

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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.253/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2014-15)

Gadiraju Jhansirani,  
Chinnamiram.

PAN: BQJPG8177J

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,  
Ward-2,  
Bhimavaram.

(प्रत्यर्थी/ Respondent)

Smt. A. Aruna, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

: 15/07/2024

: 25/07/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2024-25/1064753680(1), dated 09/05/2024 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 ["the Act"] for the AY 2014-15.

2. Briefly stated relevant facts of the case are that the assessee is an individual. A survey operation U/s. 133A of the Act was conducted in the case of M/s. Vishnu Infrastructures, Bhimavaram on 03/02/2015. During the survey, the survey team observed that the assessee – Smt. G. Jhansi Rani – along with other two landlords viz., Sri Gadiraju Venkata Subba Raju (the assessee’s husband) and Sri G. Rama Krishnam Raju (assessee’s son) has entered into a Development Agreement on 28/01/2014 with M/s. Vishnu Infrastructures for construction of 65 flats. All the three land lords are the joint owners of an open plot of land admeasuring 4,504 sq yds. As per the Development Agreement, M/s. Vishnu Infrastructures get 39 flats as its share and the three landlords get 26 flats as their share. It is also observed by the Revenue that as per the Development Agreement, M/s. Vishnu Infrastructures has absolute right over the said land and accordingly M/s. Vishnu Infrastructures applied to the Municipal Authorities for approval of plan on 20/08/2013 which was approved on 21/11/2013. Under these circumstances, the Ld. AO observed that the liability of tax on capital gains in the hands of the landlords is arising in the FY 2013-14 relevant to the AY 2014-15. By observing that the assessee is a non-filer, a notice U/s. 142(1) of the Act was issued on 12/02/2015 to the assessee.

In response, the assessee filed her return of income on 07/07/2015 admitting NIL taxable income. Subsequently, notice U/s. 148 of the Act was issued on 10/09/2015 with the prior approval of the JCIT and served on the assessee on 21/09/2015. In response, to the said notice U/s. 148, the assessee filed a letter on 7/10/2015 requesting to treat the return of income filed on 07/07/2015 as the return of income filed in response to the notice issued U/s. 148. Thereafter, statutory notices U/s. 143(2) and 142(1) of the Act were issued to the assessee on 19/11/2015 and called for certain information. In response to the notice issued on 5/8/2016, the assessee's Representative appeared before the Ld. AO and furnished the information from time to time as called for. During the assessment proceedings, on perusal of the material available before him as well as the information submitted by the assessee's Representative, the Ld.AO observed that the landlords are the sole and absolute owners of the property and the landlords have not only transferred the property to the Developers ie., M/s. Vishnu Infrastructures but also given a right to the developers to construct the buildings on the date of GPA for Development on 28/01/2014. It was further observed by the Ld. AO that though the assessee had filed her return of income and admitted capital

gains, the assessee had not paid any tax on capital gains since the assessee had claimed exemption U/s. 54F of the Act for all the eight flats received as per her share. Accordingly, the Ld. AO asked the assessee's Representative to restrict the deduction to one flat as per the provisions of section 54F of the Act. In response, the assessee's Representative filed his objections which are extracted by the Ld. AO in his order at pages 3, 4 & 5 and the crux of the issues raised by the assessee in her objection before the Ld. AO is as under:

*“i) The amendment made in the Finance Act, 2014 in respect of sec. 54 and 54F, restricts the investment made in one residential unit in India. This amendment is applicable for the assessment years commencing from 01/04-2015 i.e., from AY 2015-16. Therefore the capital gains cannot be brought to tax for the FY 2013-14 relevant to the AY 2014-15.*

*ii) The assessee had claimed exemption U/s. 54F of the IT Act for the entire LTCG since the built up area to be received is residential....”*

3. However, the Ld. AO did not consider the submissions and objections of the assessee and observed that the deduction claimed by the assessee for all the eight flats are independent and separate. Therefore, the Ld. AO opined that the assessee's claim made U/s. 54F for all the eight flats is not maintainable. The Ld. AO also observed that the exemption U/s. 54F is restricted to one flat i.e., Flat No. 511 with 1,790 sq.ft. Further,

for the purpose of computing the capital gains, the Ld. AO obtained the details of cost of sq ft for finished flats situated at the property in question from SRO, Bhimavaram and accordingly, the Ld. AO adopted Rs. 1,000/- per sq ft. Further, in the absence of proper evidence for the cost of development for land filling and construction of compound wall said to have been incurred during the year 1993-94, 20% of the relatable expenditure was disallowed and brought to tax. Thus, the Ld. AO computed the Long Term Capital Gains chargeable in the hands of the assessee for 8 flats received as her share which worked out to Rs. 89,79,885/- and determined the total income at Rs.90,35,685/- and passed the assessment order U/s. 143(3) r.w.s 147 of the Act dated 27/12/2016. Aggrieved by the order of the Ld. AO and the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

4. On appeal, the Ld. CIT(A)-NFAC, dismissed the appeal of the assessee in-limine and passed ex-parte order by observing as under:

*“2.4. In response to the several notices issued, the appellant has not filed any details / submissions, nor copy of Form-35, ground of appeal, statement of facts. Despite specific request to upload Form No. 35 and the order appealed against, the appellant has not responded and chosen to be silent. This shows that the appellant is not interested in pursuing the appeal.*

2.5 *In the absence of the copy of the order appealed against and the connected grounds of appeal, this appeal cannot be decided being defective .....*

....

....

3. *In view of the above narrated facts and circumstances, the undersigned is left with no option but to treat this appeal as defective. Accordingly, the appeal is dismissed in limine.”*

5. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The Ld. CIT(A) is not justified in deciding the appeal ex-parte.*

3. *Without prejudice to the above, the Ld. CIT(A) is not justified in assessing the capital gains at Rs. 89,79,885/- by granting exemption U/s. 54F of the Act for only one flat as against the eligible eight flats.*

4. *Any other grounds may be urged at the time of hearing.”*

6. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted before us that the Ld. CIT (A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard.

Ld. Departmental Representative [“Ld. DR”], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor her Representative has responded to the notices issued nor filed any details / submissions as called for by the Ld. CIT (A)-NFAC. It was further submitted that, under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

7. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, there was no response on behalf of the assessee before the CIT(A)-NFAC on the dates of hearing with regard to the details / submissions as called for by the Ld. CIT(A)-NFAC. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte and dismissed appeal in-limine. In this situation, considering the issues involved in the appeal, we are of the considered view that the Ld. CIT(A)-NFAC ought to have decided the case on merits instead of dismissing the appeal in-limine. However, considering the prayer of the Ld. AR, and in the interest

of justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

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

Pronounced in the open Court on 25<sup>th</sup> July, 2024.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER
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Dated :25/07/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee– Gadiraju Jhansirani, Flat No. 201, GRK Vinay Classic, Opp. SRKR Engineering College, Chinnamiram, Bhimavaram Mandal, West Godavari District, Andhra Pradesh – 534204.
2. राजस्व/The Revenue – Income Tax Officer, O/o. ITO, JP Road, Siva Rao Pet, Bhimavaram, Andhra Pradesh – 534201.
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