy to:

1. *The Assessee – Yenugula Chandra Rao, Prop : M/s. Rajanu Jewellers, D.No. 11-49-336B, Sivalayam Street, Vijayawada.*
2. *The Revenue – ITO, Ward-1(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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