

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" 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.159/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)**

Garapati Veera Swamy
D.No.7-10-1302
Mahalaxmi Nagar
Road No.4
Tadepalligudem

Vs. Income Tax Officer
Ward (International
Taxation)
Kakinada

[PAN : BRXPG9288B]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Smt.A.Aruna, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 20.05.2024

घोषणा की तारीख/Date of Pronouncement

: 28.05.2024

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)]-10, Hyderabad in Appeal No.10299/2014-15 dated 04.01.2024, arising out of order passed u/s 147 r.w.s.144 of the Income Tax Act, 1961 (in short 'Act') dated 04.03.2022 for the Assessment Year (A.Y.) 2015-16.

2. Brief facts of the case are that the assessee had not filed return of income for the year under consideration. Assessing Officer(AO) observed that the assessee had sold an immovable property vide document No.1425/2014 dated 24.04.2014 for a total consideration of Rs.41,08,000/-. The AO initiated proceedings u/s 147 and accordingly, a notice u/s 148 was issued on 30.03.2021 and further notice u/s 142(1) was issued, but no compliance received from the assessee. Therefore, the AO has passed the order ex-parte based on material available on the record and made an addition of Rs.17,07,810/- as long term capital gains in the hands of the assessee.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the addition made by the AO and dismissed the appeal of the assessee ex-parte on merits on account of non-prosecution

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 order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) is not justified in confirming the action of the assessing officer in assessing

the long term capital gains at Rs.17,07,810 without allowing deduction for cost of construction of the flat

3. The learned Commissioner of Income Tax (Appeals) having accepted the fact that the appellant purchased the flat at initial stages of commencement of construction and sold a fully constructed flat, ought to have directed the assessing officer to allow the cost of construction incurred by the appellant.

4. Any other ground that may be urged at the time of appeal hearing.

5. The only contention of the Ld.AR is that the assessee purchased the flat at initial stages of commencement of construction and sold a fully constructed flat. The Ld.AR further submitted that the Ld.CIT(A) is not justified in confirming the action of the AO in assessing the long term capital gain at Rs.17,07,810/- without allowing deduction for cost of construction of the flat. She, therefore, pleaded that the assessee may be given an opportunity of being heard before the Ld.CIT(A) to substantiate his claim in the interest of justice.

6. Per contra, the Ld.DR argued that the assessee was given sufficient opportunities before the revenue authorities, but the assessee did not try to controvert the findings of the AO by adducing supporting details / evidences. She, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material available on record. In the instant case, assessment in the case of the assessee was completed u/s 147 r.w.s. 144, assessing the long term capital gains at Rs.17,07,810/- and on appeal before the CIT(A), the Ld.CIT(A) sustained the addition made by the AO. The only contention of the assessee is that the assessee purchased the flat at initial stages of commencement of construction and incurred expenditure for construction of the flat and sold a fully constructed flat. The only contention of the assessee is that the assessee was not given proper opportunity of being heard before the Ld.CIT(A) to controvert the findings of the revenue authorities in support of his claim and hence pleaded for an opportunity of being heard before the Ld.CIT(A) to meet the ends of justice. In view of the foregoing facts and circumstances of the case and in order to meet the principles of natural justice, I am inclined to remit the matter back to the file of the Ld.CIT(A) with a direction to afford an opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued and cooperate with the department during the proceedings.

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

Order pronounced in the open court on 28th May, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 28.05.2024

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Garapati Veera Swamy, D.No.7-10-1302
Mahalaxmi Nagar, Road No.4, Tadepalligudem
2. राजस्व/The Revenue – The Income Tax Officer, Ward (International
Taxation), Kakinada
The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam