

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.82/Viz/2021

(निर्धारण वर्ष / Assessment Year : 2016-17)

Puppala Gopi Krishna,
Guntur.
PAN: ADNPP 4577 H

Vs. The Asst. Commissioner of
Income Tax,
Circle-1(1),
Guntur.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Dr. Satya Sai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 11/09/2023

घोषणा की तारीख/Date of

: 17/10/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Principal Commissioner of Income Tax, Vijayawada [Pr. CIT] passed U/s. 263 of the Income Tax Act, 1961 [the Act], dated 26/03/2021 for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee is an individual deriving income from other sources and agricultural income filed his return of income for the AY 2016-17 on 27/03/2017 declaring a total income of Rs. 75,14,450/- including the agricultural income of Rs. 6,00,000/-. Subsequently, the case was selected for limited scrutiny under CASS for the reason 'whether capital gains / loss on sale of property has been correctly shown in the return of income'. Accordingly, notices U/s. 143(2) and 142(1) of the Act were issued through ITBA. In response to the notices, the assessee submitted information electronically as called for by the Ld. AO. On verification of the assessee's ITR for the AY 2016-17 it was observed by the Ld. AO that the assessee had not shown any income under the head 'capital gains' instead the assessee offered an income of Rs. 51,05,000/- under the head 'income from other sources' on account of 'sale of vacant site'. However, the Ld. AO observed that as per the Central Information Branch the assessee had entered into multiple sale and purchase transactions during the year which are tabulated by the Ld. AO at page 2 of his order. Subsequently, vide notice U/s. 142(1) of the Act, the assessee was asked to furnish details of all the sale and purchase transactions and also the details of capital gain /

loss arrived thereon. In response, the assessee furnished the revised computation statement and offered Rs. 2,31,59,000/- as long term capital gains [LTCG] on sale of vacant site. In the computation submitted before the Ld. AO, the assessee offered net LTCG of Rs. 1,04,74,973/- after deducting the indexed cost of acquisition and the cost of improvement aggregating to Rs. 1,26,84,027/- and accordingly revised the total income of Rs. 1,22,84,430/-. Under these circumstances, the Ld. AO came to a conclusion that the assessee has concealed the particulars of income and therefore initiated the penalty proceedings U/s. 271(1)(c) of the Act. Further, on perusal of the information furnished by the assessee, the Ld. AO observed that the assessee had received the sale consideration in cash aggregating to Rs. 24,11,000/- with respect to certain sale transactions. Considering this fact admitted by the assessee in his documents submitted before the Ld. AO, the Ld. AO came to a conclusion that the assessee had violated the provisions of section 269SS of the Act and therefore the assessee is liable for penalty U/s. 271D of the Act. Accordingly, the Ld. AO completed the assessment U/s. 143(3) of the Act vide order dated 23/12/2018.

3. Thereafter, on examination of the assessment record, the Ld. Pr. CIT, Vijayawada observed that the assessment order was passed without making enquiries or verification which should have been made by the Ld. AO and thereby considered the assessment order in so far it is prejudicial to the interest of the revenue within the meaning and scope of section 263 of the Act. Accordingly, the Ld. Pr. CIT issued a show cause notice U/s. 263 of the Act dated 24/02/2021. In reply, the assessee responded through email dated 12/3/2021 and furnished the information called for. On perusal of the assessee's submissions as well as the assessment record, the Ld. Pr. CIT observed that while responding the show cause notice issued by the Ld. AO, the assessee submitted the computation statement claiming the indexed cost of improvement of Rs. 1,07,74,980/-. The Ld. AO without making any enquiries and verification, completed the assessment within a short span of time and therefore the Ld. Pr. CIT opined that the Ld. AO ought to have called for the details expenditure, purchase bills, vouchers etc., regarding the indexed cost of improvement claimed by the assessee. Further, the Ld. Pr. CIT also observed that even though there is a difference in the number of plots sold by the assessee, the Ld. AO did not verify that aspect. Further, by observing the holding period of asset by

the assessee which is less than 3 years, the Ld. Pr. CIT treated it as STCG. With respect to treatment of income as business income, the Ld. Pr. CIT did not accept the assessee reply that he has no intention to do business because the assessee had converted the land into plots by doing improvements like leveling, earth filling, compound wall, plants and laying roads which can be considered as a business motto. Therefore, the Ld. Pr. CIT was of the opinion that the assessment made by the Ld. AO is without proper examination / verification of the facts of the issue on which the case was selected for scrutiny and therefore the Ld. Pr. CIT came to the conclusion that the assessment order passed U/s. 143(3) by the Ld. AO is erroneous in so far it is prejudicial to the interest of the revenue. Accordingly, the Ld. Pr. CIT set-aside the assessment order passed on 23/12/2018 and directed the Ld. AO to re-do the assessment in accordance with law after making all necessary enquiries and verification in respect of the issues mentioned in the order passed U/s. 263 of the Act. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. Pr. CIT is contrary to the facts and also the law applicable to the facts of the case.*

2. *The Ld. Pr. CIT is not justified in assuming jurisdiction U/s. 263 of the Act in as much as the assessment order dated 23/12/2018 U/s. 143(3) of the Act is neither erroneous nor prejudicial to the interests of the revenue.*
3. (a) *The Ld. Pr. CIT ought to have appreciated that the appellant held the land as capital asset and never intended to hold it as stock in trade.*

(b) *The Ld. Pr. CIT ought to have appreciated that the Assessing Officer made necessary enquiries while assessing the capital gains.*
4. *Any other ground that may be urged at the time of appeal hearing."*

The only issue emanating from the above grounds is with regard to treatment of income from Capital Gain as Income from Business by Ld.PCIT.

4. At the outset, the Ld. AR argued that the assessee was subjected only to the limited purpose of "whether capital gain / loss on sale of property has been correctly shown in the return of income". He further submitted that the Ld. AO only after verification of the ITR filed by the assessee for the AY 2016-17, sought for certain details with regard to the multiple sale and purchase transactions during the year and accordingly, the assessee submitted its computation statement wherein the assessee offered net Long Term Capital Gains of Rs. 1,05,74,973/-. The Ld. AO only after making necessary enquiries

and thorough verification of the relevant documents as well as the computation of LTCG submitted by the assessee, accepted the revised return of income of the assessee and assessed the capital gains. The Ld. AR therefore submitted that the Ld. AO has passed the assessment order in accordance with law and also complied with the CBDT Instruction No.20/2015, dated 29/12/2015. The Ld. AR further submitted that under these circumstances, the Ld. Pr. CIT has wrongly invoked the provisions of U/s. 263 of the Act. The Ld. AR also relied on the judgment of the Hon'ble Madras High Court in the case of CIT vs. Kasturi Estates (P) Ltd reported in [1966] 62 ITR 0578 to state that the assessee's sale and purchase transactions cannot be treated as 'adventure in the nature of trade' but merely realization of capital investment. The Ld. AR also relied on the decision of this Bench in the case of Sri Venu Gopala Primary Agricultural Cooperative Credit Society Ltd vs. ITO in ITA No. 105/Viz/2021 (AY: 2015-16), dated 7/4/2022.

On the other hand, the Ld. DR supported the order passed by the Ld. Pr. CIT and submitted that since the Ld. AO has not examined the issues pointed out by the Ld. Pr. CIT there is no infirmity in the order passed U/s. 263 of the Act.

5. We have heard rival submissions and perused the material available before us as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee's case was selected for limited scrutiny 'whether capital gains / loss on sale of property has been correctly shown in the return of income' and accordingly on verification of the ITR filed by the assessee for the AY 2016-17, the Ld. AO observed that the assessee has not shown any capital gains on sale of vacant site instead offered the income under 'other sources'. Further, on observing that the assessee had entered into multiple sale and purchase transactions during the year, the Ld. AO called for the details of such transactions and only after verifying the computation statement and the relevant documents submitted by the assessee the Ld. AO accepted the assessee's offer of net long term capital gains of Rs. 1,04,74,973/-. With respect to the treatment whether the income to be assessed as capital gains or business income arising out of the sale of the land by the assessee by converting it into various plots, it can be noted from the documents submitted before us that the assessee has not converted the land into stock-in-trade, but has only sub-divided the land into parts to fetch a higher market price on the sale of the same. Therefore, it

can be safely concluded that the assessee has not converted the land into stock-in-trade as the assessee has resorted to sell it to difference buyers by sub-dividing it into various parts to fetch higher price. Merely by selling the entire land after dividing it into various parts, without altering the character of land, cannot be considered as an adventure in the nature of trade as contemplated by the Ld. Pr. CIT. On the identical issue the Hon'ble High Court of Madras in the case of CIT vs. Kasturi Estates (P) Ltd (supra) held that:

*"Where one concerned with a gain made out of purchase and sale of lands, whether it is an accretion to capital or capital profits may depend on particular facts and circumstances. The transaction itself should be looked at to see if it is essentially of a commercial character. A purchase and sale of land may be of that character but not necessarily so. **If a person is systematically engaged in a series of transactions of purchase and sale of lands with a view to make profits out of them, that may indicate that he is occupied in a trading activity. But it is well settled that ownership of land by itself is not a trade. And so a person may purchase property, hold and enjoy it, derive income from it and, when there is appreciation in its value, sell it at an enhanced price. That will not be a trade or an adventure in the nature of trade....."***

Under identical circumstances, this Bench of the Tribunal has taken a similar view in the case of SNF (India) Pvt Ltd., Visakhapanam vs. ACIT in I.T.A. No.211/Viz/2022 (AY:2014-15), dated 01/06/2023. Further, the Hon'ble Madras High Court in the case of CIT vs. A. Mohammed

Mohideen [1988] 74 CTR 129 (Mad.) held that *"plotting and developing of land before sale by itself would not establish that the person concerned was indulging in the trading activity. Revenue has to establish by positive evidence that the purchase and sale of property was with the view to earn profits through trading transaction."*

In the present case also, the assessee has sub-divided the land into parts to fetch a higher market price on the sale of the same and at the same time the Revenue also could not bring on record any evidence to prove that the assessee held the capital asset as stock in trade and the purchase and sale of property was with a view to earn profits through **trading** transactions. Further, the Ld. AO after making necessary enquiries and thorough examination / verification of the documents and the computation statement submitted by the assessee accepted the net long term capital gains offered by the assessee in his revised return of income. Further, it is noted that the Ld. Pr. CIT ought to change the character of the income ie., from capital gains to business income. However, the Hon'ble Madras High Court in the case of CIT vs. Kasturi Estates (P) Ltd (supra) has clearly held that when the asset is held as a capital asset by the assessee, where the intention of the assessee is to derive higher profits by dividing it into plots cannot alter the nature of income earned by the assessee. In the

instant case, we find that the assessee is not engaged in systematic series of transactions of purchase and sale of land but, however has divided the land into plots only to derive higher profits in the nature of capital gains and has offered the same while filing the revised return of income which was also not disputed by the Ld. AO. Considering all these facts as well as respectfully following the decision of the Hon'ble Madras High Court in the case of CIT vs. Kasturi Estates (P) Ltd (supra); decision of the Hon'ble Madras High Court in the case of CIT vs. A. Mohammed Mohideen and also the decision of this Tribunal in the case of SNF (India) Pvt Ltd (supra), we are of the considered opinion that the direction given by the Ld. Pr. CIT to the Ld. AO to re-do the assessment by invoking the provisions of section 263 of the Act is not in sustainable in law. Therefore, we hereby set-aside the order of the passed by the Ld. Pr. CIT U/s. 263 of the Act and allow the grounds raised by the assessee.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 17th October, 2023.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 17.10.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Puppala Gopi Krishna, D.No. 26-10-1, SBI PB Branch Building upside, Nagarampalem, Guntur, Andhra Pradesh – 522 004.
2. राजस्व/The Revenue – The Asst. Commissioner of Income Tax, Circle-1(1), CR Buildings, Kannavarithota, Guntur, Andhra Pradesh – 522001.
3. The Principal Commissioner of Income Tax, Vijayawada.
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