

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

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

**ITA No. 514/VIZ/2019  
(Asst. Year : 2008-09)**

Kinthada Srinivasu,  
D.No. 53-18-19/1, Chaitanya  
Nagar, Maddilapalem,  
Visakhapatnam.

vs. ITO, Ward-3(2),  
Visakhapatnam.

PAN No. BQXPK 5663 B  
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA  
Department By : Shri B.Rama Krishna, Sr.DR

Date of hearing : 04/02/2020.  
Date of pronouncement : 07/02/2020.

**ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Visakhapatnam, dated 13/06/2019 for the Assessment Year 2008-09.

**2.** The only issue raised by the assessee in this appeal relates to capital gains of Rs. 7,76,490/- and all other grounds raised, are not pressed, therefore same are dismissed.

**3.** Facts of the case in brief are that in the assessment order the Assessing Officer has noted that on perusal of the registered sale deed bearing No. 5217/2007 dated 13/12/2007, it is noticed

that assessee's grand-mother Smt. Lakoji Suryakantham acquired a property admeasuring 204 sq.yds. through registered sale deed dated 19/10/1989 bearing document No.8839/1989. Later, assessee's grand-mother died intestate on 27/03/1997 leaving behind her daughter Smt. K. Bala Rajeswarai as her legal heir. Subsequently, Smt. K. Bala Rajeswarai constructed a RCC house (G + 1) in the year 1997 and the same was sold along with other legal heirs in the F.Y. 2007-08. As the property was in possession of the assessee for more than 36 months, 1/9<sup>th</sup> share of capital gains was taxed in the hands of the assessee.

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

**5.** On appeal before me, Id.AR has submitted that the assessee's mother has sold the property for Rs. 25.25 lakhs on 13/07/2007 and submitted that property is inherited by his grand-mother to his mother, therefore the entire property is belonging to his mother. Simply because assessee is also a signatory to the document, it does not ownership to the assessee and thereby the Assessing Officer cannot tax the capital gains in the hands of the assessee.

**6.** On the other hand, Id.DR submitted that the property though inherited by the assessee's mother, assessee is also having a

right, therefore he has signed the document, therefore the Assessing Officer has rightly taxed the capital gains in the hands of the assessee also.

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

**8.** The issue involved in this appeal relates to capital gains arising out of sale of property i.e. site admeasuring 204 sq.yds. The subject matter of the property was purchased by the assessee's grand-mother Smt. Lakoji Suryakantham on 19/10/1989. Subsequently, she died intestate the assessee's mother as a legal heir and the property was sold on 13/12/2007. In the sale document Smt. K. Bala Rajeswarai has signed as a seller of the property and in the last page Smt. K. Bala Rajeswarai & 8 other legal heirs also signed on it, one Sri Kinthada Srinivasu assessee before this Bench. The case of the Assessing Officer is that assessee is a signatory to the document, therefore 1/9<sup>th</sup> share of the capital gains arising out of this transaction has to be taxed in the hands of the assessee. The case of the assessee is that the entire property belonging to his mother Smt. K. Bala Rajeswarai, she is absolute owner, therefore taxing in the hands of the assessee is not correct. I have gone through the sale deed dated 13/07/2007. According to the sale deed, the assessee's

mother Smt. K. Bala Rajeswarai inherent the property from her mother therefore she is absolute owner of the property. Simply because assessee has signed the document along with others, it cannot be said that assessee is having a right over the property. If at all capital gain arises out of sale of the schedule property admeasuring 204 sq.yds. it has to be taxed in the hands of the mother of the assessee and not in the hands of the assessee. The Id. CIT(A) without considering the same simply dismissed the appeal of the assessee and confirmed the order of the Assessing Officer. In view of the above discussion, I find that taxing the capital gains in the hands of the assessee is not correct. Accordingly, I reverse the order of the Id. CIT(A) and allow the appeal of the assessee.

**9.** In the result, appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 07<sup>th</sup> day of Feb., 2020.

Sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 07<sup>th</sup> February, 2020.**

**vr/-**

**Copy to:**

1. *The Assessee – Kinthada Srinivasu, D.No. 53-18-19/1, Chaitanya Nagar, Maddilapalem, Visakhapatnam.*
2. *The Revenue – ITO, Ward-3(2), Visakhapatnam.*
3. *The CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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

		Date	Initial	
Original dictation pad is enclosed in the file				
1.	Draft dictated on	04/02/2019	}	Sr.PS
2.	Draft placed before author	05/02/2019		Sr.PS
3.	Draft proposed & placed before the second member	/02/2020	}	JM/AM
4.	Draft discussed/approved by Second Member	/02/2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	/02/2020	}	Sr.PS
6.	Date of pronouncement	/02/2020		Sr.PS
7.	File sent to the Bench Clerk	/02/2020		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the Sr. Private Secretary			
10.	Date of dispatch of Order			