

आयकरअपीलीयअधिकरण, 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.202/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2012-13)**

Chigurupati Rajendra Prasad
Dr.No.32-41-47/28, Near Library
Machavaram
Vijayawada
PAN : ABJPC1799A]

Vs. Income Tax Officer
Ward-2(2)
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri M.V.Prasad, AR
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 16.10.2023

घोषणा की तारीख/Date of Pronouncement

: 22.11.2023

आदेश /ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2021-22/1052860606(1) dated 16.05.2023, arising out of assessment order passed u/s 143(3) r.w.s.147 of the

Income Tax Act, 1961 (in short 'Act') dated 22.11.2016 for the Assessment Year (A.Y.) 2012-13.

2. Brief facts of the case are that the assessee along with five others sold an immovable property known as "Leela Mahal" situated at M.G.Road, Vijayawada on 25.01.2012 for Rs.6,00,00,000/-, the market value of which was Rs.16,37,75,000/-, relevant to the A.Y.2012-13. The assessee did not file return of income for the A.Y.2012-13. In view of the non filing of the return, proceedings u/s 147 of the Act were initiated and the assessee admitted income from real estate transactions at Rs.38,000/-, loss from sale of property, popularly known as "leela mahal" at (-)1,10,000 and income from other sources at Rs.4,640/-. Scrutiny proceedings were initiated by issuing notices u/s 143(2) and 142(1) and the assessment was completed by passing an order u/s 143(3) r.w.s. 147 dated 22.11.2016. The assessee stated that the property was purchased by an AOP by name "Nimmagadda Venugopal & Others vide agreement of AOP dated 20.04.2010, hence, considered such transaction under the head "income from business" and admitted loss of Rs.1,10,000/-. The assessee had invested Rs.31,10,000/- towards his share for total acquisition cost including stamp duty of Rs.6,22,00,000/-. The property was sold to avoid some legal problems and the assessee received

Rs.30,00,000/-. Notice u/s 142(1) was issued to the assessee who did not admit capital gains reckoning the provisions of section 50C. The assessee was also asked to justify his claim that there existed AOP as on the date of purchase with corroborative evidence like bank account opened by AOP, filing of income tax returns by the AOP as per provisions of section 139 of the Act. Since the assessee could not justify with evidence about the existence of the AOP, the AO held that the AOP was not established with due diligence, but established to be created to avoid the provisions of sec.50C of the Act in the hands of these 6 persons. He further held that the property sold was a capital asset and profit / loss arising on sale of such property has to be computed under the head "income from capital gains" and the provisions of section 50C of the Act attracts. Accordingly, the AO completed the assessment by passing an order u/s 143(3) r.w.s. 147 dated 22.11.2016, assessing the income at Rs.54,17,590 and penalty proceedings u/s 271(1)(c) of the Act were also initiated.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee ex-parte, as the assessee has not appeared before the CIT(A) inspite of reasonable number of opportunities provided to the assessee and no

written submissions were made in support of the grounds and hence, the Ld.CIT(A) held that the assessee was not keen to pursue the appeal and no material / argument was brought on record by the assessee against the order of the AO.

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 learned CIT(Appeals) is erred in facts and law while passing the order.*
- 2. The learned CIT(Appeals) is not justified in dismissing the appeal without considering the valuation report submitted by the district valuation officer, Income Tax Department, Hyderabad u/s.50C of the I.T.Act.*
- 3. The learned CIT(Appeals) would have afforded another opportunity to the appellant to present his arguments before the learned CIT(Appeals) in view of the valuation report of the DVO.*
- 4. The learned CIT(A) is not justified in not considering the grounds of appeal raised by the appellant and dismissing the appeal merely on the fact that there was no compliance to the notices issued.*
- 5. On the facts and circumstances of the case, it is earnestly pleaded that the issue in dispute may kindly be remanded back to the Assessing Officer for fresh evaluation of cost of the immovable property basing on the report submitted by the DVO.*
- 6. The learned CIT(A) is not justified in confirming the addition made of Rs.3,00,00/- as unexplained cash credit u/s.68 of the I.T.Act which represent the deposits in the bank account, even though the income was admitted under the provisions of Section 44AD of the I.T.Act since no proper books of accounts are maintained by the assessee.*

7. The appellant craves to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.

5. Ground No.1 and 7 are general in nature which do not require specific adjudication.

6. Ground No.2 to 5 are related to the only grievance of the assessee that the AO as well as the Ld.CIT(A) passed the order without considering the valuation report submitted by the District Valuation Officer (DVO) u/s 50C of the Act. The Ld.AR pleaded that the issue in dispute may be remanded back to the AO for fresh evaluation of cost of the immovable property based on the report submitted by the DVO.

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

8. We have heard both the parties and perused the material available on record. Referring to valuation report submitted by the DVO dated 09.02.2023, the Ld.AR submitted that the AO passed assessment order dated 22.11.2016, resorting to adoption of guideline value of the stamping authority for assessment purposes and made addition of Rs.50,74,950/- as unreported capital gains by the assessee. It is evident

from the record that the valuation report was issued by the DVO with reference to the letter submitted by the AO dated 30.12.2019. But the Ld.CIT(A) passed order ex-parte without considering the valuation report. The Ld.AR therefore pleaded before the Tribunal that the issue in dispute may be remanded back to the AO for fresh evaluation of cost of the immovable property based on the report submitted by the DVO. Hence, keeping in view the principles of natural justice, we remit the matter back to the file of the AO to examine the report of the DVO and pass order *denovo*. The AO is also hereby directed to afford an opportunity of being heard to the assessee while considering the DVO report. The assessee is also directed to adhere to the notices issued by the department for fresh adjudication of the case.

9. Ground No.6 is related to confirming the addition made of Rs.3,00,00/- as unexplained cash credit u/s.68 of the I.T.Act. The Ld.AR submitted that there is a peak credit of Rs.2,00,000/- only, considering the cash transaction in both the bank accounts in State Bank of India and Andhra Bank. The assessee submitted that the cash deposits are the realizations from the loan debtors and out of advances received from prospective buyers of plots and other properties and also hand loans received from his friends. The assessee submitted that the income was

admitted under the provisions of Section 44AD of the I.T.Act and declared at 8% presumptively as in earlier assessment years and the question of non explanation of deposits in the bank accounts cannot arise for the reasons that the assessee did not maintain any books of accounts. He, therefore, pleaded to delete the addition of Rs.3,00,000/- made by the AO.

10. Per contra, the Ld.DR submitted that as contended by the Ld.AR, the ground raised by the assessee was not adjudicated before the Ld.CIT(A) due to non compliance and non appearance before the Ld.CIT(A) and the Ld.CIT(A) passed order ex-parte and dismissed the appeal of the assessee. He, therefore pleaded to dismiss the ground raised by the assessee.

11. We have heard both the parties and perused the material available on record. It is evident that the ground No.6 raised before the Tribunal relates to CIT(A)'s decision in confirming the addition made by the AO u/s 68. Since the Ld.CIT(A) has passed the ex-parte order without adjudicating any of the issues raised before him on merits, the question of raising this ground before the Tribunal does not arise. Thus, all the grounds raised by the assessee are remitted back to the file of the AO to

decide the grounds on merits after giving opportunity of being heard to the assessee. Hence, this ground is allowed for statistical purpose.

12. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22nd November, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 22.11.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- Chigurupati Rajendra Prasad, Dr.No.32-41-47/28, Near Library, Machavaram, Vijayawada
2. राजस्व/The Revenue - The Income Tax Officer, Ward-2(2), Governorpet, Vijayawada
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam