

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

**(Through Hybrid Hearing)**

आयकर अपील सं./ I.T.A. No. 279/Viz/2024

(निर्धारण वर्ष / Assessment Year: 2019-20)

Lakshmi Prasunamba Kodali,  
Hyderabad.  
PAN: CXRPK7177G

Vs. Asst. Commissioner of  
Income Tax,  
Circle-International Tax,  
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri S.V. Rao Associates

प्रत्यर्थी की ओर से / Respondent by

: Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 10/09/2024

घोषणा की तारीख/Date of

: 25/09/2024

Pronouncement

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. CIT(A)-10, Hyderabad in Appeal No. 10330/2018-19, dated 18/06/2024 arising out of the order passed U/s. 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2019-20.

2. Briefly stated the facts of the case are that the assessee is a Non-resident Indian (NRI). During the AY under consideration, the assessee has derived income from the Long Term Capital Gain ["LTCG"] from the sale of immovable properties and income from other sources as interest from NRO accounts. The assessee has e-filed his return of income for the AY 2019-20 on 29/05/2019 by declaring total income of Rs. 1,22,28,710/-. Subsequently, the assessee has revised the return of income for the AY 2019-20 on 19/6/2019 and declared total income of Rs. 1,25,23,020/-. The return was processed U/s. 143(1) of the Act and subsequently, the case was selected for scrutiny under CASS for complete scrutiny for the reason viz., "high ratio of refund to TDS related to section 195 (Non-business ITR)". Accordingly, notice U/s. 143(2) of the Act was issued. Due to change in the incumbency, a notice U/s. 129 of the Act was also issued on 16/09/2021 along with notice U/s. 142(1) of the Act. In response, the assessee submitted the information as called for. On perusal and verification / examining the submissions made by the assessee, the, the Ld. AO reworked the LTCG in the hands of the assessee amounting to Rs. 4,13,21,325/- arose from three different properties received from her mother viz., (i) Residential property at Hyderabad (ii) Residential house property at Eluru and (iii)

land at Amaravathi. Thus, the Ld. AO assessed the total income of the assessee at Rs. 4,18,87,547/- and raised a demand of Rs. 81,51,028/-. The Ld. AO also initiated the penalty proceedings U/s. 270A of the Act. Thus, the Ld. AO passed the assessment order U/s. 143(3) r.w.s 144C(3) of the Act dated 03/11/2011. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, since there was no response from the assessee with respect to the hearing notices issued and in the absence of any representation on behalf of the assessee, the Ld. CIT(A)-NFAC passed the order ex-parte and partly allowed the assessee's 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 Leaned CIT (A) has erred both in law and in facts while determining the total income of the Assessee at Rs. 4,18,87,547 / -*
2. *The Ld CIT (A) grossly erred in stating that the assessee has not responded to notices issued despite the fact that the submissions were filed by the assessee in the portal.*
3. *The Ld CIT (A) Ought to have appreciated the fact that the valuation report submitted by the DVO is not free from defects.*
4. *The Ld CIT (A) ought to have considered the FMV as on 31/03/2001 based on the details submitted by the assessee.*
5. *The Ld CIT (A) grossly erred in blindly following the value determined by the DVO.*

6. *The Assessee craves leave to add, alter amend, modify substitute delete and or rescind all or any of the grounds of appeal on or before the final hearing.”*

4. 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.

5. 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 his 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)-NFAC does not call for any interference.

6. We have heard the both the sides and carefully perused the materials available 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 Ld. 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)-NAFC was left with no other option except to adjudicate the appeal ex-parte and partly allowed the assessee's appeal by observing as under:

*“6.7. During the course of appellate proceedings, as there was no response from the appellant to the number of hearing of notices issued, in the interest of natural justice, the AO was directed to appraise of the report called for from the DVO. The AO vide letter dated 20/05/2024, submitted a copy of the DVO's report dated 4/4/2022. The report furnished is as under.....*

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*6.8. Vide the above report, the District Valuation Officer, Income Tax Department, Hyderabad, has estimated the fair market value ofa the said property in respect of the property at H.No. 8-2-593/82/A/133, Plot No. 133, Survey No. 403/1(Old), 120 (New) of Shaikpet Village and Survey No. 102/1 of Hakeempet Village, situated at Road No. 15, Jubilee Hills, Hyderabad at Rs. 6320/- per sq yard and the cost of the land of 1258 sq yds worked at Rs. 79,50,560/-. In the light of the above, the AO, is directed to adopt the fair market value of the land at Rs. 6320/- per sq yds for the 1258 sq yds and recalculate the value of the property. Since the AO has adopted the building cost as disclosed / returned by the appellant there is no dispute in this regard. The AO is directed to recalculate the Capital Gains accordingly and determine the appellant's taxable share.....”*

On perusal of the above decision of the Ld. CIT(A)-NFAC, we are of the view that the Ld. CIT(A)-NFAC ought to have called for the objections, if any, before the directing the Ld. AO to adopt the fair market value as well as while partly allowing the grounds raised by the assessee. In this

situation, considering the issues involved in the appeal, as well as considering the prayer of the Ld. AR, and in the interest of justice, strictly following the principles of natural 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 available on the record. It is ordered accordingly.

7. 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> September, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :25/09/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Lakshmi Prasunamba Kodali, Pillar No. 1672, SV Square, Hyderabad, Telangana. 500033.

2. राजस्व/The Revenue – ACIT, Circle-International Taxation, Daba Gardens, Visakhapatnam, Andhra Pradesh – 530020.
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