

**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.159/Viz/2022

(निर्धारण वर्ष / Assessment Year :2015-16)

Sri Ginjala Atchiraju  
L/R of Ginjala Simhadri Raju,  
Valasapakala, Kakinada,  
Andhra Pradesh.

PAN: ALTPG 5340 B

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

Vs. Income Tax Officer,  
Ward-1,  
Kakinada.

(प्रत्यर्थी/ Respondent)

Sri G.V.N. Hari, AR

Sri Sankar Pandi, Sr. AR

24/05/2023

15/06/2023

**ORDER**

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

This appeal filed by the Legal Representative of the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam in DIN & Order No. ITBA/APL/S/250/2021-

22/1037833888(1), dated 15/12/2021 arising out of the penalty order U/s. 271(1)(c) of the Act was passed on 28/06/2019.

2. The facts of the case are that a survey operation U/s. 133A of the Act was carried out in the case of the assessee on 20/07/2017. During the course of the survey operations, it was noticed that Sri Ginja Simhadri Raju along with his daughter sold land and buildings on 13/1/2015. However, the assessee filed return of income for the AY 2015-16 by admitting business income of Rs. 3,18,120/- and capital gains at Rs. NIL. Subsequently, the revised return was filed on 30/09/2016 by admitting long term capital gains of Rs. 45,155/-. The assessee during the course of the survey operations submitted that he has erroneously considered the sale consideration and the cost of acquisition and hence correct long term capital gains could not be admitted in his return of income. He also submitted that the entire investment in the land and buildings was made by him and his daughter's name was included for the name sake which was also confirmed by his daughter at the time of survey proceedings. The Ld. AO observed that the income chargeable to tax has escaped income and the case was reopened U/s. 148 of the Act by issuing a notice on 11/8/2017 which was served on the

assessee on 21/8/2017. In response, the assessee filed return of income manually on 24/10/2017 by admitting the LTCG at Rs. 1,65,82,836/- and business income at Rs. 3,18,120/-. Subsequently, notice U/s. 143(2) dated 9/5/2018 was issued and served on the assessee. Since there was no response from the assessee, the Ld. AO completed the assessment based on the material available on record. The assessee being the owner of land admeasuring 3.55 Acres, at Perumallapuram Village H/o. AV Nagaram Village, Thondangi Mandal, EG Dist., gifted part of the land i.e., 1163.38 sq yds to his daughter Smt. V.A. Krishnaveni on 01/11/2017. The assessee had constructed semi-finished buildings admeasuring 35,166 sq ft in his share of land during the FY 2004-05 and leased out the said semi-finished structures to an Educational Society by name M/s. Simhadri Educational Society, vide lease deed dated 22/02/2006. Similarly, Smt. V.A. Krishnaveni (daughter of the assessee) has constructed semi-finished buildings admeasuring 40,993/- sq ft during the FY 2008-09. A copy of the sale agreement dated 11/3/2014 was found and impounded during the survey proceedings where the assessee and his daughter agreed to sell their land and buildings for an agreed amount of Rs. 8,15,00,000/- to Sri G. Narayana Rao. Subsequently, the Ld. AO noticed that the sale deed was

registered in favour of Sri G. Narayana Rao and his wife Smt. G. Sakunthala on 13/1/2015 for an amount of Rs.7,15,00,000/- only. On a query from the Ld. AO, the assessee accepted that he has received an amount of Rs. 1 Cr over and above the sale consideration shown in the registered sale deed. During the course of the re-assessment proceedings, the assessee furnished the working for long term capital gains both in his hands and in the hands of his daughter. The assessee relied on the valuation reports issued by an Engineer Mr. B. Srinivas for the cost of construction while computing the capital gains. The Ld AO did not accept the cost of acquisition claimed by the assessee based on his valuation reports, the Ld. AO referred the matter to the Valuation Cell of the Department on 9/5/2018. The Ld. AO observed that the assessee did not cooperate with the Valuation Officer and thereafter issued a show cause notice to furnish his objections, if any, for the proposed assessment of long term capital gains. Since there was no response from the assessee, another show cause notice dated 11/12/2018 was issued. In response, the assessee made written submissions before the Ld. AO and accepted that the entire long term capital gains on the sale of immovable property can be considered in his hands only. Accordingly, based on the Valuation Report, the Ld. AO

recomputed the cost of acquisition while computing the long term capital gains. The balance amount of Rs. 1 Cr which was not supported by the registered sale deed, the Ld. AO considered it as unexplained money received and assessed as income from other sources in the hands of the assessee. The Ld. AO also initiated penalty proceedings U/s. 271(1)(c) of the Act. Finally, penalty order U/s. 271(1)(c) of the Act was passed on 28/06/2019. Aggrieved by the penalty order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT (A), the assessee contested the penalty order stating that the penalty cannot be levied merely based on revised estimate of the cost of acquisition by the Ld. AO. It was also submitted before the Ld. CIT(A) that there is no furnishing of inaccurate particulars of income or any concealment of income by the assessee and hence penalty U/s. 271(1)(c) cannot be levied. Considering the submissions made by the assessee, the Ld. CIT(A) found that the assessee has not disclosed capital gains correctly and also found difference with respect to sale consideration of the property sold and hence dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

4. The assessee has raised the following four grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT (A) is not justified in confirming the penalty of Rs. 90,00,000/- levied by the Assessing Officer U/s. 271(1)(c) of the Act.*
- 3. The Ld. CIT(A) ought to have appreciated that there was no case of 'furnishing inaccurate particulars of income' by the appellant.*
- 4. Any other grounds may be urged at the time of hearing."*

5. The main issue that arises from the above grounds of appeal is with respect to levy of penalty of Rs. 90 lakhs by the Ld. AO U/s. 271(1)(c) of the Act.

6. At the outset, the Ld. AR argued that on the issue of computation of capital gains, the assessee has bonafidely relied on the Valuation Certificate provided by the independent valuer and has computed the long term capital gains while filing the return of income. However, the Ld. AO has not accepted the independent valuer's report and has referred the matter to the Ld. DVO. Based on the Ld. DVO report, the Ld. AO has made an addition by reducing the cost of acquisition of the assessee as per the valuation provided by the Ld. DVO. The Ld. AR further argued that there is no concealment of income by the assessee but the

assessee has bonafidely believed the independent valuer's report and penalty cannot be levied on the estimate made by the Ld. AO. On the issue of concealment of income of Rs. 1 Cr, the Ld. AR submitted that the assessee has failed to furnish correct particulars of income while filing the original return of income. The Ld. AR therefore submitted that the assessee reworked the computation of penalty proportionate to the concealment of income by the assessee and pleaded that it may be considered by the Bench. Further, the Ld AR also relied on the decision of the Hon'ble Madras High Court in the case of CIT vs. Apsara Talkies [1985] 155 ITR 0303.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

7. We have heard both the parties and perused the material available on record. It is the case of the Ld. Assessing Officer that the assessee has concealed his income and furnished inaccurate particulars of income while filing the original return of income and therefore the provisions of section 271(1)(c) was invoked. However, we find that the assessee has disclosed the cost of acquisition while computing the long term capital gains based on the independent valuer's report. Further, we also see

from the written submissions made by the Ld. AR that the assessee's daughter Smt. V.A. Krishnaveni has filed her return of income and admitted the proportionate share of long term capital gains. However, we find that since the assessee has accepted the pay the tax on behalf of his daughter, the Ld. AO has treated the entire long term capital gains in the hands of the assessee. We noted that the assessee has merely agreed to discharge the liability of his daughter and therefore the incidence of tax cannot be cast on the assessee. Further, it was accepted by the Revenue the return of income filed by the daughter of the assessee Smt. V.A. Krishnaveni. The Ld. AO also based on the estimate of the Ld. DVO differed with the cost of acquisition claimed by the assessee and concluded that the assessee has furnished inaccurate particulars of income. The Hon'ble Madras High Court in the case of CIT vs. Apsara Talkies (supra) has clearly held that *mere estimate of cost by Departmental Valuer could not constitute material to concealment and therefore levy of penalty is not valid*. Respectfully following the decision of the Hon'ble Madras High Court in the case of CIT vs. Apsara Talkies (supra), we are inclined to delete the proportionate penalty levied on account of difference in the valuation by the Ld. DVO.

8. On the issue of concealment of income of Rs. 1 Cr by the assessee while declaring the sale consideration at Rs. 7.15 Crs instead of Rs. 8.15 Crs, we find that the assessee has furnished inaccurate particulars of income while filing the return of income and thereby it attracts the provisions of section 271(1)(c) of the Act. In this connection, the Ld. AR submitted a computation of penalty in respect of concealment of income and computed it at Rs. 23,85,025/-. Therefore the levy of proportionate penalty for Rs. 23,85,025/- with respect to the concealed income is hereby confirmed U/s. 271(1)(c) of the Act.

9. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on the 15<sup>th</sup> June, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 15.06.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sri Ginja Atchiraju L/R of Ginja Simhadri Raju, D.No.5-135, Main Road, Vakalapudi, Valasapakala, Kakinada, Andhra Pradesh – 533005.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Sri Deepthi Towers, 3<sup>rd</sup> Floor, Main Road, Kakinada, Andhra Pradesh 533001.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam