

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 1799/Hyd/2019
(निर्धारण वर्ष / Assessment Year: 2016-17)

Assistant Commissioner of Income Tax,
Circle-5(1),
Hyderabad

Vs. Sri Venkataramana Reddy
Katpalli,
Hyderabad

[PAN No. ADOPK7258H]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 02/08/2023
घोषणा की तारीख/Pronouncement on: 24/08/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the order dated 24/09/2019 passed by the learned Commissioner of Income Tax(Appeals)-4, Hyderabad ("Ld.CIT(A)") in the case of Shri Venkataramana Reddy Katpalli ("the assessee") for the assessment year 2016-17, Revenue preferred this appeal.

2. Assessee is an individual and also the Director of M/s. Prime Estate Developers and Builders P. Ltd., and a partner in M/s. Celebrity Prime Developers. For the assessment year 2016-17, he filed the return of income on 04/10/2016, declaring an income of Rs. 74,07,630/-. Learned Assessing Officer found that the assessee sold stock in trade comprising of plots and land purchased by him and claimed exemption under section 54F of the Income Tax Act, 1961 (for short "the Act"). learned Assessing Officer further found that from the explanation of the assessee, that the assessee acquired agricultural land by way of gift from his father, converted the same to stock in trade in the financial year 2012-13, divided into the plots and put the same to sale. During the financial year 2015-16, assessee sold four plots from out of the stock in trade. Apart from this, he also sold two plots which were purchased by him. The assessee treated the plots as 'capital assets' and admitted the profit arising out of such sale under the head long term capital gain, by taking the value of such plots as on the date of conversion as the cost of acquisition and worked out the income after allowing the indexed cost of acquisition. Assessee also claimed deduction under section 54F of the Act.

3. According to the learned Assessing Officer, the converting of the agricultural land as the commercial land, dividing the same into plots, allotting numbers thereto and selling the same constitute adventure in the nature of trade and referring to the decision of the Hon'ble Apex Court in the case of P.M. Mohammed Meerakhan vs. CIT (1969) 73 ITR 735, he concluded that the profit on sale of stock in trade shall be assessed as

business income. He, accordingly worked out the same to Rs. 3,01,29,734/- and added it to the income of the assessee. In respect of the plots purchased by the assessee and sold by him, learned Assessing Officer allowed the exemption under section 54F of the Act against the purchase of house by the assessee.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A) and contended that under section 45(2) of the Act, when a capital asset is converted into stock in trade, the Fair Market Value on the date of conversion will be deemed as the consideration arising from such conversion and the capital gains are to be taxed in the previous year in which the capital asset was sold. According to the assessee before the learned CIT(A), by reckoning the consideration with reference to the Fair Market Value of the asset in the year of conversion, capital gains were computed in the previous year in which the plots were sold.

5. Learned CIT(A) accepted the contention of the assessee and allowed the exemption under section 54F of the Act accordingly. Revenue is, therefore, aggrieved and filed this appeal contending that the assessee is engaged in the trading activity of purchase and sale of lands, converted the agricultural lands into stock in trade, made it into plots, numbered and subsequently sold and, therefore, the entire income from sale of plots was income from capital gains and not income from business; whereas the income from capital gains would only be to the extent of the Fair Market Value as on the date of conversion. Further according to the Revenue, the assessee is entitled to the relief under section 54F of the Act only to the

extent of the capital gains as computed above and the rest of income on the sale of stock in trade is liable to be assessed as income from business.

6. Learned AR submitted that assessee acquired 6.55 acres of land for a sum of Rs. 24,01,621/-, formed into a partnership firm with his neighbour, converted such 6.55 acres as stock in trade and subsequently, sold away such land making it into plots. According to the learned AR, the sale took place between financial year 2012-13 and 2015-16, and as and when such sale took place, the capital gains arising therefrom were admitted in the return of income for the respective assessment years by claiming exemption by depositing the same into the capital gains account. Assessee acquired house during the financial year 2015-16, withdrew the deposit in the capital gain account and claimed benefit under section 54F of the Act. He, therefore, submits that it is perfectly legal under section 45(2) read with section 2(47)(iv) of the Act. Insofar as his own plots are concerned, learned Assessing Officer himself allowed the benefit under section 54F of the Act.

7. We have gone through the record in the light of the submissions made on either side. on a careful reading of the papers including the submissions made by the counsel on either side, the undisputed facts are that,- assessee acquired 6.55 acres of land on 11/10/2004 and it was converted into stock in trade to be introduced to the partnership firm. This alone is the property that is converted from agricultural land to plots to be introduced as stock in trade of the partnership firm. This alone is in dispute in this case. Though the assessee sold two more plots one at Hosur and other at Gafoornagar villages, there is no dispute and the learned Assessing

Officer himself accepted the capital gains and allowed exemption under section 54F of the Act. We, therefore, deal with this disputed aspect in detail.

8. The entire extent of 6.55 acres which the assessee converted into stock in trade was of an extent of 1,62,470 sq.ft. The conversion took place in the financial year 2012-13. Plots after conversion were sold in the financial years 2012-13, 2013-14, 2014-15 and 2015-16 respectively. The sale consideration thereof was Rs. 5,48,30,437/-, Rs. 4,26,98,192/-, Rs. 3,19,04,005/- and Rs. 87,76,813/- respectively. Assessee claims to have computed the capital gains on the sale of these plots by taking the Fair Market Value as on the date of conversion as the cost of acquisition. By indexing the same with reference to the year of sale, the assessee computed the capital gains as Rs. 1,99,14,837/-, Rs. 1,20,49,753/-, Rs. 90,56,255/- and Rs. 37,39,147/- respectively.

9. Case of the assessee is that in respect of the assessment years 2013-14 and 2014-15, he deposited the capital gains in the capital gains account which he withdrew in the assessment year 2015-16 to be utilised for purchase of a house along with the capital gains derived for the financial year 2015-16. Since he purchased the house and utilised the amounts in the capital gains account, he cannot be denied exemption under section 54F of the Act. Precisely, the learned CIT(A) did the same.

10. It is pertinent to note that though the learned Assessing Officer in his order stated that in respect of the sale consideration on the sale of plots which were converted from out of the agricultural land to stock in trade,

the same has to be treated as 'business income' and not as 'capital gains' because the activities of the assessee were resembling the 'adventure in the nature of trade', but by way of additional grounds, the Revenue has taken a plea that such income derived by the assessee on the conversion of the plots constitutes capital gains and on the sale of such plots the assessee would be entitled to exemption under section 54F of the Act only to the extent of the Fair Market Value of such plots as on the date of conversion and nothing more.

11. In the chart furnished by the learned AR, it is clearly shown that though the sale price of such plots was much more, the assessee computed the capital gains only with reference to the Fair Market Value as on the date of conversion and by deducting the indexed cost of acquisition applicable to the year of sale. From the additional grounds, we understand that the Revenue has no grievance if the capital gains are computed by taking the sale consideration as the Fair Market Value as on the date of conversion. In such an event, Revenue cannot have any grievance and it is only a matter of verification of facts and figures. Without undertaking such an exercise, Revenue preferred this appeal.

12. We, therefore, do not find any merits in the appeal of Revenue Insofar as the principle is concerned. To that extent, we confirm the impugned order. Only thing that has to be verified is whether the assessee computed the capital gains by taking the Fair Market Value as on the date of conversion as the sale consideration and deducting there from the indexed cost of acquisition applicable to the year of sale. If it is so, the addition cannot be sustained. We direct the learned Assessing Officer to

cause this verification and if it is found that the assessee computed the capital gains by taking the Fair Market Value as on the date of conversion as the sale consideration and deducting there from the indexed cost of acquisition applicable to the year of sale, to delete the addition.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 24th day of August, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Hyderabad,
Dated: 24/08/2023

TNMM

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. ACIT, Circle-5(1), Hyderabad.
2. Sri Venkataramana Reddy Katpalli, H.No. 1-2-217/3/A/2, New No. 805,
Domalguda, Hyderabad.
3. Pr.CIT-4, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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