

आयकर अपीलीय अधिकरण, 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.42/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2016-17)

Akunuri Sai Avinash,
Rep. by GPA Holder Dr. Akunuri
Sai Babu,
Visakhapatnam.
PAN:
(अपीलार्थी / Appellant)

Vs. The Asst. Commissioner of
Income Tax,
Circle (International Taxation),
Visakhapatnam.
(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by
प्रत्यर्थी की ओर से / Revenue by

: Sri GVN Hari, AR
: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing
घोषणा की तारीख / Date of
Pronouncement

: 26/03/2024
: 12/04/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the directions of the Ld. Dispute Resolution Panel-1, Bengaluru [in short 'Ld. DRP'] vide F.No. 73/DRP-1/BNG/2022-23, dated 19/12/2022 arising out of the order passed by the Ld. AO U/s. 147 of the Act for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee is a Non-Resident Indian. It was gathered by the Revenue that the assessee has sold the property in Visakhapatnam to Smt. Vurjana Jayalakshmi vide Doc. No. 2664/2015 on 11/5/2015. Information was also received from DIT (I & CI) that the assessee has sold the above said property for a sale consideration of Rs. 14,85,000/- which is below the stamp duty value as per the provisions of section 50C of the Act. Accordingly, the Ld. AO considered the stamp duty value of Rs. 63,89,000/- as the sale consideration and subjected the difference amount of Rs. 49,04,000/- to tax under the head 'capital gains'. The Ld. AO considered this as an escapement of income as per the provisions of section 147 r.w.s 151 of the Act and after obtaining the necessary approval from the Ld. Commissioner of Income Tax (IT & TP), Hyderabad, reopened the case U/s. 147 of the Act and notice U/s. 148 was issued to the assessee on 29/03/2021. The Ld. AO thereafter passed a draft assessment order U/s. 144C of the Act to tax Rs.49,04,000/- under the head 'capital gains' during the AY 2016-17. Being aggrieved by the draft assessment order, the assessee filed its objections before the Ld. DRP. The Ld. DRP directed the Ld. AO to get the property valued by the Valuation Officer of Income Tax Department. The Ld. DVO valued

the property at Rs. 33,49,000/- as on 11/5/2015 vide his File No. AE (V)/VSP/CG-449/2022-23/1712, dated 04/11/2022. Further, the assessee also objected to the taxation of the capital gains in the AY 2016-17 whereas it was contended that the sale document was executed on 03/05/2015 and hence the capital gains should be subjected to tax in the AY 2015-16. The Ld. DRP rejected the objections raised by the assessee and thereby upholding the order of the Ld. AO wherein the Ld. AO was directed to adopt the valuation made by the Ld. DVO. Being aggrieved by the directions of the Ld. DRP, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Hon’ble Dispute Resolution Panel is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Hon’ble Dispute Resolution Panel ought to have quashed the notice issued U/s. 148 of the Act as invalid and ought to have quashed the reassessment proceedings as void ab initio.*
3. *The Hon’ble Dispute Resolution Panel is not justified in holding that the capital gains are applicable for the subject assessment year 2016-17 in respect of the sale transaction concluded in the FY 2014-15 relevant for AY 2015-16.*
4. *The Hon’ble Dispute Resolution Panel is not justified in directing the AO to adopt the value estimated by the DVO at Rs. 33,49,000/- as on the date of sale deed i.e., on 11/5/2015 ignoring the fact that the sale transaction was negotiated on 30/03/2015 itself.*

5. *The Hon'ble Dispute Resolution Panel ought to have held that the value estimated by the DVO at Rs. 33,49,000/- for the property is on higher side.*
6. *Any other grounds may be urged at the time of hearing."*

3. **Grounds No.1 and 6 are general** in nature and therefore they need not be adjudicated.

4. **Ground No. 2** relates to the validity of the reopening U/s. 148 of the Act. It was argued by the Ld. AR that there are no tangible material before the Ld. AO warranting the reopening of assessment U/s. 147 of the Act. The Ld. AR argued that there is no income escaping assessment and hence the reopening of the case is void-ab-initio.

Per contra, the Ld. DR relied on the directions of the Ld. DRP.

5. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. We find from the submissions of the Ld. AR that the Ld. AO has reopened the case U/s. 147 of the Act wherein the assessee has initially failed to file the return of income and has also subsequently declared the sale value at Rs. 14,85,000/- instead of the stamp duty value adopted U/s. 50C of the Act. We therefore find that the Ld. AO has rightly exercised and recorded

the detailed reasons and in our considered opinion the reopening of the case is valid in law and hence this ground raised by the assessee is dismissed.

6. **Grounds No. 3 and 4** relate to the taxability of the capital gains in the AY on which the sale deed was executed or on the date of registration of the sale deed. On this ground, the Ld. AR argued that the sale deed was executed on 3/3/2015 whereas it was registered on 11/5/2015. Further, the Ld. AR also submitted that the entire sale consideration of Rs. 14,85,000/- was received at the time of execution of the sale deed and the possession was handed over to the buyer of the property. Hence, he pleaded that the capital gains if any, should be made taxable only in the AY 2015-16. The Ld. AR also relied on the decision of the Hon'ble Supreme Court in the case of Kanwar Raj Singh (D) Th. LRs vs. GEJO (D) Th. LRs & Ors in Civil Appeal No. 9098 of 2013, dated 02/01/2024, wherein the Hon'ble Supreme Court has held that *"in terms of section 47 of Registration Act, a registered sale deed where the entire consideration was paid would operate from the date of its execution."*

Per contra, the Ld. DR submitted that as per the Transfer of Property Act, section 54 defines "sale". It states that "*such*

transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.” Further, the Ld. DR also relied on the case of Hon’ble High Court of Madras in the case of R. Krishnaswamy vs. CIT [2014] taxmann.com 177 (Madras). The Ld. DR therefore pleaded that the capital gains should be subjected to tax in the AY 2016-17 and thereby the directions of the Ld. DRP may please be upheld.

7. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is the case of the Ld. AO whether the sale deed was registered on 11/5/2015 as per the sale deed copy submitted in page No.1 of the paper book. Even though the sale deed was executed on 3/3/2015, the document was registered on 11/5/2015. Further, from the recitals of the sale deed, we find that the agreed sale consideration of Rs. 14,85,000/- was paid by way of cash on various occasions. However, the sale deed failed to mention the date of payment made by the purchaser of the property. The case relied on by the Ld. AR on the ratio laid down by the Hon’ble Supreme Court in the case of Kanwar Raj Singh (D) Th. LRs vs. GEJO (D) Th. LRs & Ors (supra), it is clear that if the consideration is paid on the date of execution of sale deed the

registered sale deed will operate from the date of its execution. However, in the instant case, the date of payment of consideration was not mentioned in the sale deed and hence the case relied on by the Ld. AR is of no assistance to him. In the case relied on by the Ld. DR, the Hon'ble Madras High Court in the case of R. Krishnaswamy vs. CIT (supra) has held as follows:

“In the absence of any part performance as contemplated under section 53A of the Transfer of Property Act, 1882 and as pointed out by the Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd vs. State of Haryana [2012] 340 ITR 1 / [2011] 302 Taxman 607/14 taxmann.com 103, registration of sale deed alone completes the transfer....”

8. Further, section 54 of the Transfer of Property Act, 1882 as pointed out by the Ld. DR also states that in the case of tangible immovable property transfer can be made only by a registered instrument. In view of the foregoing judicial pronouncements as discussed above and also considering the facts and circumstances of the case, we hereby uphold the directions of the Ld. DRP in directing the Ld. AO to compute the capital gains based on the date of registration of the sale deed which is in the instant case AY 2016-17. Accordingly, we hereby dismiss the Grounds No. 3 & 4 raised by the assessee.

9. With respect to **Ground No.5**, the Ld. AR argued that the Ld. DVO has valued the property at Rs. 33,49,000/- by adopting the rate of Rs. 1446/- per sq. yd. The Ld. AR further submitted that the Ld. DVO has hypothetically added 45% of the value of Rs. 1446/- amounting to Rs. 651/- per sq. yd stating that the property is well connected and the size of the plot is regular and large size. The Ld. AR strongly objected to this hypothetical addition and pleaded that this addition may be deleted.

Per contra, the Ld. DR relied on the valuation report of the Ld. DVO.

10. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. On perusal of the analysis of fair market value of the Ld. DVO, we find that the Ld. DVO has adopted the amount of Rs. 1446/- per sq. yd. Additionally, he had added 45% as the subjected property was well connected and the size of the plot is regular shape and large size. We find merit in the argument of the Ld. AR that this hypothetical valuation is not valid in law as it is not calculated based on any scientific basis. Further, we also find that the Ld. DVO has not given any valid reason for computing the additional 45% on the initial value of Rs. 1446/-

per sq. yd. We therefore direct the Ld. AO to adopt the rate of Rs. 1446/- per sq. yd while computing the sale consideration in accordance with the provisions of section 50C of the Act and compute the capital gains. Accordingly, this ground raised by the assessee is partly allowed for statistical purposes.

11. In the result, appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 12th April, 2024.

Sd/-

(दुव्वूरु आर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 12.04.2024

OKK - SPS

Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Akunuri Sai Avinash, Rep. by GPA Holder Dr. Akunuri Sai Babu, D.No. 14-11-2A, Ramajogipeta, Visakhapatnam, Andhra Pradesh.
2. राजस्व/The Revenue –Asst. Commissioner of Income Tax, Circle (International Taxation), O/o. ITO, Infinity Towers, Shankaramatam Road, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam