

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.946/Bang/2024
Assessment year : 2016-17

Raghu Belagodu (HUF), No.69/1, 2 nd Main, 8 th Block, Jayanagar, Bengaluru – 560 082. PAN : AAGHR 9947F	Vs.	The Principal Commissioner of Income Tax, Bengaluru – 2, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha, Advocate
Respondent by	:	Shri D.K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.07.2024
Date of Pronouncement	:	27.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This is the second round of proceedings before the Tribunal. The assessee has filed the appeal against the order u/s. 263 of the Act dated 29.03.2024 passed by the Principal Commissioner of Income-Tax, Bengaluru-2 [Pr.CIT] for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessment in the hands of the assessee for the AY 2016-17 was completed by the AO u/s. 143(3) of the Act on 29.12.2018. The assessee had received

compensation of Rs. 3.32 Crores from M/s. Karnataka Industrial Regional Development Board (KIADB) on compulsory acquisition of land and claimed the same as exempt relying on the CBDT Circular No. N.36/2016 dated 25.10.2016. The Assessing Officer accepted the claim of the assessee and accordingly completed the assessment. The Assessing Officer has also noted that the CBDT, in the above said circular has clarified that compensation received in respect of award or agreement which has been exempted from levy of income tax vide section 96 of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (RFCTLARR Act) shall not be taxable under the provisions of Income Tax Act.

3. The Id. Pr.CIT in the first round of proceedings took the view that the land acquired by KIADB was to be used by BMRCL(Bangalore Metro Rail Corporation Ltd.) and the said land was not acquired under RFCTLARR Act. Accordingly, the assessee is not entitled for exemption and consequently, the assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. Accordingly, the Id. Pr.CIT held that the assessee is not eligible for exemption since the compensation received by the assessee has no relation to RFCTLARR Act. Accordingly, he set aside the assessment order passed by the AO with the direction to redo the assessment afresh by disallowing exemption claimed by the assessee in respect of long term capital gain.

4. Before the Tribunal, the Ld AR for the assessee contended that the provisions of RFCTLARR Act shall apply to the land compulsorily acquired from the assessee. Since these legal contentions were not raised before Ld Pr.CIT, the Tribunal by order dated 08.10.2021 set aside the order passed by Ld. Pr.CIT and restored all the matters to his file for examining afresh duly considering various legal contentions.

5. In the second round of proceedings, the ld. Pr.CIT after considering the submissions and the documents furnished, noted that land was acquired under Karnataka Industrial Area Development Act (KIAD Act) which is not exempt either under KIAD Act or Income-tax Act, 1961. Section 27 & 29 stipulates compensation under this Act and not under RFCTLARR Act. Further section 43 of KIAD Act does not give exemption from Income-tax Act, it gives exemption only to Stamp Act and section 47 of KIAD Act is having overriding effect. The assessee relied upon judgment of Hon'ble High Court of Karnataka in WP No.7660/2003(T-IT) dated 9.1.2024 in the case of Smt. P. Jaishree v. CCIT-1, Bengaluru and submitted that the facts of this case are similar to assessee's case and it is in favour of assessee. The ld. Pr.CIT noted that against the above judgment the department has filed Writ Appeal in WA No.373/2024 which is pending as on the date of his order. Further, in the above judgment the Hon'ble High Court relied on the judgment in WP No.7660/2023 in the case of BMRCL Ltd. v. Sri Balaji Corporate Services & Ors (WA No.890/2022) against which the department has submitted proposal for filing SLP before the Hon'ble Supreme Court and therefore the above

judgments had not reached finality. Hence without prejudice to the above judgments of Hon'ble High Court, the Id. Pr.CIT held that the assessment completed by accepting the revised total income resulted in short computing of long term capital gains of Rs.3,45,13,545 and consequent short levy of tax of Rs.66,49,705, which is erroneous and prejudicial to the interests of the revenue. Accordingly he set aside the assessment order with a direction to the AO to redo the assessment. Aggrieved, the assessee is in appeal before the ITAT.

6. The Id. AR reiterated the submissions made before the Id. Pr.CIT she strongly contested that during the assessment proceedings after considering the entire facts observed that the amount of compensation paid to assessee towards land acquisition comes under RFCTLARR Act and CBDT Circular No.36/2016 dated 25.10.2016. She also relied on the judgments in the following cases:-

- (i) Madaparambil Varkey Varghese v. ACIT, Hon'ble Kerala High Court Judgment dated 31.5.2019
- (ii) ACTI v. S V Global Mill Ltd., ITAT, Cochin order dated 28.1.2021
- (iii) Balakrishna v. UOI, Hon'ble Supreme Court judgment
- (iv) Sanaulla A Khan v. ITO, ITA No.2645/Bang/2019 (ITAT Bangalore)
- (v) Viswanathan v. CIT, Hon'ble Kerala High Court judgment in WP No.3227/2020 dated 18.2.2020
- (vi) BMRCL v Sri Balaji Corporate Services & Ors. Hon'ble High Court of Karnataka judgment dated 27.9.2023
- (vii) Jaishree v. ITO & Ors., Hon'ble High Court of Karnataka judgment dated 9.1.2024

(viii) NHAI v. P Nagaraju @ Cheluvaiah & Anr., Hon'ble Supreme Court judgment

7. The Id. DR strongly relied on the order of Pr.CIT and submitted that compensation awarded to the land loser is determined by KIADB with mutual consent which is evident from the intimation letter issued by KIADB u/s. 29(2) of the KIAD Act, 1966 and compensation has not been calculated under RFCTLARR Act. Therefore, the circular relied by the Id. AR is not applicable to the present facts of the case. The judgment relied by the Id. AR has been challenged before the Hon'ble Apex Court. Accordingly the order passed by the AO is erroneous and prejudicial to the interests of the revenue.

8. In the rejoinder, the Id. AR submitted that the Id. Pr.CIT was bound to follow the judgment of jurisdictional High Court which is in favour of the assessee, till the passing of the order by the Hon'ble Apex Court. Therefore the Id. Pr.CIT is not justified in holding that the compensation does not come under the RFCTLARR Act.

9. Considering the rival submissions, we note that the land has been acquired by BMRCL through KIADB for Metro Rail project as per Notification No.CI.162/SPQ/2015 dated 19/22-12-2015 u/s. 28(4) of the KIAD Act, 1966 and the award has been fixed as per mutual consent. The Karnataka Govt. had published a Notification u/s. 28(1) of the KIAD Act, 1966 dated 24.12.2012 in Karnataka State Gazette Part III on 15.01.2015 in page No. 413 to 415 as per the KIADB Ref. No. KIADB/METRO/LAC/131/2014-15 Dated 02.12.2015 which is

placed at pages 53 to 55 of PB. We are reproducing section 28 & 29 of the KIAD Act, 1966 which are as under:-

“Karnataka Industrial Areas Development Act, 1966

28. Acquisition of land.-

- (1) If at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land.
- (2) On publication of a notification under sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired.
- (3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.
- (4) After orders are passed under sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section (1), a declaration shall, by notification in the official Gazette, be made to that effect.
- (5) On the publication in the official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.
- (6) Where any land is vested in the State Government under sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State

Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

- (7) If any person refuses or fails to comply with an order made under sub-section (5), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary.
- (8) Where the land has been acquired for the Board, the State Government, after it has taken possession of the land, may transfer the land to the Board for the purpose for which the land has been acquired.

29. Compensation.

- (1) Where any land is acquired by the State Government under this Chapter, the State Government shall pay for such acquisition compensation in accordance with the provisions of this Act.
- (2) Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be paid in accordance with such agreement.
- (3) Where no such agreement can be reached, the State Government shall refer the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

- (4) On receipt of a reference under sub-section (3), the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested herein to appear before him and state their respective interests in the said land.”

10. On going through the above sections there is no dispute that KIADB has not followed any procedure as laid down in sections 28 & 29 of the KIAD Act, 1966. A similar issue has been decided by the jurisdictional High Court in the case of *Mr. Vellara Francis Thomas v. UOI, WP No.1705/2024 dated 27.2.2024* reported in 162 taxmann.com 68 (Kar) wherein it is held as under:-

“ 3. The material on record discloses that the petitioner who is the individual assessee under the Income Tax Act, 1961 [for short, 'the IT Act'] filed her income tax returns for the assessment year 2018-19 and in the said returns, she voluntarily disclosed tax in respect of long term capital gains for receiving compensation from the concerned authority-Karnataka Industrial Areas Development Board. It is contended that the petitioner was unaware of the exemption for NC: 2024:KHC:8023 deduction of tax deducted at source as well as payment of tax in respect of the land acquisition compensation received by her and when she came to know about the same, she submitted an application under Section 119[2][b] of the IT Act seeking condonation of delay and sought for refund accordingly. The said application was considered by the respondent who proceeded to reject the same both on the ground of delay as well as on merits by passing the impugned order dated 08.03.2023 which is assailed in the present petition.

4. Insofar as the entitlement of the petitioner to claim exemption from payment of income tax on the land acquisition compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is concerned, the said issue/question is

truly and squarely covered by the Division Bench decision of this Court in the case of 'BANGALORE METRO RAIL CORPORATION LIMITED v. M/s. SRI BALAJI CORPORATE SERVICES AND OTHERS' in W.A. No.890/2022 and connected matters disposed of on 27.09.2023, wherein it is held that the land acquisition compensation is exempted from payment of income tax. Applying the law laid down by the Hon'ble Division Bench, I am of the considered opinion that the respondents committed error in rejecting the request of the petitioner for refund of the tax collected by them in relation to the subject land acquisition compensation.”

11. We note that in the present case on hand the Id. Pr.CIT has not accepted the judgment of jurisdictional High Court observing that revenue has filed petition before the Hon'ble Apex Court. Both the parties were unable to produce the status of the case in the Hon'ble Apex Court against the judgment of Hon'ble High Court in the case of BMRCL v. M/S. Sri Balaji Corporate Services & Ors. in W.A. No.890/2022. The Id. Pr.CIT is bound to follow the judgment of jurisdictional High Court as on the date of the order on similar facts. In support of our view we rely on the judgement of Hon'ble High Court of Allahabad in the case of Mohan Lal Santwani vs UOI reported in (2022) 138 taxmann.com 229 (Allahabad) and another judgment of the Co-ordinate Bench of ITAT DELHI in the case of Sheraton International , LLC vs JCIT International Taxation in ITA No. 4772 to 4774/Del/2019 reported in (2022) 142 taxmann.com 520 (Del= Tribunal). Further the judgments relied by the Id. AR noted above also support the case of the assessee. Respectfully following the above judgments as well as the judgment in the case of *Mr. Vellara Francis*

Thomas v. UOI noted supra, we hold that the compensation received by the assessee towards mutual agreement as per Notification issued is not liable for payment of income tax on such compensation received. Therefore, we quash the order of the ld. Pr.CIT.

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

Pronounced in the open court on this 27th day of August, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.