

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.592/Viz/2019

(निर्धारण वर्ष / Assessment Year : 2016-17)

**Mattapalli Ram Kumar
8-20-11/A, Madireddy Vari Street
Rajahmundry
[PAN : AFRPM4855P]
(अपीलार्थी/ Appellant)**

**Vs. Asst.Commissioner of
Income Tax
Circle1(1)
Rajahmundry
(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri SPG Mudaliar, DR
सुनवाई की तारीख / Date of Hearing : 16.03.2022
घोषणा की तारीख/Date of Pronouncement : 08.04.2022

ORDER

Per Shri Balakrishnan S, Accountant Member

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-1 [in short, "CIT(A)"], Rajamahendravaram, in ITA No.10248/2018-19/CIT(A)/RJY dated 04.07.2019 for the Assessment Year (A.Y.) 2016-17.

2. Brief facts of the case are that the assessee is a commission agent, deriving income from finance business, filed his return of income for the A.Y.2016-17, declaring income of Rs.48,78,230/-, besides agricultural income of Rs.4,50,000/-. The case was selected for complete scrutiny under CASS, where notices u/s 143(2) and 142(1) have been issued and served on the assessee. The assessee purchased agricultural lands jointly with his wife during 2012 to an extent of 4.5 acres and later converted the land into non agricultural land on 18.06.2013 vide proceedings of RDO, Rajahmundry in RC.F.2951/II/3540/13 (LCR 03009988). Later, the assessee along with his wife divided the land into plots under a project, known as "Rome City" and obtained approval from Director of Town & Country Planning, Rajahmundry in T.L.P. No.111/2014/R. Subsequently, the assessee sold the entire plots to M/s Sattibabu Ventures & Projects Pvt.Ltd., Rajahmundry, where, the assessee is also one of the Directors holding 32% of shares. The assessee declared his share of long term capital gains of Rs.29,14,025/-, arising out of sale of plots. The Ld.AO carefully examined the submissions made by the assessee, relying on the case of G.Venkataswamy Naidu Vs. CIT [35 ITR 594 (SC)] and treated it as 'Adventure in the Nature of Trade' and taxed the sale consideration as business receipts.

3. Aggrieved by the order of the AO, the assessee filed appeal before CIT(A), Rajahmndry. Considering the submissions made by the AR, the Ld.CIT(A), upheld the order of the AO, relying on the judgement of Hon'ble ITAT, Jaipur Bench in the case of Ramswaroop Saudagar, Jaipur Vs. ITO, Dausa in ITA No.329/JP/2017.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us raising the following grounds :

- a. *The learned Commissioner of Income Tax (Appeals) erred in confirming the orders of assessing officer, as the orders are bad in law;*
- b. *The Commissioner of Income Tax(Appeals) has erred in treating the nature of transaction of the appellant as an "adventure in the nature of trade".*
- c. *The assessing officer failed to appreciate the real intention of the appellant in making the investment in purchase of the agricultural land.*
- d. *Selling of asset for better profit in systematic and organized manner doesn't amounts to activity as 'adventure in the nature of trade".*
- e. *The assessing officer failed to appreciate the fact, that the appellant had not done any development activity, simply converted the land and sold away for better profits. Conversion of Land without any further development could not be termed or should not be treated as Real estate transaction. And*

For other grounds that may be urged the time of hearing of the appeal,

5. The Ld.AR argued that in order to fetch better price for the land which was held as an asset by the assessee for a period of more than 36 months, the land was converted into non agricultural land and divided into plots and sold to M/s Sattibabu Ventures & Projects Pvt. Ltd., Rajahmundry. The Ld.AR also submitted that the assessee is not a real estate agent dealing with sale and purchase of land. The Ld.AR argued that the assessee sold the plots which were held as an investment.

6. Per contra the Ld.DR relied on the order of the AO and also argued that the assessee with an intention to commercially exploit the sale of land converted the land into non agricultural land and later divided into plots and sold for a higher consideration. Therefore, he pleaded that the order of the Ld.CIT(A) be upheld.

7. We have heard both the parties and perused the material placed on record. It is seen from the submissions of the Ld.AR that the agricultural land was purchased by the assessee on 21.01.2012 and converted the same into non agricultural land on 18.06.2013. The assessee in order to exploit the opportunity of getting higher price for the land, divided it into plots and sold them to M/s Sattibabu Ventures & Projects Pvt Ltd., where the assessee is also a Director. We find that it is quite natural that a person will

try to exploit the commercial opportunities for the investments made by him. It is also noted that the assessee has not claimed any expenses with regard to conversion of agricultural land into non-agricultural land. The assessee after indexing the cost of land offered the balance Rs.29,14,025/-, being his share of capital gains to tax. Since the assessee is not in the business of trading in plots or real estate, it is prerogative of the assessee to make the land into a saleable condition for higher consideration. In view of the above, we find force in the argument of the Ld.AR and based on the merits of the case, the appeal of the assessee is allowed.

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

Order Pronounced in open Court on 08th April, 2022.

Sd/-

(दुव्वूरु आर. एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 08.04.2022

L.Rama, SPS

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

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

1. निर्धारिती/ The Assessee- Mattapalli Ram Kumar, 8-20-11/A, Madireddy Vari Street, Rajahmundry
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle1(1), Rajahmundry
3. प्रधान आयकर अधिकारी/Principal Commissioner of Income Tax, Rajamahendravaram
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam