

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.08/Viz/2024

(निर्धारण वर्ष / Assessment Year : 2016-17)

Indira Pasupuleti,
Palakollu.

PAN: GFJPP 5413 L

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
International Taxation,
Kakinada.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

26/03/2024

19/04/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the final assessment order of the Ld. Assessing Officer in DIN & Order No. ITBA/AST/S/147/2023-24/1058339709(1), dated 30/11/2023 arising out of the directions of the Ld. Dispute Resolution Panel [in short Ld. DRP] given U/s. 144C(5) of the Income Tax Act, 1961 [the Act] for the AY 2016-17.

2. Briefly stated the relevant facts of the case are that the assessee is an individual Non-Resident Indian [NRI]. During the AY 2016-17, the assessee purchased an immovable property vide Document No. 1399/2016 of SRO, Palakollu, dated 03/03/2016 for a consideration of Rs. 15,00,000/- whereas as per the Ld. AO the SRO value was Rs. 30,50,000/-. In this regard, the Ld. AO observed that as per the provisions of section 56(2)(vii)(b) of the Act, the assessee has purchased the property below the market value and hence the difference of Rs. 15,50,000/- (Rs. 30,50,000 – Rs. 15,00,000/-) was proposed to be treated as ‘income from other sources’. The Ld. AO also observed that the assessee has not filed her return of income for the AY 2016-17. Hence, a notice U/s. 148 was issued on 30/03/2021 and the same duly served on the assessee on 9/4/2021. Further, the Ld. AO also issued notice to the assessee U/s. 142(1) of the Act wherein the assessee was called for the details of bank account statements, details of assets in her name, address with email Id, immovable property transactions during the year under consideration. Since there was no response from the assessee, the Ld. AO issued another notice U/s 142(1) of the Act dated 18/12/2021 and 31/12/2021. In response, the assessee’s GPA holder furnished computation statement through email on 3/1/2022 wherein the assessee shown interest income at

Rs. 9,027/-, TDS at Rs. 2,790 and claimed refund of Rs. 2,790/-.

On perusal of the computation statement of the assessee, the Ld. AO noticed that the assessee has not furnished any evidence to substantiate the claim of the assessee and therefore did not accept the same. Thereafter, the Ld. AO issued another notices U/s. 142(1) of the Act on 1/3/2022, 10/10/2022 and 6/12/2022. Since there was no response, the Ld. AO issued a show cause notice on 24/01/2023. Considering the assessee's non-compliance to the notices issued, the Ld. AO proceeded to complete the assessment by treating the difference amount between the SRO value and the actual sale consideration paid i.e., Rs. 15,50,000/- as 'income from other sources' and determined the total income at Rs. 15,59,027/- [Income U/s. 56(2)(vii)(b) Rs. 15,50,000/- + interest income Rs. 9,027/-]. Accordingly, the Ld. AO passed the draft assessment order U/s. 144C(1) of the Act. On being aggrieved, against the draft assessment order, the assessee filed objections U/s. 144C(3) of the Act before the Ld. Dispute Resolution Panel, Bengaluru. After considering the submissions of the assessee and the remand report obtained from the Ld. AO, the Ld. DRP passed order U/s. 144C(5) of the Act on 29/11/2023 wherein the assessee's objections were rejected by the Ld. DRP. Giving effect to the directions of the Ld. DRP, the Ld. AO passed the final assessment

order U/s. 147 r.w.s 144 of the Act on 30/11/2023 and sustained the addition made in the draft assessment order as directed by the Ld. DRP. Aggrieved by the said order of the Ld. AO, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. That under the facts and circumstances of the case, the orders passed under section 147 r.w.s 144 and r.w.s 144C of the Act is contrary to the provisions of the law and facts of the case.*
- 2. The Ld. AO failed to issue and serve the notice U/s. 148 of the Act and in the absence of the impugned order under appeal is liable to be quashed.*
- 3. The Ld. AO and the Authority Dispute Resolution Panel are not correct in bringing to tax the amount of Rs. 15,50,000/- U/s. 56(2)(vii)(b) of the Act being the difference between the stamp value of the property as per the Stamp Value Authority and the actual consideration paid by the assessee.*
- 4. The Ld. AO failed to consider and take cognizance of the evidences filed before him which evidences would substantiate the claim of the assessee that the actual consideration paid towards purchase of property is the market value of such property as on the date of transaction took place.*
- 5. The AO if he is not convinced with the submissions of the assessee, justifying the fair market value of the property purchased, in which case he ought to have referred the matter to the DVO (the valuation authority) to ascertain the fair market value of the property.*

6. *The Ld. AO passed the assessment order in a summary and casual manner without appreciating the submissions made by the assessee in proper manner.*
7. *For these and other reasons the appellant praisethat the orders passed by the Lower Authorities ought to be set aside in the interest of justice and fair play.”*

3. At the outset, the Ld. AR submitted before me that the Ld. AO did not consider and appreciate the evidences submitted before him which goes to the root of the matter to substantiate the claim of the assessee that the actual consideration paid towards purchase of property is the market value of such property as on the date of transaction took place. Further, the Ld. AR also submitted that the Ld. AO ought to have referred the matter to the Valuation Officer instead of making the addition arbitrarily without considering the submissions made by the assessee. The Ld. AR also submitted that even the Ld. DRP has not considered the objections raised by the assessee. Therefore, the Ld. AR pleaded that the assessee may be provided with one more opportunity to pursue her case before the Ld. AO.

4. Per contra, Ld. DR objected to the submissions of the Ld. AR and argued that before the Ld. A.O. though the assessee got sufficient opportunity to substantiate her case, the assessee failed to do so. Hence,

it was pleaded that the orders passed by the Ld. Revenue Authorities do not call for any interference and appeal of the assessee may be dismissed.

5. I have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, I find that the Ld. AO ought to have considered the submissions, explanations and the evidences submitted before him while making the addition. It is also pertinent to mention here that during the assessment proceedings, if at all the Ld. AO is not convinced with the submissions made by the assessee with regard to the valuation of the property, the Ld. AO is supposed to refer the matter to the Valuation Cell to obtain the market value of the property purchased by the assessee which was not done by the Ld. AO in the present case. Even the Ld. DRP, in my view, ought to have considered the submissions and the evidences produced before the Ld. AO, which were stated to be not properly appreciated by the Ld. AO, while rejecting objections raised by the assessee. Under these circumstances, considering the prayer and the submissions of the Ld. AR and the nature of issues involved in the appeal, in the interest of justice, I hereby remit the matter back to the file of Ld. AO for de-novo consideration thereby providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in their

proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 19th April, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 19/04/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Indira Pasupuleti, D. No. 1-320, Poolapalli, Palakollu, Andhra Pradesh – 534260.
2. राजस्व/The Revenue –Income Tax Officer, International Taxation, 3rd Floor, Deepthi Towers Main Road, Andhra Pradesh – 533001.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam