

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

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.100/Viz/2021 & 101/Viz/2021
(निर्धारण वर्ष / Assessment Year : 2013-14)**

Dr. Karumanchi Nalini
D.No.10-3-37
Sambasiva Peta
Guntur
[PAN : AAYPN5886F]
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
Ward 1(3)
Guntur

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Shri MN Murthy Naik, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 23.05.2022

घोषणा की तारीख/Date of Pronouncement

: 28.07.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

These appeals are filed by assessee against the orders of the Principal Commissioner of Income Tax [in short, "Pr.CIT"], Guntur dated 06.03.2018 and 24.03.2021, passed u/s 263 of the Income Tax Act, 1961 (in short 'Act') for the Assessment Year (A.Y.) 2013-14. Since the grounds raised in these appeals are common, these appeals are clubbed, heard

together and a common order is being passed for the sake of convenience as under.

2. Brief facts of the case are that the assessee is an individual, e-filed her return of income, admitting total income at Rs.7,65,730/- for the A.Y.2013-14. Subsequently, the case was selected for scrutiny under CASS and the assessment u/s 143(3) was completed and order passed on 28.01.2016, determining total income of Rs.9,60,730/- by disallowing an amount of Rs.95,000/- towards other expenditure and Rs.1,00,000/- towards personal drawings. Subsequently, the case records were called for and examined by the Ld.Pr.CIT and the Ld.Pr.CIT set aside the assessment order dated 28.01.2016 and passed order u/s 263 dated 06.03.2018, directing the Assessing Officer (AO) to redo the assessment on the lines indicated in the order and in accordance with the law and established procedure after affording reasonable opportunity of being heard to the assessee. Consequent to the order of the Ld.Pr.CIT, the AO completed the assessment u/s 143(3) r.w.s. 263 and passed consequential order dated 16.08.2018 determining the total income at Rs.9,75,130/-.

On subsequent examination, the Ld.Pr.CIT observed that the AO while completing the assessment u/s 143(3) r.w.s. 263 had travelled beyond the directions of the Pr.CIT to disallow the claim of the deduction

u/s 54F of the Act amounting to Rs.55,45,275/- and passed assessment order without making inquiries or verification, which is erroneous and prejudicial to the interest of the revenue. The Pr.CIT observed from the records that the assessee during the financial year 2012-13 sold two sites on 04.07.2012 and 28.07.2012 to two different persons for an aggregate amount of Rs.62,00,000/-. The assessee purchased a residential house vide registered deed No.6643/2012 dated 10.12.2012 for a consideration of Rs.56,00,000/- and claimed exemption u/s 54F of the Act to the tune of Rs.55,42,275/- towards long term capital gains arose on account of sale of two properties. The Ld.Pr.CIT observed on verification of records, that the assessee owned two residential properties during the year and also offered property income from the said two residential properties amounting to Rs.66,577/- (33600+32977). As per the provisions of sec.54F ***“exemption shall be available only when the assessee does not own more than one residential property on the date of transfer of such asset exclusive of the one which he has bought for claiming exemption u/s54F”***. Thus, held that the assessee is not eligible for exemption u/s 54F of the Act amounting to Rs.55,45,275/- and directed the AO to disallow the claim of deduction u/s 54F of the Act. Hence, issued a detailed show cause

notice and served on the assessee, calling for objections, if any against the proposed revision of the assessment.

In response to the notice, the assessee filed written submissions with evidences provided during the assessment proceedings and submitted that the property situated at Arundelpet, Guntur is a site with dilapidated structure, not useful for residential purpose, which was given on lease to a waste paper merchant who pays Rs.4000/- per month . Hence, submitted that the assessee hold only one residential house property on the date of transfer of capital asset and the assessee is eligible to claim exemption u/s 54F of the Act.

The Ld.Pr.CIT observed that the assessment order was passed without making inquiries or verification, and without following the directions of the Pr.CIT in the order u/s 263 which should have been followed with regard to the issue of deduction u/s 54F of the Act for which the Ld.Pr.CIT had made a specific direction. Hence, invoking the revisionary powers u/s 263 of the Act, the Ld.Pr.CIT set aside the assessment order as erroneous and prejudicial to the interest of the revenue with a direction to redo the assessment by disallowing the deduction u/s 54F of the Act.

3. Aggrieved by the order of the Ld.Pr.CIT, the assessee filed appeal before the Tribunal and raised the following grounds of appeal :

1. *The order of the learned Principal Commissioner of Income Tax is contrary to the facts and also the law applicable to the facts of the case.*

2. *The learned Principal Commissioner of Income Tax is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order dated 28.01.2016 u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of revenue.*

3. *The learned Principal Commissioner of Income Tax is not justified in observing that the appellant is not entitled for exemption u/s 55,45,275/- u/s 54F of the Act.*

4. *The learned Principal Commissioner of Income Tax ought to have appreciated that the assessing officer conducted enquiries in respect of the above issue and as such it is not a case of lack of inquiry to enable the learned Principal Commissioner of Income Tax to invoke the provisions of section 263.*

5. *Any other ground that may be urged at the time of appeal hearing.*

4. Ground No.1 and 5 are general in nature which does not require specific adjudication.

5. Ground No.2 to 4 are related to revisional proceedings u/s 263 of the Act . The Ld.Counsel for the assessee has submitted that the Ld.Pr.CIT has passed an order u/s 263 dated 06.03.2018 by setting aside the assessment order dated 28.01.2016 with a direction to the AO to redo the assessment and also examine fact that the assessee is holding two

residential properties during the year and also offered the property income from the said two residential properties amounting to Rs.66,577/-. The Ld.AR submitted that the Ld.Pr.CIT viewed, as per the provisions of Sec.54F, exemption shall be available only when the assessee does not own more than one residential property on the date of transfer of such asset exclusive of the one which he has bought for claiming exemption u/s 54F. Therefore, the Ld.Pr.CIT held that the assessee is not eligible for exemption u/s 54F and directed the AO to disallow the deduction claimed u/s 54F. Thereafter, the AO issued notice and he has examined the properties and came to conclusion that the property at Arundelpet, Guntur is not residential property and passed order. The AO complied with the directions issued by the Ld.Pr.CIT u/s 263. The Ld.AR further submitted that the Ld.Pr.CIT has again issued notice to the assessee and passed another order u/s 263 saying that the AO has not followed the directions given by the Ld.Pr.CIT passed on 06.03.2018, which is incorrect, because of the fact that the AO has physically examined and passed the assessment order. Thus, the Ld.Pr.CIT is not correct in initiating the proceedings u/s 263. The Ld.AR, therefore, pleaded that the order passed by the Ld.Pr.CIT u/s 263 dated 24.03.2021 is not valid in the eyes of law since the AO has examined and followed all the directions

given by the Pr.CIT and passed the assessment order. Hence, the Ld.AR submitted that the order passed u/s 263 dated 24.03.2021 is not valid and pleaded that the order be quashed.

6. On the other hand, the Ld.DR argued that since the AO has not complied with the directions of the Ld.Pr.CIT, thus, proceedings u/s 263 were initiated again. Therefore, the order passed u/s 263 dated 24.03.2021 is valid under law and pleaded that the order passed u/s 263 dated 24.03.2021 be confirmed.

7. We have heard both the parties and perused the material placed on record. Admittedly, the Ld.Pr.CIT has passed an order u/s 263 dated 06.03.2018 with a direction to examine whether the assessee is entitled for claiming exemption u/s 54F, since the assessee is having two residential properties and also offered rental income for the relevant assessment year. After issuance of notice and on physical verification of the residential properties, the AO opined that the property is not residential house and it is a small portion of construction and the assessee has let out the same and offered the income. Accordingly, the AO has completed the assessment dated 143(3) dated r.w.s. 263 dated 16.08.2018. Therefore, we are of the view that initiation of proceedings

u/s 263 is incorrect and not permissible under law. Therefore, we hold that the assessment order passed u/s 143(3) r.w.s. 263 dated 16.08.2018 holds good and thus quash the order passed u/s 263 dated 24.03.2021. Therefore, the grounds raised by the assessee are allowed.

7. In the result, appeals of the assessee are allowed.

Order Pronounced in open Court on 28th July, 2022.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER Dated : 28.07.2022 L.Rama, SPS	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिक सदस्य/JUDICIAL MEMBER
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Dr. Karumanchi Nalini, D.No.10-3-37, Sambasiva Peta, Guntur
2. राजस्व/The Revenue – Income Tax Officer, Ward 1(3), Rajkamal Complex, Lakshmipuram Main Road, Guntur
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR,ITAT, Visakhapatnam
- 5 .गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam