

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखासदस्य 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. 230/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

<b>Sannidhi Sriramachandra Murthy (HUF)</b> D.No. 42-10-30/31 Sree Ramachandra Murthy Nilayam Mangalavarapu Peta Rajahmundry – 533101 Andhra Pradesh  [PAN: AAXHS4350L]	v.	<b>The Assistant Commissioner of Income Tax, Circle-1</b> Income Tax Office, Aayakar Bhavan Veerabhadrapuram Rajahmundry-533105 Andhra Pradesh
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. Satyasaai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.09.2024
घोषणा की तारीख/Date of Pronouncement	:	25.09.2024

**आदेश /O R D E R**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the assessee against proceedings of Learned Principal Commissioner of Income Tax, Visakhapatnam – 1 [hereinafter in short “Ld.Pr.CIT”] passed under section 263 of Income Tax Act, 1961 (in short ‘Act’)

vide DIN & Order No. ITBA/COM/F/17/2023-24/1023231590(1) dated 29.03.2024 for the A.Y.2013-14.

2. Brief facts of the case are that, assessee being Hindu Undivided Family (HUF) filed its return of income admitting a total income of Rs. 20,69,660/- consisting of income from business at Rs. 17,27,016/- and Long-Term Capital Gain income of Rs. 24,833/- and other sources of Rs. 3,62,909/-. Subsequently, the case was reopened by issue of notice under section 148 of the Act on 17.03.2021 and in response to the said notice assessee filed return of income on 23.03.2021 admitting the same income. The Assessing Officer completed the assessment under section 147 r.w.s. 144B of the Act on 24.03.2022 by accepting the income returned. Thereafter, Ld.Pr.CIT in exercising of power vested on him under section 263 of the Act considered the order of the Assessing Officer as erroneous and prejudicial to the interest of the revenue on the following grounds.

- i. Ld.Pr.CIT observed that assessee converted its urban agricultural lands into stock-in-trade on 10.03.2010 and sold during the financial year 2012-13 for a sale consideration of Rs.2,00,49,030/-. Ld.Pr.CIT observed that as per Sec.45(2) of the Act, the fair market value of the asset on the date of such conversion i.e., 10.03.2010 shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset into stock-in-trade.

ii. Ld.Pr.CIT noticed that assessee has claimed exemption under section 54B of the Act for Rs. 84,56,550/- and under section 54F of the Act for Rs.1,15,67,647/-. The objection of the Ld.Pr.CIT is since the transfer took place on 10.03.2010 the investments should have been made on or before 10.03.2012, whereas assessee has invested in the purchase of agricultural lands for claiming deduction under section 54B beyond the due date and also invested in residential property for claiming deduction under section 54F of the Act on 20.09.2013.

3. Thereafter, Ld.Pr.CIT issued show cause notice under section 263 of the Act dated 07.03.2024 to show cause why the exemption claimed under section 54B and 54F of the Act could not be denied. In response, assessee vide reply dated 12.03.2024 submitted that the capital gains on the conversion of the capital asset into stock-in-trade was realised during the assessment year 2013-14. As per the provisions of section 45(2) of the Act, it becomes taxable in the year of realisation of the stock-in-trade. Assessee also further submitted that, he relied on the CBDT Circular No. 791 dated 02.06.2000 wherein for the purpose of claiming exemption under section 54EA/54EB/54EC, the date of transfer shall be considered as the date on which the stock-in-trade is sold and not on the date of conversion of the capital asset into stock-in-trade.

4. Considering all the submissions made by the assessee, Ld.Pr.CIT further observed that the assessee has included Rs. 17,73,716/- as deduction under section 54B of the Act whereas it was claimed to be the purchase of the residential flat and not agricultural land. Ld.Pr.CIT therefore considered the order of the Assessing Officer is erroneous and also prejudicial to the interest of the revenue and directed the Assessing Officer to pass a consequential order by disallowing the following: -

- i. Deduction under section 54B of the I.T. Act claimed by the assessee for Rs. 84,56,550/-
- ii. Deduction under section 54F of the I.T. Act claimed by the assessee for Rs. 1,15,67,647/-

5. Aggrieved by the order of the Ld. Pr.CIT assessee is in appeal before us by raising following grounds of appeal: -

1. *The order of the learned Principal Commissioner of Income Tax is contrary to the facts and also the law applicable to the facts of the case.*
2. *The learned Pr. Commissioner of Income Tax, Visakhapatnam-1 is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order u/s 147 r.w.s.144B dated 24.03.2022 for the A.Y 2013-2014 is neither erroneous nor prejudicial to the interests of revenue.*
3. *The learned Pr. Commissioner of Income Tax, Visakhapatnam-1 is not justified in directing the Assessing officer to disallow the deduction of Rs.84,56,550 claimed by the appellant u/s 54B of the Act.*
4. *The learned Pr. Commissioner of Income Tax, Visakhapatnam-1 is not justified in directing the Assessing officer to disallow the deduction of Rs.1,15,67,647 claimed by the appellant u/s 54F of the Act.*
5. *The learned Pr. Commissioner of Income Tax, Visakhapatnam-1 ought to have appreciated that the assessing officer initiated enquiries in*

*respect of the above issues and as such it is not a case of lack of inquiry' to enable the learned Commissioner of Income Tax to invoke the provisions of S. 263*

6. *Any other ground that may be urged at the time of appeal hearing.”*

6. Ground Nos. 1 and 6 are general in nature and needs no adjudication.
  
7. Ground Nos. 2, 3, 4 & 5 relates to the validity of the order passed by the Ld.Pr.CIT under section 263 of the Act. Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee converted agricultural lands into stock-in-trade on 10.03.2010 which was subsequently sold during the financial Year 2012-13. The Ld.AR further submitted that assessee has considered the fair market value as on the date of conversion for the purpose of computation of capital gains and treated the consideration received from the date of conversion to the date of sale of stock-in-trade as his business income and has filed return of income accordingly. However, the Ld.Pr.CIT has disputed the date of transfer, without considering the provisions of section 45(2) of the Act, Ld.AR contended. Ld.AR further pleaded that since the allowability of deductions with respect to capital gains arise in the period of sale of stock-in-trade, investment made by the assessee after realisation of stock-in-trade needs to be allowed.
  
8. He also further pleaded that on the date of conversion assessee has not received any consideration and hence it will be a financial burden on the assessee for discharging the tax on capital gains. Ld.AR submitted that on similar facts

the Co-ordinate Bench of Jaipur in ITA No. 144/JP/2023 in the case of Gुरुवendra Singh v. ACIT dated 07.12.2023 held that capital gains arise in the period when the stock-in-trade is sold by the assessee. He therefore pleaded that the deduction claimed by the assessee under section 54B and 54F to be allowed.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] placed heavy reliance on the order of the Ld.Pr.CIT and argued that date of transfer is to be construed as the date on which the capital asset is converted into stock-in-trade. In this connection Ld. DR relied on the following decisions:

- i. Decision of the Hon’ble Madras High Court in the case of CIT v. Essorpe Holdings (P.) Ltd., [2017] 83 taxmann.com 280 (Madras).
- ii. Decision of the ITAT Bangalore Bench in the case of Futuristic Diagnostic Imaging Centre (P.) Ltd. V. ITO [2022] 137 taxmann.com 342 (Bangalore Trib.)

10. We have heard both the sides and perused the material available on record. It is an undisputed fact that the agricultural land was converted into stock-in-trade on 10.03.2010 whereas the stock-in-trade is sold in the financial year 2012-13. The only issue involved in this case is to whether the time limit for making the investment is to be counted from the date when the assessee converted the capital asset into stock-in-trade or when the stock-in-trade is sold by the assessee. The capital gains till the date of conversion were computed by the assessee as per the

provisions of section 45(2) of the Act. Therefore, as and when such stock-in-trade was sold to the ultimate buyer, capital gains and corresponding business income was offered for tax by the assessee, in the year of sale. In the instant case, the assessee invested in agricultural lands and residential property and has claimed benefit under section 54B and 54F of the Act respectively out of the money so received on sale of stock-in-trade. These facts are not disputed by the revenue. The only contention of the Ld.Pr.CIT is that the assessee has not invested in the new agricultural land and invested in residential property within the specified time limit prescribed under section 54B and 54F of the Act.

**11.** As per section 54B the assessee is required to purchase agricultural land within two years from the date of transfer of land. As per section 54F the assessee is required to construct the residential property within the period of three years from the date of transfer of capital asset. The contention of the Ld.PCIT that transfer of agricultural land in to stock in trade was during 2009-10, when deemed capital gains arises. We extract below Section 45 of the Act, which determines the capital gains in cases of conversion to stock in trade.

*45. Capital gains.*

*(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.*

*(1A) Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—*

*(i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or*

*(ii) riot or civil disturbance; or*

*(iii) accidental fire or explosion; or*

*(iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),*

*then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such money or other asset was received and for the purposes of section 48, value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.*

*Explanation.—For the purposes of this sub-section, the expression "insurer" shall have the meaning assigned to it in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938).*

*[(1B) Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any amount under a unit linked insurance policy, to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof, including the amount allocated by way of bonus on such policy, then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such*

*amount was received and the income taxable shall be calculated in such manner as may be prescribed.]*

***(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.”***

**12.** As per provisions of section 45(2) any profits or gains arising from the transfer by way of conversion by the owner of a capital asset into or its treatment as stock-in-trade of that business carried on by him then such profits and gains is to be charged under the head capital gains, once the said stock-in-trade is sold by the assessee As per section 2(47)(iv) of the Act, the transfer takes place when the conversion is done to the capital asset into stock-in-trade, however, the same is chargeable to tax under the head capital gains only in the year in which stock-in-trade is sold by the assessee and consideration is received. On the date of conversion to the stock-in-trade, assessee does not receive any amount of consideration and received the consideration only when the stock-in-trade is ultimately sold. Therefore, in our view tax on such conversion being considered as a transfer, is to be determined as per fair market value on the date of conversion and computed only when the amount is received by the assessee on the sale of

stock-in-trade. Similarly, the date on which investment is to be made in a specified asset is to be reckoned from the date when the consideration is received by the assessee on account of sale of stock-in-trade. CBDT Circular No. 791 dated 02.06.2000 referred by the Ld.AR is with reference to the benefit availed by the assessee under section 54EA, 54EC and 54EB of the Act and in our view the same analogy would be applicable for the benefit claimed under any other similar section.

**13.** Based on the above discussions, we have no hesitation in confirming that the deduction u/s 54B and 54F of the Act, shall be allowed in the impugned assessment year when the stock-in-trade is sold by the assessee. However, we find from the order of the Ld.Pr.CIT, the Ld.Pr.CIT while examining the investment in agricultural land has observed that the assessee has purchased residential flat for Rs. 17,73,760/- vide document No. 5623/2012 dated 01.09.2012 and claimed it to be an agricultural land. However, the Ld.Pr.CIT erred while giving direction to the Assessing Officer to state that the above amount of Rs. 17,73,760/- is not eligible for deduction under section 54B of the Act. We therefore direct the Assessing Officer to examine the documents and allow the deduction under section 54B and 54F of the Act based on our above observations. We are therefore inclined to set-aside the order passed by the Ld.Pr.CIT under section 263 of the Act and allow the appeal of the assessee.

14. The case laws relied by the Ld. DR are distinguishable on the facts that it relates to the nature of income and not to the date of reckoning of the capital gains and investment for the purpose of claiming deduction under section 54B and 54F of the Act. Hence these cases are not in help to the revenue.

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

Order pronounced in the open court on 25<sup>th</sup> September, 2024.

**Sd/-**  
(दुव्वूरु आरएल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER  
Dated :.25.09.2024  
Giridhar, Sr.PS

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

**आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-**

1. निर्धारिती/ The Assessee : **Sannidhi Sriramachandra Murthy (HUF)**  
D.No. 42-10-30/31  
Sree Ramachandra Murthy Nilayam  
Mangalavarapu Peta  
Rajahmundry – 533101  
Andhra Pradesh
2. राजस्व / The Revenue : **The Assistant Commissioner of Income Tax, Circle-1**  
Income Tax Office, Aayakar Bhavan  
Veerabhadrapuram, Rajahmundry -533105  
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam