

आयकर अपीलियअधिकरण, 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.270/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2018-19)

M.G. Gopal,
Vijayawada.
PAN: AFWPM6317H

(अपीलार्थी/ Appellant)

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

Vs. Deputy Commissioner of
Income Tax,
Circle-2(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri MA Rahim, AR
Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing : 22/05/2024
घोषणा की तारीख/Date of
Pronouncement : 31/07/2024

ORDER

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"] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1055949390(1), dated 11/09/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee is an individual deriving income from salary, business in transport and interest on loans. The assessee has e-filed his return of income for the AY 2018-19 on 04/10/2018 declaring a total income of Rs. 38,58,050/- and agricultural income of Rs. 1,65,91,420/-. Initially, the return was processed U/s. 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS. Notice U/s. 143(2) of the Act was issued and served on the assessee on 28/09/2020. Subsequently, notices U/s. 142(1) dated 19/12/2019, 23/01/2020, 18/8/2020 & 01/03/2021 calling for relevant details were issued and served on the assessee. In response to the notices, the assessee has uploaded only agreement copy of agricultural land on e-filing portal. During the assessment proceedings, the Ld. AO observed that the assessee is engaged in the business of hotels and the assessee was asked to furnish the details. The Ld. AO further asked the assessee to furnish the documentary evidence with respect to the claim of deduction of Rs. 1,84,85,195/-. Since there was no response from the assessee and in the absence of any documentary evidence, the Ld. AO proceeded to make addition of Rs. 1,84,26,414/- rejecting the assessee's claim of deduction. Further, the Ld.AO also observed that the assessee has declared

profit under 44AE of Rs. 3,60,000/- and arrived the net profit under 44AE at Rs. 3,01,219/- and the assessee was asked to furnish the details. Considering the assessee's no response and in the absence of any explanation, the Ld. AO made addition of Rs. 3,60,000/- U/s. 44AE of the Act. Further, the Ld. AO, in the absence of any documentary evidence in respect of the agricultural income, the assessee's claim of agricultural income of Rs. 1,67,07,620/- was added back to the total income of the assessee. Furthermore, the Ld. AO also rejected the assessee's claim of expenses of Rs. 1,16,200/- incurred towards earning of agricultural income. Thus, the Ld. AO completed the assessment U/s. 143(3) r.w.s 144B of the Act and determined the assessed income at Rs. 3,90,50,864/- and passed the assessment order dated 23/04/2021. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, after considering the submissions of the assessee, and on perusal of the facts and circumstances of the case, granted part relief to the assessee and partly allowed the appeal. 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 Ld. CIT(A) erred in law and facts of the case in confirming the addition to the extent of Rs. 1,63,82,490/- and treating the same as income from business.*
2. *The Ld. CIT(A) also erred in confirming the above addition for the AY 2018-19 when the income relates to the AY 2017-18.*
3. *Documentary evidence in the shape of account copies of agricultural land as per books of account and copies of sale deeds filed with the Ld. Cit(A) during appeal proceedings clearly show that the income is assessable for the AY 2017-18 having arisen during the FY 2016-17.*
4. *Even after advising in para 6.2 of the appellate order that the assessment may be reopened for the AY 2017-18 to consider the above income, Ld. CIT(A) erred in confirming the addition for the AY 2018-19.*
5. *Ld. CIT(A) also erred in treating the income as business income when it is assessable under the head ‘capital gains’. It is submitted that evidence on record is clear that the agricultural land purchased by the appellant in the year 1993 was sold by him in 2016 after a long gap and therefore the income is assessable under the head ‘capital gains’.*
6. *Such other grounds may be urged at the time of appeal hearing.”*

4. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted that the assessee has not pressed the **Grounds No. 2, 3 & 4. Accordingly, these grounds are dismissed as not pressed.**

5. With respect to **Grounds No. 1 & 5**, the only issue involved in these grounds is whether the Ld. CIT(A)-NFAC is right in treating the income of the assessee as ‘business income’ instead of ‘capital gains’ as claimed by the assessee. On this issue it was

the submission of the assessee that the land which was purchased by the assessee in the year 1992 and the same was sold by the assessee in the year 2016 after a long gap of 24 years and therefore, the income should be assessable under the capital gains but not under the head 'income from business'. The Ld. AR further submitted that it is an agricultural land however, the assessee has not claimed the entire exemption but the assessee has pleaded only for relief in computation for treating it as capital gains. However, the Ld. AO erroneously treated the same as business income of the assessee. The Ld. AR also relied on the decision of the Hon'ble Madras High Court in the case of CIT vs. Mohammed Mohideen [1989] 176 ITR 393 (Mad.); CIT, Madras vs. Kasturi Estates (P.) Ltd [1966] 62 ITR 578 (Mad.) and the judgment of the Madhya Pradesh High Court in the case of CIT vs. Suresh Chand Goyal [2008] 298 ITR 277 (MP) and pleaded to set aside the orders of the Ld. Revenue Authorities on this issue.

6. On the other hand, the Ld. Departmental Representative ["Ld. DR"] argued that the assessee has sold the land by dividing it into small plots therefore, the Ld. Revenue Authorities treated the same as adventure in the nature of trade and computed the

income under the head 'business income'. Therefore, the Ld. DR pleaded to uphold the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee has divided the land into small extents and sold the same. It is also undisputed fact that the land is situated within the Municipal Limits of Serilingampally Municipality. Therefore, even though it is an agricultural land, it attracted capital gain tax. The main contention of the assessee is that even though the assessee has divided the land into plots and sold out the same, the assessee's income should not be treated as business income since the assessee has never engaged in any real estate business and also this is the only such transaction done by the assessee. We have also gone through the decisions of the Hon'ble High Courts (supra) relied on by the Ld. AR. The Hon'ble Madras High Court in the case of Kasturi Estates (P.) Ltd (supra) has held as under:

".....A sale of immovable property may possible be a trading or commercial transaction, but need not necessarily be so..... If a land-owner developed his land, expended money on it, laid roads, converted the land into house sites and with a view to get a better price for the land, eventually sold the plots for a consideration yielding a surplus, it could hardly be said that the transaction is anything more than a realisation of a capital

investment or conversion of one form of asset into another. Obviously, the surplus in such a case will not be trading or business profit because the transaction is one of realisation of asset in investment rather than one in the course of trade carried on by the assessee or an adventure in the nature of trade.”

After considering the decision of the Hon’ble Madras High Court in the case of CIT vs. Kasturi Estates (P) Ltd (supra), we are of the considered view that even in the instant case, the said decision of the Hon’ble High Court holds good as there is no material evidence to prove that the assessee has ever intended to engage in any trading activity. Therefore, we hereby allow the Grounds No. 1 & 5 raised by the assessee with a direction to the Ld. AO that the entire sale consideration of the assessee should be treated as capital gains and not as business income of the assessee. It is ordered accordingly.

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

Pronounced in the open Court on 31st July, 2024.

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

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

Dated :31/07/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee– M. Giridhar Gopal, 40-3-2/A, Krishna Nagar, Labbipet, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –DCIT, Circle-2(1), Ground Floor, Central Revenue Buildings, M.G. Road, Vijayawada, Andhra Pradesh – 520002.
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, Visakhapatna

