

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.245 & 246/Viz/2020

(निर्धारणवर्ष/ Assessment Year:2016-17)

The Asst. Commissioner of
Income Tax (International Taxation),
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. Kanchumarthi Venkata Sita
Ramachandra Rao,
Rajahmundry.
PAN:EDZPK 3519 Q

(प्रत्यर्थी/ Respondent)

C.O. No.12 & 13/Viz/2021

(In आयकरअपीलसं./ I.T.A. Nos.245 & 246/Viz/2020)

(निर्धारणवर्ष/ Assessment Year:2016-17)

Kanchumarthi Venkata Sita
Ramachandra Rao,
Rajahmundry.
PAN:EDZPK 3519 Q

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यर्थीकीओरसे/ Revenue by

Vs. The Asst. Commissioner of
Income Tax (International
Taxation),Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, Advocate

Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

: 20/07/2022

: 30/08/2022

ORDER

PER Bench:

The captioned appeals are filed by the Revenue and the Cross Objections are filed by the assessee. Since the assessee in both the appeals is the same, for the sake of convenience these appeals as well as the cross objections are clubbed, heard together and disposed off in this consolidated order.

ITA No. 245/Viz/2020 (AY: 2016-17)
(Revenue's Appeal)

2. This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad [the Ld. CIT (A)] in Din & Order No.ITBA/APL/S/250/2020-21/1028054190(1), DATED 24/09/2020 for the AY 2016-17 arising out of order passed U/s. 143(3) rws 147 of the Income Tax Act, 1961 ["the Act"].

3. Brief facts of the case are that the assessee a Non-Resident Indian, in response to the notice U/s. 148 of the Act filed his return of income on 31/3/2018 for the AY 2016-17 by declaring a total income at Rs. 2,92,55,358/-. Subsequently, a notice U/s. 143(2) r.w.s 147 and notice U/s. 142(1) of the Act were issued and served on the assessee. In response, the assessee filed

details of the capital gain workings claimed in the return of income along with the documents relied on by the assessee in computation of capital gains. The Ld. AO considering the submissions, assessed the total income of the assessee at Rs.9,77,03,500/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-10, Hyderabad. After considering the submissions made by the assessee's representative, the Ld. CIT(A) partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

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

- “1. *The order of the Ld. CIT(A) is contrary to the law and facts of the case and therefore liable to be quashed.*
2. *The Ld. CIT(A) has erred in directing the Assessing Officer to adopt the cost of acquisition of the property as on 1/4/1981 at Rs. 350/- per sq yd on the basis of the fair market value of the property certified by the joint sub-registrar, but ignoring the fact that the joint sub-registrar has computed the fair market value of the property certified by the District Registrar as on 1/4/1981, which is more reliable both on account of accuracy of the date of valuation and District Registrar being placed higher than the Joint Sub-Registrar in the administrative hierarchy.*
3. *The Hon'ble CIT(A) has erred in disregarding the contemporaneous evidence adduced by the Assessing Officer in the shape of certificate issued by the District Registrar dated 5/12/2018 with regard to fair market value of the property as on 1/4/1981 for the purpose of determining the cost of acquisition of the property u/s. 55(2)(b) of the Act while computing the capital gains arising on sale of property u/s. 45 of the Act.*

4. *The Ld. CIT(a) erred in law and on facts in directing the Assessing Officer to allow deduction towards cost of improvement to the extent of Rs. 1,25,70,000/- determining the estimated cost @ Rs. 2000/- per sq yd instead of Rs. 400 per sq yd adopted by the Assessing Officer while completing the assessment.*
5. *The Ld. CIT(A) is not justified in relying upon the self-made vouchers produced by the assessee and statements of alleged labour contractors as fool proof evidence to believe the assessee's claim of incurring huge amount of expenditure towards improvement of the property without considering the fact that self-made vouchers have no evidentiary value in the eyes of the law and the statements of alleged labour contractors are untrustworthy.*
6. *The Ld. CIT(A) ought to have considered the facts and supporting material evidence gathered by the Assessing Officer in the form of site inspection report of inspector of income tax including visual pictures of land sold, which revealed the fact that no noteworthy developmental activities in the form of development of part laying roads, construction of drainage, laying of electric polls, etc., has taken place as on the date of passing the assessment order.*
7. *Any other ground of appeal that may be pleaded with the prior approval of the Hon'ble ITAT during the course of appellate proceedings."*

5. **Grounds No. 2 & 3:** The Learned Departmental Representative [Ld. DR] argued that the Ld. CIT (A) has erred in estimating the cost of acquisition of the immovable property as on 1/4/1981 at Rs. 350/- per sq yd relying on the market value of the property certified by the Joint Sub-Registrar, Rajahmundry as on 17/2/1987. The Ld. DR argued that this value cannot be adopted as on 1/4/1981. The Ld. DR further submitted that as per the letter issued by the District Registrar,

Rajamahendravaram the value of the land is Rs. 8000/- per Acre as on 1/4/1981, which translates to Rs.1.65 per sq.yard. The Ld. DR pleaded that the Ld. AO has rightly taken this rate while adopting the cost of acquisition and thereby computing the capital gains on the sale of land. The Ld. DR further submitted that the Ld. AO has rightly computed the cost of improvement at Rs. 400/- per sq yd due to the fact that the assessee has paid most of these expenses in the form of cash and has claimed various payments by way of self-made vouchers. The Ld. DR pleaded that the order of the Ld. AO be upheld.

Per contra, the Learned Authorized Representative [Ld. AR] argued that the cost as on 1/4/1981 could not be ascertained. The Ld. AR also submitted that the records prior to 1987 could not be traced therefore the assessee has relied on the value as on 17/2/1987 issued by the Joint Sub-Registrar, Rajahmundry. The Ld AR also submitted that the AO while framing the assessment in the assessee's own case for the AY 2017-18 has considered Rs 350/- per sq.yard in his order dt 26.03.2022. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

6. We have heard both the sides and perused the material available on record and the order of the authorities below. The admitted facts are that the assessee has sold an immovable property inherited by him after converting it into plots during the impugned assessment year.

7. The main issue of contention is whether the land is agricultural land or non-agricultural land has to be ascertained. The Ld. AR in paper book page No. 36 has submitted a letter from Tahsildar, Rajahmundry Urban dated 14th February, 2013 that the land is a non-agricultural land since 1981. Contradicting the above, the Ld. DR in his submissions produced a letter from Tahsildar, Rajamahendravaram Urban dated 18/2/2018 wherein the Tahsildar has confirmed that the letter issued dated 14/2/2013 could not be traced. Further, in the instant case, the other main contention is about the fair market value of the land as on 1/4/1981. We find from the records available before us that no evidence was produced either during the assessment proceedings or during the first appellate proceedings regarding the fair market value of the land adopted by the assessee as on 01.04.1981. However, the Department has produced a letter from the District Registrar, Rajamahendravaram vide letter no

G3/1657/2018 dated 6.12.2018 stating the value adopted by the Registration and Stamps Department at Rs. 8000/- per Acre for stamp duty purposes, as on 1/4/1981. However, the Ld. DR also could not produce the fair market value of the land as on 1/4/1981. The argument of the Ld. AR that the fair market value will be higher than the value adopted by the SRO for stamp duty purposes cannot be ignored. The fair market value as defined u/s. 2(22B) of the Act is reproduced below:

- “(i) the price that the capital asset would ordinarily fetch on sale in the **open market** on the relevant date; and*
- (ii) where the price referred to in sub-clause (i) is not ascertainable such price as may be determined in accordance with the rules made under this Act;”*

8. From the above it is clear that the fair market value of a capital asset is the value which would ordinarily fetch on sale in the open market on the relevant date and not on the value adopted for stamp duty purposes. In the absence of a confirmed fair market value as on 1/4/1981, the Ld. AO has also not referred the matter to the DVO for valuation of the property as on 1/4/1981. We also find that the Ld. CIT (A) has estimated the value at Rs. 350/- per sq yd based on the valuation provided by the Joint Sub-Registrar, Rajahmundry as on 17/2/1987. In the

absence any evidence of fair market value, not being provided by both assessee and Revenue, we are therefore of the considered view that, since the property is located within a distance of one kilometre from the RTC Complex, within the Rajamundhry municipal limits, we find that the estimate made by Ld.CIT(A) is reasonable and hence no interference is required. Thus, the grounds No. 2 and 3 raised by the Revenue are dismissed.

9. **Grounds No.4, 5 and 6:** The Ld. DR argued that the assessee has incurred cash expenses for the purpose of development of land and has claimed cost of acquisition in the computation of capital gains. The Ld. DR also objected to the self-made vouchers produced by the assessee during the assessment proceedings and stated that the Ld. AO has rightly rejected the same. The Ld. DR therefore pleaded that the Ld. AO's order be upheld.

Per contra, the Ld. AR submitted that the assessee has partly incurred some cash expenses which is supported by self-made vouchers. The Ld. AR also submitted that during the cross-examination of Sri B. Atchutananda Rao and Sri N. Ram Krishna through whom the development works are being executed, have retracted from their sworn-in statements and

confirmed the receipt of cash as claimed by the assessee. The Ld. AR also further submitted that the amounts were transferred to the labour contractors and thus the contractors have withdrawn the amounts in cash for the purpose of incurring the expenditure in development of the land. The Ld. AR pleaded that merely the expenses are incurred through cash, cannot warrant the disallowance of expenditure.

10. We have heard both the sides and perused the material available on record and the orders of the Authorities below. The admitted facts are that there are certain expenses incurred by the assessee in the development of land into plots. This was never denied by the Revenue Authorities. The only contention of the Revenue is that since the assessee has incurred certain expenditure by way of cash and documents evidencing by way of self-made vouchers, these expenses are not genuine. The Ld. CIT(A) in his findings in para 8.4 of the order has observed as under:

“8.4. The Assessing Officer could not bring on record any material to disprove the veracity of the evidence submitted by the appellant. At the same time, the fact remains that most of the payments were made in cash and the vouchers are self-made. Considering the entire facts of the case, I am of the considered view that Rs. 2000 per sq yd is a reasonable estimate of the expenditure on development. By substituting this figure in the place of Rs. 400 per sq yd the

eligible deduction works out to Rs. 1,25,70,000 for 6285 sq yds. The Assessing Officer is directed to allow deduction of Rs. 1,25,70,000 and the balance addition is sustained.”

11. The expenses incurred by the assessee in the development of land is also evidenced from the inspection report submitted by the ACIT, Rajamahendravaram. The only dispute is with respect to the amount of expenditure actually incurred by the assessee for the development of land into plots. We find that the Ld. CIT(A) has rightly estimated the cost of development at Rs. 2,000/- per sq yd which in our view is reasonable and hence no interference is required on this issue in the order of the Ld. CIT(A). It is ordered accordingly. Thus, Grounds No. 4, 5 & 6 raised by the Revenue are dismissed.

12. Grounds No.1 and 7 raised by the Revenue are general in nature and therefore they need not be adjudicated.

13. In the result, appeal filed by the Revenue is dismissed.

C.O. No. 12/Viz/2021 (AY: 2016-17)
(By Assessee)

14. This Cross Objection is arising out of the appeal ITA No. 245/Viz/2020. The Grounds raised by the assessee in this Cross Objection are in support of the decision taken by the Ld. CIT(A).

While adjudicating the Revenue's appeal, since we decided the issue on merits and dismissed the Revenue's appeal, the adjudication of the Cross Objection becomes infructuous and thereby the CO is dismissed as infructuous.

15. In the result, CO raised by the assessee is dismissed.

ITA No. 246/Viz/2020 (AY: 2016-17)
(Revenue's Appeal)

16. This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad [the Ld. CIT (A)] in Din & Order No. ITBA/API/S/250/2020-21/1028052845(1), dated 26/03/2022 for the AY 2016-17 arising out of order passed U/s. 271D of the Income Tax Act, 1961 ["the Act"].

17. Brief facts of the case are that the penalty order was issued by the Ld. Joint Commissioner of Income Tax (Ld. JCIT) where the Ld. JCIT observed that the assessee has received a sum of Rs. 2,32,04,500/- by cash from various persons on account of sale of immovable property and thereby violated the provisions of section 269SS of the Act. In this connection a penalty Notice u/s 274 r.w.s. 271D of the Act was issued to the assessee. The Ld. JCIT

considered the assessee submissions and found it does not constitute a reasonable cause, levied the maximum penalty of 100% amounting to Rs. 2,32,04,500/-.

18. Aggrieved by the order of the Ld. JCIT, assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) considered the submissions made by the assessee and partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

19. The crux of the grounds raised by the Revenue is with respect to receipt of cash in relation to transfer of immovable property by the assessee attracting the provisions of section 269SS of the Act.

20. The Ld. DR argued that the assessee has pleaded ignorance of the fact that cash cannot be received while selling the immovable property. The Ld. DR submitted that ignorance of the penal provisions of the Act by the assessee is not a reasonable cause. Per contra, the Ld. AR relied on various case laws, but placed heavy reliance on the ratio laid down in CIT Vs Jai Laxmi Rice Mills [379 ITR 0521] (SC). The Ld.AR further submitted that the cash receipts have been accounted and is evidenced by sale

deeds with respective buyers. The Ld.AR pleaded that order of the Ld. CIT(A) be upheld.

21. We have heard both the sides and perused the material available on record and the orders of the authorities below. The admitted facts are that the assessee has received cash partly for the sale of immovable properties from seven buyers totaling to Rs. 2,32,04,500/-. Section 269SS of the Act as amended by Finance Act, 2015 wef 1/6/2015 stipulates that no person shall take or accept from any other person, any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. The “specified sum” has been defined in the section 269SS of the Act as follows:

“Specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.”

22. From the plain reading of the above section, it is noted that any person is barred from receiving from any amount otherwise by cheque or through banking channels in relation to transfer of the immovable property. Section 269SS of the Act prohibits receipt of any amount by way of cash in relation to the transfer of

any immovable property. The Memorandum explaining the provisions of Finance Bill 2015 with respect to amendment proposed w.e.f 1/6/2015 in section 269SS is reproduced below:

“In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.”

23. The objective of the amendment proposed in 269SS of the Act is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been recorded in the sale deed and deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax. Therefore, in our opinion the order of the Ld JCIT deserves to be quashed.

However, it is also found that the Ld.AO has not recorded satisfaction regarding the initiation of penalty proceedings. The Ld AO merely proposed to initiate penalty proceedings u/s 271(1)(c) of the Act. The ratio laid down in the case CIT Vs Jai Laxmi Rice Mills [379 ITR 0521] (SC), relied on by the Ld.AR the Hon'ble Supreme Court has observed as follows:

“As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under section 271(1)(c) of the Act. Thus, insofar as penalty under section 271E is concerned, it was without any satisfaction and therefore no such penalty could be levied.”

24. Therefore, on this count also in the instant case, by respectfully following the ratio laid down by Hon'ble Supreme Court we are of the considered view that the order Ld JCIT deserves to be quashed and therefore the order of the Ld. CIT(A) does not require interference and hence the appeal of the Revenue is dismissed.

25. In the result, appeal filed by the Revenue is dismissed.

C.O. No. 13/Viz/2021 (AY: 2016-17)
(By Assessee)

26. This Cross Objection is arising out of the appeal ITA No. 246/Viz/2020. The Grounds raised by the assessee in this Cross Objection are in support of the decision taken by the Ld. CIT(A). While adjudicating the Revenue's appeal, since we decided the issue on merits and dismissed the Revenue's appeal, the adjudication of the Cross Objection becomes infructuous and thereby the CO is dismissed as infructuous.

27. In the result, CO filed by the assessee is dismissed.

28. Ex-consequenti, both the appeals of the Revenue as well as both the cross objections filed by the assessee are dismissed.

Pronounced in the open Court on the 30th August, 2022.

Sd/-

(दुव्वूरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :30.08.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Sri Kanchumarthi Venkata Sita Ramachandra Rao, 46-22-16, Danavaipeta, Rajahmundry, Andhra Pradesh – 533103.
2. राजस्व/The Revenue –Asst. Commissioner of Income Tax (International Taxation), D.No.50-92-34/1, Ground Floor, Infinity Tower, Shantipuram, Shankaramatham Road, Visakhapatnam – 530016.
3. (i) The Commissioner of Income Tax (IT & TP), Hyderabad.
(ii) The Chief Commissioner of Income Tax (IT) (SZ), Bengaluru.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-10, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam