

आयकरअपीलीयअधिकरण, विशाखापटणम 'SMC" 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.15/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)**

Mogalapalli Mahalakshmi
Flat No.404, Sitara Enclave
Opp.AMG Hospital
Seethammadhara
Visakhapatnam
[PAN :AUGPM0457M]

Vs. Income Tax Officer
Ward (International
Taxation)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 04.04.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

आदेश / O R D E R

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.10/10323/2014-15 dated 23.11.2023, arising out of order passed u/s 144 r.w.s.144C(3) of the Income Tax Act, 1961 (in short 'Act') dated 10.02.2023 for the Assessment Year (A.Y.) 2015-16.

2. Brief facts of the case are that the assessee is a non-resident individual and during the impugned assessment year, the assessee had sold immovable property bearing Document No.3645/2014 and got it registered on 09.06.2014 with SRO, Visakhapatnam for a consideration of Rs.35,65,700/-. The Assessing Officer(AO) issued noticed u/s 148 of the Act on 29.03.2021 in order to bring to tax the income from long term capital gains arising out of sale of immovable property. Subsequently, the AO completed the assessment and passed order u/s 144 r.w.s. 144C(3) of the Act, dated 10.02.2023, by assessing the income of the assessee at Rs.18,19,013/ and raised a demand of Rs.6,13,013/-.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee.

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) ought to have quashed the notice u/s 148 as invalid and ought to have quashed the consequent reassessment proceedings as void ab initio.

3. *The learned Commissioner of Income Tax (Appeals) ought to have affirmed that had the DIN been mentioned in the notice issued on 29.08.2021, there was no need to intimate again on 19.09.2022.*

4. *Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.14,14,654 made by the assessing officer towards re-computation of capital gains at Rs.13,92,012 as against loss of Rs.22,642 admitted by appellant.*

5. *Any other ground may be urged at the time of hearing.*

5. Ground No.1 and 5 are general in nature, which do not require specific adjudication.

6. Ground No.2 and 3 are not pressed by the assessee, hence, dismissed as not pressed.

7. With regard to Ground No.4, it was the submission of the Ld.AR that the AO made disallowance of indexed cost of improvement of Rs.14,21,650/- with supporting documents, such as source of funds, mode of payment and bank statement etc. It was further submitted that to substantiate assessee's claim, the assessee has produced confirmation letter from the civil contractor, but the Ld.AO as well as the Ld.CIT(A) rejected the submissions and confirmation letters filed by the assessee, saying that the assessee has not produced any supporting bills, vouchers, source of funds, in respect of the claim of indexed cost of improvement. The assessee has filed Memorandum of Understanding (MoU) dated

10.03.2006, which was executed by the assessee and civil contractor, by name Sri Vadakattu Sambasiva Rao, HUF and the civil contractor has shown the transaction in his return of income for the A.Y.2015-16. Therefore, it clearly establishes that the assessee entered into an agreement cum MoU and thereby, she made certain improvements and hence the indexed cost of improvement should be allowed.

8. On the other hand, the Ld.DR(CIT) has submitted that the MoU is unregistered and it is only notarized agreement, therefore, it is not a valid document. Hence, the order passed by the Ld.AO is to be confirmed.

9. I have heard both the parties and perused the material available on record. It is an undisputed fact that the agreement cum MoU is unregistered. The main grievance of the revenue is that the assessee has not produced any bills for the cost of improvement. It is undisputed fact that the civil contractor who entered into MoU has offered the amount received for cost of improvement from the assessee as income and the same is shown in the return of income filed by the contractor for the A.Y.2015-16. Therefore, the AO, simply cannot disbelieve the MoU on the ground that it was not registered. Therefore, I am of the view that the

assessee is entitled to indexed cost of improvement as claimed by the assessee, therefore, the ground raised by the assessee is allowed.

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

Order pronounced in the open court on 31st May, 2024.

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

Dated : 31.05.2024

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Smt.Mogalapalli Mahalakshmi, Flat No.404, Sitara Enclave, Opp.AMG Hospital, Seethammadhara, Visakhapatnam
2. राजस्व/The Revenue - The Income Tax Officer, Ward (International Taxation), Infinity Towers, Sankaramatam Road, Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam