

आयकरअपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.No.84 /Viz/2021 & 85/Viz/2021
(निर्धारणवर्ष/Assessment Year:2015-16)**

Yandrapu Joseph Ratna Kumar D.No.50-104-3/4 N.E.Layout, Seethammadhara Visakhapatnam [PAN : AAAPY8927E]	Vs.	Asst.Commissioner of Income Tax Circle-4(1) Visakhapatnam
Yandrapu Udaya Kumar D.No.50-104-3/4 N.E.Layout, Seethammadhara Visakhapatnam [PAN : AAAPY8929L]		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri D.K.Sonowal, CIT, DR
सुनवाई की तारीख / Date of Hearing	:	14.09.2021
घोषणा की तारीख/Date of Pronouncement	:	24.09.2021

आदेश /ORDER

Per Bench:

These appeals are filed by the assesseees against the orders of the Principal Commissioner of Income Tax (PCIT), Visakhapatnam, passed u/s 263 in order No.ITBA/COMF/1/17/2020-21/1031850881(1) dated 28.03.2021 and Order No.ITBA/REV/F/REVS/2020-21/1031830844(1)

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dated 27.03.2021 for the Assessment Year (A.Y.) 2015-16 . Since the facts are identical, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under and the facts are extracted from I.T.A.No.84/Viz/2021 of Yandarapu Joseph Ratna Kumar.

2. Brief facts of the case are that the assessee filed the return of income declaring total income of Rs.2,16,55,690/- and the return was taken up for limited scrutiny for verification of 'large long term capital gains'. During the course of assessment proceedings, the Assessing Officer (AO) called for the details and the assessee has furnished the details with regard to long term capital gains. After verification of details filed by the assessee, the assessment was completed accepting the income returned by an order dated 15.06.2017 u/s 143(3) of the Income Tax Act, 1961 (in short 'Act'). Subsequently, the Pr.CIT, Visakhapatnam has taken up the case for revision u/s 263 and found that as per the Development Agreement cum Power of Attorney, the assessee along with other co-owners have transferred the land and the owners are entitled for 50% of share in all the constructed areas with proportionate undivided share of the land and parking space. However, the Ld.Pr.CIT observed that the assessee had arrived the value of total property at Rs.21,29,60,000/- by adopting Rs.20,000/- per sq.yd for the total extent land of 10,648 sq.yds. and out of which, the assessee has

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taken their share at Rs.10,64,80,000/- for co-owners) in the ratio of 50 : 50. Since the assessee is having 1/5th share in property, he offered capital gain of Rs.2,11,55,566/- after claiming proportionate indexed cost of acquisition of Rs.1,40,434/-. The Ld.Pr.CIT further found that the market value of the property for the purpose of stamp duty was Rs.41,97,80,000/- and the assessee has adopted Rs.21.29 crores which was accepted by the AO. Therefore, viewed that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue, hence, issued show cause notice, for which the assessee's AR filed explanation stating that the total value of land and the constructed space is valued at Rs.41.97 crores out of which the co-owners share is 50% which works out to 20.98 crores including the constructed space. However as on the date of agreement there is no constructed space, since, the same is yet to be commenced. As on the date of agreement the assessee transferred the land for development and entitled 50% of the constructed area and the 50% of undivided share of land therefore submitted that the assessee has rightly offered 50% of the land admeasuring 5324 sq.yds @ of Rs.20,000/- per sq.yd the which worked out to Rs.10,64,80,000/-. The assessee further submitted that the AO has accepted the computation of capital gains after due verification of details furnished by the assessee Therefore, there is no error in the

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assessment order passed by the AO which is prejudicial to the interest of the revenue, hence, requested to drop the proceedings. However, not being convinced with the explanation of the assessee, the Ld.Pr.CIT held that the assessee, having transferred the entire land of 10,648 sq.yds, in lieu of super built up area, the sale consideration of the entire land amounting to Rs.21,29,60,000/-, required to be brought to tax, hence, viewed that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. Therefore, the Ld.Pr.CIT set aside the order of the AO and directed the AO to recompute the capital gains after giving opportunity to the assessee.

3. Against which the assessee is in appeal before us. During the appeal hearing, the Ld.AR submitted that the assessment was completed u/s 143(3). The case was selected for scrutiny for verification of capital gains and the AO called for relevant information which was furnished by the assessee and after verification of the entire information and the correctness of computation of capital gains, the AO completed the assessment. The fact of calling for the details and verification is evident from para No.5 and 6 of the assessment order. The Ld.Pr.CIT has taken up the case for revision on the same issue, which was already examined and considered by the AO and taken a different view. The revision is not

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permissible on difference of opinion and there is no error in the assessment order passed by the AO and hence the revision is not permissible under 263 of the act. Therefore, argued that the order passed by the Ld.Pr.CIT is bad in law, hence, requested to quash the order u/s 263.

3.1. The Ld.AR further submitted that what was transferred by the land owners is 50% share of land in lieu of receipt of 50% of the constructed area. As on the date of transfer, there was no super built up area. Since the assessee retained, 50% of the land, either the value of 50% of the land or 50% of constructed area required to be taxed as capital gains, but not the land as well as the super built up area, since, the developer has not constructed the space nor parking space is available to the assessee. Therefore, Ld.AR argued that the assessee has rightly admitted 50% of the sale value of land of 5324 sq yards @20,000 per sq.yd. which worked out to Rs.10.64 crores for capital gains, thus, argued that on merits also the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue and there is no case for revision u/s 263. Hence, requested to set aside the order under 263 and allow the appeal of the assessee.

4. On the other hand, the Ld.DR supported the order of the Ld.Pr.CIT.

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5. We have heard both the parties and perused the material placed on record. In the instant case, there is no dispute that the assessee has admitted the capital gains in the returns of income and the case was taken up for scrutiny for the purpose of verification of large long term capital gains. During the course of assessment proceedings, the AO called for the relevant details in respect of computation of capital gains as evident from para No.5 and 6 of the assessment order. For the sake of clarity, we extract para No.5 and 6 of the assessment order which reads as under :

“5. The AR was asked to furnish a copy of return of income with computation, bank account statements, Form 26AS and its reconciliation with ITR for the Assessment Year 2015-16, complete details of assessee’s movable and immovable properties held in the name of assessee. In the return of income, the assessee declared a long term capital gains of Rs.2,11,55,566/-. The A.R was asked to furnish the details of the property concerned. The AR submitted the property in question is a piece of land and that the assessee was the joint owner along with 4 others. The land was sold to one M/s Northstar Homes, a partnership firm for development of residential project.

6. The assessee was asked to furnish the details of ownership of the land and sales deed of the same with the firm. The AR furnished the required information from time to time and the same was duly verified.

Regarding the Tax Credit mismatch, AR was asked to furnish the reconciliation statement of 26AS with ITR. The required document was furnished and the same was duly verified.

After verification of the information / documents called for and discussion with the assessee, the assessment is completed by accepting income returned by the assessee.”

From the assessment order, it is clear that the issue with regard to correctness of capital gains was verified by the AO before completing the assessment. In the instant case, the assessee along with 4 others (co-

owners) transferred the land admeasuring 10,648 sq.yards for development on 50:50 basis and the assessee is having 1/5th share in the said land. Since the co-owners have transferred the land in lieu of receipt of 50% of constructed area and retained the 50% of land towards their share, for the purpose of computation of capital gains, only 50% of the land transferred to the developers share required to be considered but not the entire land. This Tribunal in the case of Vijaya Medical Center Vs. Pr.CIT in I.T.A. No.168/Viz/2016 dated 25.04.2018, on similar facts viewed that capital gains has to be computed on 50% of the land transferred to the developer when the land was given for development on 50:50 basis. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.7 which reads as under :

"7. The third argument of the assessee is that the short term capital required to be assessed on half of the total value i.e. 1,95,29,500/- since the assessee has transferred only 13.45 acres of land, but not the entire land of 26.90 acres. As per the development agreement the assessee had transferred 26.90 acres for development of the land into plots with an understanding that 50% of the plotted area in the lay out has to be given to the developer towards development charges and 50% of the plotted area has to be retained by the assessee. This fact was not disputed by the Ld.Pr.CIT. Though the assessee has transferred the undeveloped land and the developer has given physical possession of the developed plots as per the development agreement dated 28.06.2010, the fact remains that the assessee had retained 50% of the land and only 50% of the land was transferred to the developer, therefore, we are of the considered view that the capital gains has to be computed on 50% of the land transferred to the developer, but not on the entire developed land as contended by the Ld.Pr.CIT. partly."

Similarly, This Tribunal in the case of Ganta Srinivasa Rao in I.T.A. No.423/Viz/2019 and 424/Viz/2019 dated 17.09.2021 also viewed that if, the assessee transfers 50% of land and retained 50% of land in development agreement, for the purpose of computation of capital gains, only 50% of undivided share of land which goes to the share of developer needs to be taxed under the capital gains. There is no dispute that the AO has called for the details and considered the issue of capital gains in the assessment order. It is undisputed that the assessee has transferred the land for development and entitled to 50% of the constructed space and the land. As on the date of transfer there is no constructed space is available. Therefore, On facts and the law we are of the view that the AO rightly has computed the capital gains and the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue. Therefore, we set aside the order of the Ld.Pr.CIT and allow the appeals of the assessees.

6. In the result appeals of the assessees are allowed.

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Order pronounced in the open court on 24th September, 2021.

Sd/-

Sd/-

(एन के चौधरी)

(N.K.CHOUDHRY)

न्यायिक सदस्य/ JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 24 .09.2021

L.Rama, SPS

(डि.एस.सुन्दर सिंह)

(D.S.SUNDER SINGH)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-(i) Yandrapu Joseph Ratna Kumar (ii) Yandrapu Udaya Kumar, D.No.50-104-3/4, N.E.Layout, Seethammadhara, Visakhapatnam
2. राजस्व/The Revenue -Asst.Commissioner of Income Tax, Circle-4(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax, Visakhapatnam-1
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्डफ़ाईल / Guard file

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Sr. Private Secretary
ITAT, Visakhapatnam