

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.213/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2016-17)

Nageswara Rao Viswanadha,
Visakhapatnam.
PAN: AAIPV 6107 H

Vs. The Asst. Commissioner of
Income Tax,
Circle-3(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri Madhukar Aves, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 07/12/2023

घोषणा की तारीख/Date of

: 10/01/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1053478087(1), dated 2/6/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee, being an individual, Director in M/s. VTC Engineering Pvt Ltd., is deriving income from salaries, capital gains and income from other sources, filed his original return of income for the AY 2016-17 on 29/4/2017 admitting the total income of Rs. 54,72,850/-. The return was summarily processed U/s. 143(1) of the Act on 14/6/2017. Subsequently, the case was selected for scrutiny under CASS to verify the following reasons viz., (i) deduction / exemption from capital gains and (ii) investment in immovable property. Thereafter, a notice U/s. 143(2) of the Act was issued electronically. Subsequently, a notice U/s. 142(1) of the Act was issued electronically on 12/9/2018. The assessee in response to the notices filed submissions through ITBA portal. The Ld. AO after verifying the submissions found that the assessee has offered Rs. 50,000/- towards Short Term Capital Gains (STCG). The Ld. AO also further observed that the assessee has sold two properties and received his share of sale consideration of Rs. 3,95,70,000/- and after adjusting the cost of acquisition at Rs. 3,95,20,000/-, the assessee offered Rs. 50,000/- towards STCG.

The Ld. AO noticed that the assessee has adopted the sale consideration as against the market value adopted by SRO of Rs. 5,88,54,500/- towards the assessee's share of sale consideration. The Ld. AO therefore proceeded to tax the difference of Rs. 1,93,34,500/- as STCG after excluding the adjustment of Rs. 50,000/- [Rs.1,93,34,500 – Rs. 50,000 = Rs. 1,92,84,500] which was already declared by the assessee while filing the return of income. Aggrieved by the above addition made in the assessment order, the assessee preferred an appeal before the Ld. CIT (A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, invoking the provisions of section 50C(2) and 50C(3) of the Act and relying on various judicial pronouncements, directed the Ld. AO vide order dated 25/2/2020 to refer the matter to the District Valuation Officer (DVO). The Ld. CIT(A)-NFAC also directed the Ld. AO to invoke the provisions of section 50C(3) of the Act while deciding the sale consideration and thereby partly allowed the appeal filed by the assessee. The Ld. AO as per the directions of the Ld. CIT(A), referred the matter to the Ld. DVO wherein the Ld. DVO submitted his report on 21/4/2022 determining the value of the property at Rs. 8,23,96,160/- as on 31/1/2016. Adopting the

value arrived at by the Ld. DVO, the Ld. AO computed the share of income of the assessee and passed the consequential order dated 12/10/2023 by granting a relief of Rs. 1,76,56,420/- based on the DVO report as against the original addition made by the Ld. AO. Aggrieved by the directions in the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following 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) ought to have held that the addition made by the AO by computing the capital gains under the provisions of section 50C of the Act is outside the scope of the limited scrutiny for which the case was selected.*
- 3. The Ld. CIT(A) ought to have held that the provisions of section 50C of the Act are not applicable in respect of the property sold by the appellant to Viswanadha Educational Society.*
- 4. Without prejudice to the above, the Ld. CIT(A) erred in not noticing the fact that the DVO report is already on record certifying the market value at Rs. 8,23,96,160/- as against SRO value of Rs. 11,77,09,000/-.*
- 5. The Ld. CIT(A) erred in giving a general direction to the Assessing Officer instead of specifying that the appellant is entitled to relief for Rs. 1,76,56,480/- out of total addition of Rs. 1,92,84,500/-.*
- 6. Any other grounds may be urged at the time of hearing."*

4. **Grounds. No. 1 & 6 are general in nature** and therefore they need no adjudication.

5. **Grounds No. 4 & 5 are not pressed** by the Ld. AR as the consequential order has been issued by the Ld. AO and therefore these grounds have been considered as infructuous.

6. **Grounds No. 2 and 3 are with respect to applicability of the provisions of section 50C for the impugned assessment year** to the assessee. On this issue, the Ld. AR argued that the case was selected for limited scrutiny for the purpose of examining the exemption / deduction claimed by the assessee. The Ld. AR further submitted that the Ld. AO has travelled beyond his jurisdiction. Further, the Ld. AR also submitted that the assessee has entered into an agreement on 30/12/2015 wherein the sale consideration has been determined and an advance amount of Rs. 1.50 Crs vide Cheque No. 915393, dated 14/8/2014 was received by the assessee. The Ld. AR therefore pleaded that as on the date of agreement, wherein a substantial amount of sale consideration has been partly received by the assessee, the SRO value, as per the provisions of section 50C of the Act, on the date of registration of the sale deed cannot be

applied in the instant case. The Ld. AR therefore pleaded that the order of the Ld.CIT(A)-NFAC be set-aside.

7. Per contra, the Ld. Departmental Representative argued that the limited scrutiny includes the value to be adopted for the purpose of the provisions of section 50C of the Act and it is required to re-compute the capital gains. The Ld. DR therefore pleaded that the order of the Ld. AO be upheld.

8. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has sold two properties and has received his share of sale consideration amounting to Rs. 3,95,70,000/- and has disclosed a sum of Rs. 50,000/- as STCG in the return of income. The Revenue has not disputed the cost of acquisition claimed by the assessee at Rs. 3,95,20,000/-. The only dispute is with respect to the computation of capital gains by the Ld. AO by adopting the stamp duty value for the purpose of computation of the capital gains. The Ld. AO invoking the provisions of section 50C of the Act concluded that the assessee's share of sale consideration works out to Rs. 5,88,54,500/- as per the stamp duty value adopted by the SRO at the time of registration of the sale deed.

Further, it is also noticed that as per the directions of the Ld. CIT(A)-NFAC, the Ld. AO has referred the matter to the Ld. DVO who determined the value of the property at Rs. 8,23,96,160/-. The main contention of the Ld. AR is that when the agreement to sell the property has been entered into on 30/12/2015 by receiving a part sale consideration of Rs. 1.50 Crs on 14/8/2014 the same shall be deemed to be the sale consideration accepted by the vendor. Section 50C(1) of the Act is reproduced below for reference:

"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed ^{25a}[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :

[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

*Provided further that the first proviso shall apply only in a case where the amount of consideration, **or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account** [or through such other electronic mode as may be prescribed²⁸], on or before the date of the agreement for transfer:]*

[Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ³⁰[ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]"

9. From the bare reading of the section 50C(1) of the Act, and the first and second provisos, in the instant case, the date of agreement fixing the amount of consideration and the date of registration for transfer of the capital asset are not the same. The value adopted for the stamp duty valuation purposes as on the date of agreement shall be taken for the purpose of computing the full value of consideration for such transfer. Further, the second proviso also stipulates that where **the amount of sale consideration, or a part thereof** has been received by an account payee cheque or through banking channels, the first proviso to section 50C(1) shall be applied in those cases. In the instant case, we find that **the agreement has been entered into on 30/12/2015 and the part consideration has been received on 14/8/2014**. Therefore, we find merit in the argument of the Ld. AR that the provisions of section 50C of the Act adopting the value for stamp duty purposes as on the date of sale deed could not be applied but the value as on the date of the agreement / date of receipt of advance has to be applied. We are therefore of the considered view that the provisions of section 50C(2) & 50C(3) of the Act cannot be applied in the instant case. Therefore, we direct the Ld. AO to adopt the

actual sale consideration declared and accepted on the date of agreement entered into by the assessee to compute the capital gains. Accordingly, **the Grounds No.2 & 3 raised by the assessee are partly allowed.**

10. In the result, **appeal of the assessee is partly allowed.**

Pronounced in the open Court on 10th January, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 10/01/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Nageswara Rao Viswanadha, D.No. 1-44-1/1/1, HIG-12, Sector-1, MVP Colony, Venkojipalem Jn, Visakhapatnam, Andhra Pradesh – 530017.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-3(1), Pratyakshakar Bhavan, MVP Double Road, Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax,
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