

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, 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.186/Viz/2018  
(निर्धारण वर्ष/Assessment Year:2012-13)

Marni Prasuna  
24-5-60/A, Rajmahal  
Kacheripeta  
Kakinada

Vs. Income Tax Officer  
Ward-2  
Kakinada

**[PAN : BCMPM6385B]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri G.V.N.Hari, AR  
: Shri B.Satyanaraya Raju, DR

सुनवाई की तारीख / Date of Hearing

: 25.02.2020

घोषणा की तारीख/Date of Pronouncement

: 28.02.2020

**आदेश /ORDER**

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

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-9, Hyderabad in I.T.A.No.10219/ITO-2, Kakinada/2017-18 dated 14.03.2018 for the Assessment Year (A.Y.)2012-13.

2. All the grounds of appeal are related to the share income received by the assessee from Avinash Hi-tech City-2 Society (in short Society). Brief facts of the case are that the assessee is an individual deriving income from interest, development and operation of SEZ as co-developer filed her return of income declaring total income at Rs.96,300/-. The return was processed u/s 143(1) and the case was selected for scrutiny and notice u/s 143(2) was served on the assessee. The assessee has filed the return of income admitting total income of Rs.16,29,025/- and claimed the deduction of Rs.14,50,050/- under Chapter VIA relating to the share income received from the Society which was claimed as exemption u/s 80IAB of the Income Tax Act, 1961 (in short 'Act'). During the assessment proceedings, the Assessing Officer (AO) found that the assessee is not entitled for deduction u/s 80IAB, hence called for information from the assessee as to why the same should not be disallowed and added back to the income. The assessee filed explanation stating that the assessee along with 79 other members were owners of the land admeasuring 25.68 cents forming part of survey nos. 30, 34, 35 and 38 situated at Gachibouwli Village, Serilingampally, Ranga Reddy District and executed a Development Agreement cum Power of Attorney in favour of project developer named L&T Phonix Info Parks

Private Ltd. Pursuant to the development agreements, the developer in the name of Hi-Tech City-2 acquired sanction for setting up of a SEZ for sector specific Information technology and information technology enabled services (IT / ITES SEZ) from the Govt. of India, Ministry of Commerce and Industry, Department of Commerce vide notification No.892 dated 11.08.2006. The owners of the property including the assessee formed three societies, Avinash Hitech City -2 Society and two other societies registered under the Societies Registration Act,2001 for obtaining co-developer status. The assessee along with 17 others have become members of the Society. Thereafter, Avinash Hitech City 2 Society and other societies made application to the Secretary, Ministry of Commerce in Form -A on December 12, 2007 for approval of co-developers status on behalf of the owners. And the society was granted co-developer status. L&T Phonix info parks private limited developed the land and allotted cold shell of H1B building towards the share of the assessee out of the total property developed. The society further made developments to meet the norms specified by the SEZ authority. The share income of Rs.14,49,029/- from the development business of the society was received by the assessee which was offered as income in her hands.

2.1. The Society is separately assessed to tax and filed its return of income admitting 'Nil' income claiming deduction u/s 80IAB of the Act which was disallowed by the AO and the issue travelled to the ITAT and the ITAT in its order in I.T.A. No.726/Hyd/2017 dated 29.12.2017 for the A.Y. 2013-14 held that the Society is entitled for deduction u/s 80IAB, accordingly, upheld the order of the Ld.CIT(A).

2.2. The issue in the present case is only limited to the extent of whether the share income received by the assessee as member of the society is required to be taxed separately or not. The AO viewed that the assessee has claimed deduction u/s 80IAB incorrectly, hence, disallowed the same. On appeal before the CIT(A), the Ld.CIT(A) in para No.5.2 observed that the income required to be assessed in the hands of the Society, but not in the hands of individual members of the Society. However, the Ld.CIT(A) observed that the society as well as the assessee have not filed the returns of income, hence viewed that both of them have relinquished the claim of deduction u/s 80IAB, thus, viewed that the individual also is not allowed to claim deduction u/s 80IAB as the relief was not given to the society, therefore confirmed the order of the AO.

3. Against which the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee is a member of the Society as a co developer and he has received the share income from the society. The income of the society was taxed separately in the hands of the society. The society was entitled for deduction u/s 80IAB which was claimed and allowed by the ITAT. Though the AO had disallowed the claim for deduction u/s 80IAB in the hands of the society, both the appellate authorities i.e CIT(A) as well as the ITAT, allowed the appeal of the assessee and the matter has reached the finality. What is received by the assessee was only the share of income which was already offered to tax in the hands of the Society, therefore, argued that the same income cannot be taxed twice, once in the hands of the society as well as in the hands of the assessee. Therefore, argued that both the lower authorities erred in taxing the same income which was already suffered to tax, hence requested to delete the addition and allow the appeal of the assessee.

4. On the other hand, the Ld.DR relied on the orders of the lower authorities.

5. We have heard both the parties and perused the material placed on record. In the instant case, what was received by the assessee was only

share of income from the society. The income of the society was taxed separately in the hands of the society. The Ld.CIT(A) also has given a finding that the income should be taxed in the hands of the society only but not in the hands of individual members. However, the Ld.CIT(A) confirmed the addition, because of the reason that the assessee as well as the society have not filed the returns of income, thereby held that the assessee has relinquished the claim for deduction u/s 80IAB which was disallowed by the AO. For the sake of clarity and convenience, we extract para No.5.2 of the order of the Ld.CIT(A) which reads as under :

*“5.2. Respectfully following the reasoning given by the Hon’ble ITAT for A.Y.2013-14, I am of the view that in this assessment year also the income should be assessed in the hands of the Avinash Hi-tech City-2 Society only and individual members of the society should not be taxed in their hands. However, for this assessment year, the appellant as well as the society have not filed the revised returns relinquishing or claiming the deduction u/s 80IAB. The facts of A.Y.2013-14 and 2014-15 are distinguishable although on principle basis the income is assessable in the hands of society only but because of the peculiar facts, I am constrained in not allowing the relief. Since the individual is not allowed to claim 80IAB relief as the approval was given only to the society, therefore, the deduction claimed u/s 80IAB also cannot be allowed. The case law relied upon of Bangalore Tribunal in the case of M/s Vanshee Builders and Developers Pvt. Ltd. Vs. ITO, Ward-12(2) is not applicable in this case.”*

5.1. Since the income of the society was taxed separately as rightly observed by the Ld.CIT(A), individual members of the society are not liable to be tax the same income. Taxing the income again in the hands of the assessee would amount double taxation of the same income which is not

permissible. Since, the claim of deduction u/s 80IAB has reached finality in the hands of the society, we hold that both the lower authorities have erred in taxing the share income received by the assessee, accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO and allow the appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28<sup>th</sup> February, 2020.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 28.02.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 28.02.2020

L.Rama, SPS

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

1. निर्धारिती / The Assessee–Marni Prasuna, 24-5-60/A, Rajmahal, Kacheripeta Kakinada
2. राजस्व /The Revenue –Income Tax Officer, Ward-2, Kakinada
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-9, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
ITAT, Visakhapatnam