

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “A” BENCH: BANGALORE

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER

ITA. No. 168/Bang/2021
Assessment Year: 2016-17

Shri Raghu Belagodu (HUF), No. 69/1, 2 nd Main, 8 th Block, Jayanagar, Bengaluru – 560 082. PAN: AAGHR9947F	vs.	The Principal Commissioner of Income-tax, Bengaluru – 2, Bengaluru.
(Appellant)		(Respondent)

For Assessee:	Shri S. Parthasarathi, Advocate
For Revenue :	Ms. Neera Malhotra, CIT (DR)

Date of Hearing :	07.10.2021
Date of Pronouncement :	08.10.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER

The assessee has filed this appeal challenging the revision order dated 17.03.2021 passed by Id. Pr.CIT-2, Bangalore which relates to the Assessment Year 2016-17. The assessee is challenging the validity of revision order passed by Id. Pr.CIT.

2. The facts relating to the case are stated in brief. The assessment in the hands of the assessee for the Assessment Year 2016-17 was completed by the AO u/s. 143(3) of the Act on 29.12.2018. The assessee had received compensation of Rs. 3.32 Crores from M/s. Karnataka Industrial Regional Development Board (KIADB) on compulsory acquisition of land and claimed the same as exempt relying on the CBDT Circular No. N.36/2016 dated

25.10.2016. The Assessing Officer accepted the claim of the assessee and accordingly completed the assessment. The Assessing Officer has also noted that the CBDT, in the above said circular has clarified that compensation received in respect of award or agreement which has been exempted from levy of income tax vide section 96 of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (RFCTLARR Act) shall not be taxable under the provisions of Income Tax Act.

3. The Id. Pr. CIT called for assessment record and he took the view that the land acquired by KIADB was to be used by BMRCL and the said land was not acquired under RFCTLARR Act. Accordingly, he took the view that the assessee is not entitled for exemption and consequently, the assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. Accordingly, Id. Pr. CIT initiated revision proceedings u/s. 263 of the Act. After hearing the assessee, the Id. Pr. CIT held that the assessee is not eligible for exemption since the compensation received by the assessee has no relation to RFCTLARR Act. Accordingly, he set aside the assessment order passed by the AO with the direction to redo the assessment afresh by disallowing exemption claimed by the assessee in respect of long term capital gain. Aggrieved, the assessee has filed this appeal.

4. The Ld A.R invited our attention to sections 28 and 29 of The Karnataka Industrial Areas Development Act, 1966 and submitted that the lands are being acquired by the State Government under the above said Act. Inviting our attention to section 30, the Ld A.R submitted that the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis and mutandis apply in respect of the enquiry and award by the Deputy Commissioner etc for the land acquired under KIAD Act. He submitted that, in effect, the land has been acquired under the Land Acquisition Act only. The Ld A.R, then invited our attention to section 24 of RFCTLARR Act, which read as under:-

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases:-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act, but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

The Ld A.R submitted that the provisions of RFCTLARR Act shall apply to the case of the assessee also and the Ld PCIT has not considered section 24 and other provisions of RFCTLARR Act. He submitted that the Land Acquisition Act shall apply to the land acquired under KIAD Act and hence RFCTLARR Act shall apply to the land acquired compulsorily from the assessee. He submitted that the Ld PCIT has directed the AO to withdraw exemption without considering the legal provisions stated above. Accordingly, the Ld A.R submitted that the direction given by Ld PCIT to withdraw exemption is not in

accordance with law and accordingly prayed that the direction so given may kindly be modified.

5. The Ld CIT-DR submitted that the assessee is bringing to the notice of Tribunal various legal provisions, which were not submitted before Ld PCIT.

6. The Ld A.R, in the rejoinder submitted that the matter may be restored to the file of Ld PCIT for examining it afresh in the light of legal provisions submitted before the Tribunal.

7. We heard the parties and perused the record. Since the Ld A.R is contending that the provisions of RFCTLARR Act shall apply to the land compulsorily acquired from the assessee and since these legal contentions were not raised before Ld PCIT, we are of the view that this issue requires reconsideration at the end of Ld PCIT. Accordingly, we set aside the order passed by Ld PCIT and restore all the matters to his file for examining afresh duly considering various legal contentions raised before us. After affording adequate opportunity of being heard, the Ld PCIT may take appropriate decision in accordance with law.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 8th October, 2021.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Dated: 8th October, 2021.
/MS/

Copy to

1. The Appellant
2. The Respondent
3. CIT(A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore