

**आयकर अपीलीयअधिकरण, 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.584/Viz/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

Income Tax Officer (International Taxation), Kakinada. (अपीलार्थी/ Appellant)	Vs.	Smt. Bikkina Savitri Devi, Samalkota. PAN: BTSPB 9625 A (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri K. Hari Prasad
प्रत्यर्थी की ओर से / Respondent by	:	Sri SPG Mudaliar, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	19/04/2022
घोषणा की तारीख/Date of Pronouncement	:	11/05/2022

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the Revenue against the order of the Ld. CIT (A)-10, Hyderabad in appeal ITA No.0201/CIT(A)-10/2016-17 (AY: 14-15)/CIT(A), Hyd-10/10127/2016-17, dated 10/07/2019 passed U/s. 143(3) r.w.s 147 of the IT Act, 1961 for the AY 2014-15.

2. The Revenue has raised the following grounds of appeal:

- “(i) The Ld. CIT(A) erred in law and in facts of the case.*
- (ii) The Ld. CIT(A) erred in accepting the contention of the assessee, that she has gifted the property to her brother (GPA holder) basing on the unregistered affidavit which is not a legal document and came into the light after issuing of notice, which is contrary to the Registered GPA given by the assessee to his brother. It cannot be circumvent the provisions of Income Tax Act applicable to the assessee-NRI.*
- (iii) The CIT(A) erred in observing that as per GPA, the GPA holder is only the person designated by the assessee-NRI to lookafter her real estate transactions and account for the same to the assessee-NRI, but not for looking of her income tax related issues.*
- (iv) The CIT(A) erred in holding that the qualification of loss by the GPA holder in respect of the business of the assessee and offering long term capital gains in his individual capacity is not tenable in the eye of law leaving the assessee, NRI who is the real beneficiar as evident from a registered documents which was the base in computing the capital gains. Taxation of real income of a real person is a valid one in the eyes of law.*
- (v) The CIT(A) erred in accepting affidavit and considering the gift a valid, even the GPA holder did not execute the document in his individual capacity, executed as GPA holder only. If the assessee gifted the property to her brother, he might entered the document in his individual capacity.*
- (vi) The Ld. CIT(A) erred in accepting with regard to amount received from Sri PV Satyanarayana, that the assessee had given two cheques of Rs. 15 lakhs on 22/08/2013 to Sri PV Satyanarayana and same was returned by him. However, as evident from the bank account, Sri PV Satyanarayana made payments to other four persons before 28/08/2013 and he had no balance available with him to return as on November 2013.*
- (vii) The Ld. CIT(A) erred in accepting gift received from Bikkina Srinivas, even though, he had creditworthiness*

*to give the amount to the assessee. Assessee could not prove with correlated evidence that she had taken gift from him.*

*(viii) The ld. CIT (A) erred in accepting sources of income even though the assessee has taken two views, initially stated that the sources for purchase were amounts received from M/s. Viswaroopi Energy Pvt Ltd and later on changed her version that she had taken gift from Sri Bikkina Srinivas and received back amount from PV Satyanarayana. According to the convenience, the assessee changed her version.*

*(ix) Any other ground that may be urged at the time of appeal hearing.”*

3. Brief facts of the case are that the assessee, an NRI sold various immovable properties by dividing it into plots through General Power of Attorney (GPA) executed in favour of Sri. Yarlagadda Ravi Chandra Prasad, brother of the assessee. A notice U/s. 148 of the Act has been issued and served on the assessee's GPA holder on 07/10/2015 calling for the return of income. In response the assessee has e-filed return of income on 26/03/2016 admitting total income at Rs. 71,041/- and again filed a revised return of income on the same day revising the income returned at Rs. 2,71,790/-. Statutory notices U/s. 142(1) was issued to the assessee requesting him to furnish the following details:

(i) Books of account for the FY 2013-14.

- (ii) Copies of IT Returns filed for the various assessment years.
- (iii) Sources of income.
- (iv) Copies of bank statements.
- (v) Details of movable and immovable properties held in the assessee's name and in the name of her family members and
- (vi) The loans taken from individuals etc.

4. The Ld. AO in the meanwhile issued a letter to SRO, Samalkota calling for details of all types of transactions held in the name of the assessee and the GPA holder Sri. Yarlagadda Ravi Chandra Prasad. The AO once again issued notice U/s. 142(1) on 6/9/2016 and the letter was duly served on GPA holder on 9/9/2016. In response to the notice, the Authorized Representative of the assessee on 3/10/2016 furnished clarifications to the Ld. AO. Based on the submissions made by the Ld. AR of the assessee, a detailed show cause notice was issued on 5/10/2016 along with notice u/s. 142(1) on 17/10/2016 calling for specific information. In response, the Authorized Representative of the assessee appeared on 10/11/2016 and furnished a letter mentioning the details of gift of land given by the assessee to her brother Sri. Yarlagadda Ravi Chandra Prasad, execution of the conveyance, and loan taken from M/s. Viswaroopi Energy Private limited, Vijayawada. After perusal of the information available on record and submissions

made by the assessee's Representative, the Ld. AO assessed the income at Rs. 1,72,30,151/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the CIT(A)-10, Hyderabad. In response to the notice of the Ld. CIT(A), the assessee's AR filed written submissions and additional evidences before the Ld. CIT(A). The additional evidences were forwarded to the Ld. AO and the Ld. AO furnished the remand report dated 9/2/2018 which was supplied to the assessee for objections, if any. In response, the assessee submitted a letter dated 4/7/2019. The Ld. AR of the assessee submitted before the Ld. CIT(A) that apart from the execution of GPA, the land sold under consideration was also gifted to the GPA holder in the year 2012-13. The Ld. AR also submitted that before the land under consideration was sold, the land was developed into plots and all aspects relating to development and sale of land were handled by the GPA holder. The Ld. CIT(A) also observed that the sale deeds in respect of the sale of land / plots were also executed by the GPA holder. Therefore, the Ld. CIT(A) applied the provisions of section 160 and 161 of the Act and treated the GPA holder as a "representative assessee". The Ld. CIT(A) also held that the gift is a valid gift as ingredients of the gift are satisfied even though it is not registered by the assessee. The Ld. CIT(A) allowed the

appeal of the assessee treating the sale of plots as business income of the GPA holder. The Ld. CIT(A) also allowed the transactions involved in cash payments received from Sri P V Satyanarayana against the advance payment made by cheque by the assessee. The Ld. CIT(A) observed that since no adverse material was brought on record the cash payments being the return of advance paid for the purchase of property, hence directed the Ld. AO to delete the addition made on this count. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. The Ld. DR argued that the property so gifted is an oral gift and not a registered gift. The Ld. DR also vehemently opposed the change of stand by the assessee in issuing the GPA for the sale of land and later retracting and stating that the land has been gifted to the brother who is also a GPA holder. The Ld. DR also referred to the provisions of the Transfer of Property Act and submitted that unless an immovable property is registered, the gift is not a valid gift. The Ld. DR also argued that the payment of advance of Rs. 30 lakhs to Sri PV Satyanarayana by way of cheques has been returned by Sri PV Satyanarayana by way of cash to the assessee. Further, the Ld. DR referring to the bank

statements submitted that there are no sufficient cash withdrawals by Sri PV Satyanarayana while returning the advance to the assessee.

6. On the other hand, the Ld. AR argued that in view of the practical difficulties, being NRI, the assessee has decided to gift the property to her brother Mr. Yarlagadda Ravi Chandra Prasad to facilitate him to sell the property. The assessee also handed over the possession of the property to her brother. The Ld. AR also argued that since GPA holder has declared the sale of property gifted by his sister as a business income in his return of income, the same cannot be once again taxed in hands of the assessee as capital gains. The Ld. AR also submitted that this will amount to double taxation and there is no revenue loss to the Department. The Ld. AR also argued that the assessee decided to construct a hospital in Samalkota and for the purpose of identifying land, has advanced an amount of Rs. 30 lakhs to Sri PV Satyanarayana which was returned by him since the proposal to buy the land did not materialize.

7. We have heard both the sides and perused the materials on record and the orders of the Authorities below. Legally, as per the provisions of Transfer of Property Act, any gift of an

immovable property needs to be registered. However based on the merits of the case on a beneficial note we are of the opinion that since the GPA holder namely Sri. Yarlagadda Ravi Chandra Prasad has disclosed the income from the sale of plots gifted by his sister in his return of income and discharged his liability of taxes on returned income, in his return of income, the same cannot be taxed once again in the hands of the assessee. Admittedly, there is no revenue loss to the Department on account of the income being taxed in the hands of the GPA holder. The Ld. DR also could not bring on record any details regarding the loss of revenue to the department attributable to the transactions entered into by the assessee in the present case. In view of facts and circumstances of the case as discussed above, the Grounds No (ii) to (v) raised by the Revenue are dismissed.

8. Grounds No.(vi) to (viii) raised by the revenue relates to the advance payment of Rs. 30 lakhs to Sri PV Satyanarayana which was returned by him by way of cash to the assessee. In the absence of any cogent documentary evidence, the withdrawals from the bank account of Sri PV Satyanarayana could not be accepted. The contention of the Ld. AR that Sri PV

Satyanarayana had creditworthiness to return the amount in cash to the assessee in lieu of the cheque payments received by him as an advance is invalid. In view of the above, Grounds No. (vi) to (viii) raised by the Revenue are allowed.

9. Ground No.(i) & (ix) are general in nature and need not be adjudicated.

10. In the result, appeal of the Revenue is partly allowed.

Pronounced in the open Court on the 11<sup>th</sup> May, 2022.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated :11.05.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – Smt. Bikkina Savitri Devi C/o. Sri Yarlagadda Ravi Chandra Prasad, 9-6-11, Gollavri Street, Samalkot, Andhra Pradesh – 533440.
2. राजस्व/The Revenue – Income Tax Officer (International Taxation), 3<sup>rd</sup> Floor, Deepthi Towers, Main Road, Besides Chandana Brothers, Kakinada.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-10, Hyderabad.

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam