

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.581/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2016-17)

Income Tax Officer Ward – 1 (1) Tirupati	Vs.	Smt. Devapatla Subhadramma Tirupati PAN:AYQPS6231H
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A.Sai Prasad, CA	
राजस्व द्वारा/Revenue by::	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	05/03/2024	
घोषणा की तारीख/Pronouncement:	18/03/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President.

This appeal filed by the Revenue is directed against the order dated 29.09.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. Facts of the case, in brief, are that the assessee derives income from house property and filed her return of income for the impugned A.Y on 23.3.2018 declaring total income of Rs.4,72,520/-. The case was selected for limited scrutiny to verify the (i) cash deposits and transaction in property and (ii) capital gain/loss on sale of property. The

Assessing Officer thereafter issued notice u/s 143(2) of the I.T. Act on 09.08. 2018. Since the assessee did not respond to the above notice, the Assessing Officer issued letter on 18.09.2018 and calling for certain information. In absence of any reply, another notice dated 8.10.2018 was issued which also remained uncompiled with. A show cause notice calling for the objection of the assessee for completion of the assessment u/s 144 was issued on 29.10.2018. The assessee did not respond to this notice also. The Assessing Officer therefore, proceeded to complete the assessment u/s144 of the I.T. Act on the basis of material available on record.

3. The Assessing Officer observed from the AIR data that the assessee sold a property on 25.11.2015 for an amount of Rs.3,40,06,000/-. However, she has admitted Rs.2,58,93,000/- as full value of consideration received on account of sale of property. Further, she has claimed Rs.2,54,62,480/- as cost of acquisition out of the sale consideration received and admitted Rs.4,30,520/- as Short-Term Capital Gains. In absence of production of purchase deed of the property purchased for Rs. 2,54,62,480/- and in absence of any evidence to support her claim towards cost of acquisition and reasons for the difference in sale consideration received as per AIR data and as per her admission in return of income, the Assessing Officer treated the entire sale consideration at Rs. 3,40,06,000/- as Capital Gains. Since the assessee had already admitted Short Term Capital Gain of Rs.4,30,520/-, the Assessing Officer added the balance amount of Rs. 3,35,75,480/- to the total income of the assessee.

4. The Assessing Officer further observed from the data received in his office that the assessee has sold one more property on 23.09.2015 for Rs.16,06,000/- but she has not disclosed this sale in her return of income filed for the A.Y.2016-17 and had not admitted any Capital Gain on account of this sale. In absence of any reply from the side of the assessee, the Assessing Officer treated the entire amount of Rs.16,06,000/- as undisclosed capital gains and added the same to the total income of the assessee.

5. The Assessing Officer similarly observed from the data received in his office that the assessee has made Cash Deposits of Rs.2,29,30,000/- in her savings bank account. In absence of any evidence to explain the source of such cash deposits, the Assessing Officer made addition of Rs.2,29,30,000/- as unexplained cash deposit and added the same to the total income of the assessee.

6. In appeal, the learned CIT (A) NFAC gave part relief to the assessee. So far as the addition of Rs.3,35,75,480/- is concerned, the learned CIT (A) NFAC restored the issue to the file of the Assessing Officer with direction to verify and work out the actual cost of acquisition of the immovable property claimed by the assessee and allow the cost of acquisition by observing as under:

“9.2 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The appellant has submitted that the Assessing Officer has not considered the cost of acquisition of Rs.2,54,62,480 while computing the capital gain. I find that the appellant has enclosed a valuation report regarding the cost of acquisition of the immovable

property. The appellant also submitted the copies of the purchase as well as sale documents are submitting herewith and requested that the same may be considered as additional evidence under Rule 46A of the IT Rules 1962. In view of the above a remand report was called for from the AO on 05.07.2023 along with reminders on 14.08.2023 and 04.09.2023, but no report received till date. I find that the AO has not considered the cost of acquisition of the property and has added the entire sale consideration of the immovable property as capital gain which is not sustainable. The AO is directed to verify and work out the actual cost of acquisition of the immovable property claimed by the appellant and allow the cost of acquisition in computing the capital gain. Thus, the appeal on this ground is partly allowed.”

7. So far as the addition of Rs.2,29,30,000/- as unexplained cash deposit is concerned, the learned CIT (A) deleted the addition by observing as under:

10.2 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. I find from the evidences submitted that the Cheques for Rs. 80,00,000, Rs.80,00,000 and 99,38,000 noted in the sale document No.6728/2015 dated 25.11.2015 were not encashed by the appellant and the purchaser took back these cheques on the date of registration of the document itself and the purchaser deposited the cash of Rs. 80,05,000 on 14.12.2015, Rs. 99,38,000 on 17.12.2015 and Rs. 50,00,000 on 02.01.2016 in the appellant bank account bearing No. 7652500100674101 with Karnataka Bank Ltd., Tirupathi. Therefore it is established that the cash deposits represents the sale consideration deposited by the purchaser in respect of the immovable property sold to him on 25.11.2015 for a consideration of Rs. 2,58,62,480. The appellant also furnished an Affidavit duly notarized by a qualified Advocate, to the effect that the cash deposits made in her bank account in the Karnataka Bank Ltd. represents the sale consideration of her immovable property. In view of the above, the addition of cash deposits of Rs. 2,29,30,000 in the savings bank account as unexplained cash deposits is not sustainable and is directed to be deleted. The appeal on Ground Nos 5 & 6 are allowed.

8. So far as the addition of Rs.16,06,000/- made by the Assessing Officer is concerned, the learned CIT (A) NFAC partly allowed the same by observing as under:

“11.1. I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The appellant sold a property on 23.9.2015 for

a consideration of Rs.16,06,000 and derived loss on this property. From the documents submitted, it is seen that the said property was acquired for Rs 14,54,000/- i.e. (excluding stamp duty, registration charges etc.) only on 25.03.2015 i.e. just before six months from the date of sale and sold without any profit. The appellant has submitted that since there was no element of gain involved in this transaction, the same was not admitted in the computation statement by oversight. In view of the above facts, I find that the AO adding the entire sale consideration of property at Rs. 16,06,000 is not sustainable. Therefore, the AO is directed to examine the copies of the relevant documents viz. purchase as well as sale documents are submitting by the appellant and work out the capital gain, if any and bring to tax only such capital gain. Thus, the appeal on this ground is partly allowed”.

9. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds:

1. The order of the Ld.CIT(A) is erroneous both on the facts of the case and in law.
2. On the facts and circumstances of the case, the Ld.CIT(A) erred in not considering the value of the property at Rs. 3,40,06,000/- as adopted by the Stamp Value Authority on pages 01 & 09 vis-va-vis endorsement on flip page of page 02 of the Registered Document No. 6728/2015 as the full value of consideration u/s 50C of the Income Tax Act.
3. On the facts and the circumstances of the case, the Ld.CIT(A) erred in not considering the fact that there was difference between the payments of consideration as mentioned in the Registered document and the subsequent cash deposits said to be made by the purchaser on three different dates. Cheques dated 23.11.2015 were issued in the name of seller vide Nos. 094120, 094121 and 094122 for Rs. 80,00,000/-, Rs. 80,00,000/- and Rs. 99,38,000/- respectively drawn from the The Karnataka Bank Limited, Tirupati Branch were totaling to Rs. 2,59,38,000/- whereas the subsequent cash deposits on three different dates i.e. 14-12-2015, 17-12-2015 and 02-01-2016 of Rs. 80,05,000/-, Rs. 99,38,000/- and Rs. 50,00,000/- respectively were totaling to Rs. 2,29,43,000/-. This difference works out to Rs. 29,95,000/-. However, the Ld.CIT(A) has simply accepted the submission of the assessee without adjudicating on the difference amount of Rs. 29,95,000/-.
4. On the facts and circumstances of the case, the Ld.CIT(A) erred in simply accepting the contention of the assessee that the Cheques dated 23.11.2015 issued in the name of seller vide Nos. 094120, 094121 and 094122 for Rs. 80,00,000/-, Rs. 80,00,000/- and Rs. 99,38,000/- respectively drawn from The Karnataka Bank Limited, Tirupati Branch totaling to Rs. 2,59,38,000/- were returned to the purchaser based on the Affidavit filed by the assessee without calling for any corroborative evidence.
5. Any other ground that may be urged at the time of hearing.

10. The learned DR strongly challenged the order of the learned CIT (A). He submitted that when the Stamp Valuation Authority have valued the property at Rs.3,40,06,000/-, the learned CIT (A) should have considered the same as full value of consideration u/s 50C of the I.T. Act Similarly, the deletion of the amount of Rs.2,29,30,000/- towards unexplained cash deposit was erroneously deleted by the learned CIT (A) on the basis of submission of the assessee without adjudicating on the difference amount of Rs.29,95,000/- as per the grounds of appeal. He accordingly submitted that the order of the learned CIT (A) be reversed or alternatively the matter may be remanded back to the file of the Assessing Officer for fresh adjudication.

11. So far as the first issue raised by the Revenue in the grounds of appeal is concerned, the learned Counsel for the assessee, while supporting the order of the learned CIT (A) submitted that the learned CIT (A) has restored the issue to the file of the Assessing Officer with a direction to verify and work out the actual cost of acquisition of the immovable property and allow the cost of acquisition in computing the capital gain. Referring to the order giving effect dated 2.11.2023, he submitted that the Assessing Officer after due verification of the various details furnished before him on the basis of the order of the learned CIT (A) has accepted the Short-Term Capital Gain admitted by the assessee at Rs.4,30,520/- and therefore, the ground raised by the Revenue on this issue needs to be dismissed.

12. So far as the ground challenging the deletion of Rs.2,29,30,000/- is concerned, the learned Counsel for the

assessee drew the attention of the Bench to the order giving effect of the same and submitted that the cash deposit is out of the cash received on account of sale of the immovable property and therefore, the ground raised by the Revenue on this issue also needs to be dismissed.

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. So far as the first issue raised by the Revenue challenging the order of the learned CIT (A) in not considering the value of the property at Rs.3,40,06,000/- as adopted by the Stamp Valuation Authority is concerned, we find the learned CIT (A) in his order has categorically mentioned that the various additional evidences filed before him were forwarded to the Assessing Officer for his comments but the Assessing Officer for the reasons best known to him did not give any remand report for which the learned CIT (A) restored the issue to the file of the Assessing Officer with a direction to verify and work out the actual cost of acquisition of the immovable property claimed by the assessee and allow the cost of acquisition in computing the capital gain. We find the Assessing Officer in the order giving effect dated 2.11.2023 has accepted the short-term capital gain declared by the assessee at Rs.4,30,520/- by recording as under:

5.2 Accordingly, the computation of short term capital gains is as under:-

During the financial year 2015-16 relevant for assessment year 2016-17, the assessee Smt. Devapatla Subhadramma has sold immovable property on 25/11/2015 having document number 6728/2015 at Renigunta Sub-Registrar Office, Tirupati district. On examination of sale deed having document number 6728/2015, on pages 01 and 09 of sale deed, it is clearly written that the sale consideration and market value of property is Rs. 2,58,93,000/- BUT NOT Rs. 3,40,06,000/-. The then AO, in absence of any sale deed, has added the amount of Rs. 3,35,75,480/-(34006000-430520) as short term capital gains; as the assessee has already offered short term capital gains of Rs. 4,30,520/- in her return of income filed for A.Y. 2016-17. The assessee has purchased the vacant land vide purchase deed having document number 5957/2007 dated 13/08/2007 at SRO, Renigunta. Hereafter, the assessee started to construct G+5 floor on the purchased land. Due to financial trouble, the assessee

sold G+3 during financial year 2014-15 relevant to assessment year 2015-16 and admitted short term capital gains of Rs. 6,05,200/- in itr-2 filed on 31/03/2017. The assessee started construction on the purchase property at 04th and 05th floor from April 2013 to March-2015 which was completed in the month of March-2015. Due to financial problem, the 04th and 05th floor along with common land were sold on 25/11/2015. The assessee has also furnished valuation report dated 04/09/2015 of registered income tax valuer Shri Er.C.V.Sreedhar Rao which clearly states that net cost of construction of the building(04th & 05th floor) is Rs. 2,54,58,742/- or say Rs. 2,55,00,000/-. The assessee has taken the lower figure of Rs. 2,54,58,742/- which is beneficial to the revenue. The assessee has also submitted that due to fire in the building, all expenditure bills & vouchers of construction of buildings were destroyed on 15/06/2020. In support of her claim, the assessee also furnished a copy of FIR No.194/2020 dated 25/06/2020 filed at Gajula Mandyam Police station of Tirupati district. Hence, the claims of the assessee about non-availability of bills/vouchers towards constructions of the property are found to be genuine. The calculation of short term capital gains as offered by the assessee is as under:-

Full value of consideration on sale of immovable property vide document number 6728/2015 dated 25/11/2015	Rs. 2,58,93,000/-
Cost of acquisition without indexation	Rs. 2,54,62,480/-
Short term capital gains	Rs. 4,30,520/-

The short term capital gains is computed at Rs. 4,30,520/- for A.Y. 2016-17, which has already been admitted by the assessee in her ROI.

Deletion 1:- Rs. 3,35,75,480/-

13.1 We find the Assessing Officer has categorically mentioned that the sale consideration and the market value of the property is Rs.2,58,93,000/- and not Rs.3,40,06,000/-. Further, the learned CIT (A) had simply restored the issue to the file of the Assessing Officer for computation of capital gain after verification of the various details. In view of the above discussion, the ground of appeal No.2 raised by the Revenue, in our opinion, has no legs to stand. Accordingly, ground of appeal No.2 by the Revenue is dismissed.

14. So far as the grounds of appeal No.3 and 4 are concerned, we find these relate to the order of the learned CIT (A) in deleting the addition of Rs.2,29,30,000/-. We find in absence of any details furnished before the Assessing Officer, he made addition of Rs.2,29,30,000/- being unexplained cash deposits in the bank account. We find the assessee before the learned CIT (A), submitted a petition under Rule 46A of the I.T.

Rules enclosing certain additional evidences in respect of the cash deposits made in Karnataka Bank Ltd according to which the various cheques noted in the sale document No.6728/2015 dated 25.11.2015 were not encashed by the assessee and were taken back by the purchaser on the date of registration of the document itself and instead he deposited cash in his bank account amounting to Rs.80,05,000/- on 14.12.2015, Rs.99,38,000/- on 17.12.2015 and Rs.50,00,000/- dated 01.01.2016 totaling to Rs.2,29,43,000/-. There is no evidence on record to show that the cheques which were given earlier amounting to Rs.80,00,000/-, 80,00,000 and 99,38,000/- respectively totaling to Rs.2,59,38,000/- were not encashed by the assessee. Further, there is a difference of Rs.29,95,000/- being the difference towards the 3 cheques received at Rs.2,59,38,000/- and the cash deposit amounting to Rs.2,29,43,000/-. Under these circumstances, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to verify as to whether these 3 cheques issued by the purchaser were encashed or not and whether the purchaser had deposited cash in the bank account of the assessee and how the balance amount of Rs.29,95,000/- was received by the assessee. The assessee is directed to produce necessary details before the Assessing Officer to substantiate that those cheques were not encashed by him. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The 3rd and 4th grounds raised by the Revenue are accordingly allowed for statistical purposes.

15. Grounds 1 and 5 being general in nature are dismissed.

16. In the result, appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 18th March, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 18th March, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Income Tax Officer Ward (1)1 KT Road, Tirupati 517501 A.P
2	Smt. Devapatla Subhadramma, Mohan Reddy Nagar, Elamandyam Village, Renigunta, Tirupati 517520 A.P
3	Pr. CIT-, Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order