

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.209/Viz/2023 & 210/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2010-11)**

Maga Sai Ramalingavara Prasad
Govada
[Rep.by Legal heir son
Mr.G.Balakrishna]
D.No.31-35-41, Vivekananda Colony
Assam Gardens
Visakhapatnam
[PAN : AAPPG5719B]

Vs. Asst.Commissioner of
Income Tax
Circle-1(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.Bala Krishna, AR
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 11.10.2023

घोषणा की तारीख/Date of Pronouncement

: 31.10.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

These appeals are filed by the assessee's legal heir, his son, Shri G.Balakrishna against the orders of Commissioner of Income Tax (Appeals) [CIT(A)], Delhi dated 31.05.2023. Since, the grounds raised in the appeals are identical in nature, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under. Facts are extracted from I.T.A.No.209/Viz/2023.

2. Brief facts of the case are that the assessee is an individual, purchased site to the extent of 302.10 sq.yds vide registered sale deed dated 04.09.1991 and 17.09.1991 and subsequently constructed residential building during the F.Y.1994-95. The assessee sold the scheduled property on 17.03.2007 of the F.Y.2006-07, relevant to the A.Y.2007-08 to Shri Konchada Krishna Rao, vide document No.1171/2007 for a total consideration of Rs.48,00,000/- by execution / registration of the Agreement to sell cum General Power of Attorney dated 17.03.2007 to register the property either on his name or his nominees. The purchaser got registered the scheduled property on his name vide registered document dated 25.01.2010 of the A.Y.2010-11. The Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961 (in short "Act") dated 31.03.2017. Since there was no response from the assessee, the AO issued notice u/s 133(6) to the purchaser Shri Konchada Krishna Rao, who got registered GPA from the assessee on 17.03.2007. In response, Shri Konchada Krishna Rao submitted the sale deed document executed by himself on his name dated 25.01.2010 and also submitted the death certificate of the assessee to the AO. Further, the AO issued a letter dated 14.12.2017 to the assessee to file any objections for the proposed best judgement assessment u/s 144 of the Act. Since, there

was no response from the assessee, the AO completed the assessment ex-parte as per provisions of section 144 of the Act as the assessee is liable to pay tax on his long term capital gains.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the assessment made by the AO and dismissed the appeal of the assessee ex-parte, holding that the assessee does not wish to pursue the appeal since he has not furnished his submissions with proper evidences to support his claim.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

- 1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts of the case and provisions of law.*
- 2. The action of the learned Commissioner of Income Tax (Appeals) in passing the order under section 250 of the Income Tax Act, 1961, against the assessee is unjust, arbitrary and deserves to be quashed.*
- 3. That action of the learned Commissioner of Income-Tax (Appeals) in not providing the proper opportunity of being heard and dismissing the appeal is against the cardinal principle of natural justice and accordingly order deserves to be quashed.*
- 4. The action of the learned Commissioner of Income Tax (Appeals) erred in confirming the action of the assessing officer in making an addition of Rs.72,63,000/- under head capital against without giving any proper opportunity.*

5. *The learned Commissioner of Income Tax (Appeal) erred in confirming the action of the assessing officer in determining the sale consideration vide document no.368/2010 as Rs.74,23,000/- against the cost of Acquisition of Rs.Nil.*

6. *The learned Commissioner of Income Tax (Appeal) erred in confirming the action of the Assessing Officer in determining the tax liability as Rs.14,96,178/-.*

7. *The learned Commissioner of Income Tax (Appeal) erred in confirming the action of the Assessing Officer in determining the Interest u/s 234A & 234B as Rs.13,31,598/- and Rs.13,91,446/- respectively.*

8. *For these and other grounds that may be urged at the time of hearing, it is submitted that the order of the lower authorities be set aside or modified as may be deemed fit.*

5. All the grounds of appeal are related to confirming the addition of Rs.74,23,000/- made by the AO. At the outset, the Ld.AR (the legal heir of the assessee) filed a paper book and submitted that the assessee received the entire sale consideration of Rs.48,00,000/- on execution of Agreement of Sale cum General Power of Attorney on 17.03.2007 itself during the A.Y.2007-08 and the physical possession of the property was handed over to the purchaser. Hence, the notice issued by the AO u/s 148 of the Act for the A.Y.2010-11 is not valid and against the provisions of the Act. The Ld.AR further submitted that the AO erred in considering the order passed u/s 147 r.w.s. 144 of the Act for the A.Y.2010-11 and by passing order u/s 271(1)(c) of the Act for the A.Y.2010-11 vide order dated 02.05.2018 holding that the assessee concealed the particulars of

income. The Ld.AR, therefore, submitted that the order passed u/s 271(1)(c) of the Act by the AO for the A.Y.2010-11 is contrary to the facts of the case and against the law. The Ld.AR pleaded before the Tribunal that he may be given an opportunity before the CIT(A) to substantiate his claim with relevant evidences.

6. Per contra, the Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal filed by the assessee.

7. We have heard both the parties and perused the material available on record. It is undisputed fact that the assessee sold the scheduled property to Shri Konchada Krishna Rao by execution of Agreement of Sale cum General Power of Attorney on 17.03.2007, relevant to the A.Y.2007-08. The assessee contended that he was not given an opportunity before the Ld.CIT(A) to substantiate his claim with evidences. The assessee filed paper book and filed copy of death certificate of the assessee and copies of sale deeds executed by the assessee dated 17.03.2007 and pleaded that he may be given one more opportunity to substantiate his claim with cogent evidences. In view of the facts and circumstances of the case and in order to meet the

principles of natural justice, we are inclined to remit the matter back to the file of the Ld.CIT(A) to afford one more opportunity of being heard to the assessee to substantiate his claim with proper evidences and pass order accordingly. The assessee is also directed to adhere to the notices issued by the revenue authorities. Hence, the grounds filed by the assessee are allowed for statistical purpose.

6. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 31st October, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated :31 .10.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

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

1. निर्धारिती/ The Assessee – Maga Sai Ramalingavara Prasad Govada
[Rep.by Legal heir son Mr.G.Balakrishna], D.No.31-35-41, Vivekananda
Colony, Assam Gardens, Visakhapatnam
2. राजस्व/The Revenue – The Asst.Commissioner of Income Tax, Circle-
1(1), Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam