

**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**

**I.T.A. No.55/VIZ/2019
(Asst. Year : 2009-10)**

ITO, Ward-4(2),
Visakhapatnam.

vs.

S. Pundarikaksha Swamy
(HUF), Flat No. 501,
Block-B, Pleasant Valley,
Near R & B Guest House,
Madhavadhara,
Visakhapatnam.

(Appellant)

PAN No. AARHS 8499 C
(Respondent)

Assessee by : Shri T.V.U.B.S.Kishore Babu, Adv
Department By : Smt. U.Mini Chandran, Sr.DR

Date of hearing : 18/02/2020.
Date of pronouncement : 26/02/2020.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 20/11/2018 for the Assessment Year 2009-10.

2. Facts of the case in brief are that assessee is a HUF, filed his return of income by declaring total income of Rs. 1,59,110/-, which was selected for scrutiny and assessment was completed by

assessing income of the assessee at Rs. 11,50,110/-. In the assessment order, the Assessing Officer has noted that assessee along with another person purchased a property admeasuring 1000 sq.yds for a consideration of Rs.40,39,540/- at Madhavadhara, Visakhapatnam within the GVMC limits and the same was given for development to M/s. Sai Datta Associates on 05/08/2008 vide document No. 1617/2008. As per the said development agreement, the landlords are entitled for 40% share in developed portion i.e. 6140 sft. and 750 sft. for car parking area and the developer is entitled for 600 sq.yds. out of 1000 sq.yds. The case of the Assessing Officer is that when the assessee was entered into development agreement, he has to offer capital gains, hence, case of the assessee was reopened and addition was made in his hands under the head 'capital gains'.

3. On appeal, Id. CIT(A) deleted the addition made by the Assessing Officer.

4. Before us, Id.DR has submitted that when the assessee entered into development agreement with the developer and on the very same day transfer has been taken place i.e. assessee has given possession, therefore assessee has to offer capital gains.

5. On the other hand, Id.counsel for the assessee has submitted that subsequent to the development agreement, the plan

prepared by the developer-M/s. Sai Datta Associates for construction of the project was not approved by the competent authority and submitted that no activity has been taken place subsequent to the agreement. Therefore, the assessee has not received any consideration and capital gains cannot be taxed in the hands of the assessee. He further submitted that so-called developer M/s. Sai Datta Associates not at all available to the assessee to cancel the development agreement that is the reason he has not able to cancel the agreement and submitted that the order passed by the Assessing Officer is not correct and supported the order of the Id. CIT(A).

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

7. The assessee along with another person entered into development agreement with M/s. Sai Datta Associates on 05/08/2008 vide document No. 1617/2008. As per the development agreement, the assessee along with another person is entitled to receive 40% of the developed area. The case of the Assessing Officer is that when the assessee has given possession to M/s. Sai Datta Associates, the assessee has to offer short term capital gain which he failed, therefore by reopening the case of the assessee calculated the capital gains and addition was made. On

appeal, Id. CIT(A) deleted the addition made by the Assessing Officer on the ground that assessee has not received any consideration. The case of the assessee is that subsequent to the development agreement with M/s. Sai Datta Associates, the competent authority not approved the construction plan, therefore there is no activity carried out. That apart, M/s. Sai Datta Associates are not available for cancellation of development agreement and submitted that there was no activity carried out on the land which belonging to the assessee and another person, therefore no capital gains can be taxed. By considering overall facts of the case, we are of the opinion that it is necessary to verify what is the status of the land transferred to M/s. Sai Datta Associates. The Id. CIT(A) without considering the facts, deleted the addition made by the Assessing Officer, in our opinion, it is not correct. Therefore, we set aside the order passed by the Id. CIT(A) and remit the matter back to the Assessing Officer to examine what is the status of the land belonging to the assessee and another person and any development has taken place and after detailed verification complete the proceedings as per law. Thus, this appeal filed by the Revenue is allowed for statistical purpose.

8. In the result, appeal filed by the Revenue is allowed for statistical purpose.

Order Pronounced in open Court on this 26th day of Feb., 2020.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 26th February, 2020.

vr/-

Copy to:

1. *The Assessee - S. Pundarikaksha Swamy (HUF), Flat No. 501, Block-B, Pleasant Valley, Near R & B Guest House, Madhavadhara, Visakhapatnam.*
2. *The Revenue - ITO, Ward-4(2), Visakhapatnam.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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