आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE PRESIDENT
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.294/Viz/2023
(निर्धारण वर्ष/ Assessment Year : 2015-16)

Income Tax Officer - Ward-3(3) IInd Floor Infinity Towers Shankarmatam Road, Santhipuram Visakhapatnam - 530016	Vs.	Saripalli Vimala Devi Flat No. 103, Sun N Sea Apartments East Point Colony Visakhapatnam - 530017 **PAN: BDDPS0883J**
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Sri C. Kameswara Rao, AR
प्रत्यार्थीकीओरसे/ Revenue by	:	Dr. Satyasai Rath, CIT-DR
सुनवाईकीतारीख/ Date of conclusion of Hearing	:	18/12/2024
घोषणाकीतारीख/Date of Pronouncement	:	18/12/2024

O R D E R

PER S. BALAKRISHNAN, ACCOUNTANT MEMBER :

1. This appeal filed by the Revenue is against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)-NFAC'] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056789653(1), dated 5/10/2023 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 [in short 'the Act'], dated 26/10/2017 for the AY 2015-16.

2. Briefly stated the facts of the case are that the assessee being an individual, filed the return of income for the AY 2015-16 belatedly on 29/04/2016 admitting a total income of Rs. 1,97,44,630/-. It was noticed that the assessee along with her daughter Smt. Indukuri Uma Maheswari being the legal heirs of one Shri Saripalli Ranga Raju has sold a building located at D.No. 30-15-127A, 30-15-127B and D.No.29-6-1 at Dabagardens, Visakhapatnam, consisting of 3 floors, admeasuring 6067 sq ft for a consideration of Rs.10 Crs to M/s. Cell Point India Pvt Ltd. The assessee being a co-owner of the property, with each 50% of share along with her husband, Sri Saripalli Rangaraju and upon his death, the assessee inherited the property as legal heir being 25% of the share from her husband and the balance share of 25% to her daughter Smt. Indukuri Uma Maheswari. The assessee claimed Rs. 3.75 Crs as cost of acquisition of the property, wherein, the assessee stated that she has repaid the mortgage loan of Rs.5 crores, being the share of her husband and claimed proportionate to her 75% of share in the property, while computing the capital gains. The Ld. AO noticed that since it was not incurred for purchase of property or in connection with the transfer of property at the time of sale, reopened the case U/s. 147 of the Act and issued notice U/s. 148 of the Act on 24/6/2016 which was duly served on the assessee. In response, the assessee filed a reply and requested the return filed on

29/4/2016 may be treated as return filed in response to the notice U/s.148 of the Act. Subsequently, notice U/s. 143(2) and 142(1) of the Act were issued to the assessee from time to time. During the assessment proceedings, the Ld. AO noticed that the property was originally purchased by Sri Saripalli Ranga Raju (since deceased) and Smt. Saripalli Vimala Devi admeasuring 910 sq yds for a consideration of Rs. 63,29,225/- and Rs. 52,21,220/- respectively against the Doc. No. 98/2004 and 3772/2004. The property was purchased on 9/1/2004 and 30/08/2004 respectively. Subsequently, during the year 2007 the property was mortgaged with State Bank of India against the term loan of Rs. 3 Crs granted to M/s. Amaravathi Inn Pvt Ltd., wherein the assessee and her late husband were Directors. Further, another term loan of Rs. 1.78 Crs was granted to M/s. Amaravathi Residency on 31/3/2008 wherein the assessee and her late husband were partners. The assessee's husband Sri Saripalli Ranga Raju died intestate on 29/06/2010. The assessee claimed that shae has repaid Rs.10 crores out of which 50% belongs to her husband. Therefore, she claimed 75% from the husband's share of repayment of loan, amounting to Rs. 5 Crores as cost of acquisition while computing the capital gains, being her share in the property sold, including inheritance. The Ld. AO considered that the repayment of mortgage loan does not constitute cost of acquisition as per section 48 r.w.s

55(2) of the Act. The Ld. AO therefore disallowed the claim of the assessee for Rs 3.75 crores (75% of Rs. 5 Crores) claimed as cost of acquisition. Being aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. The Ld. CIT(A)-NFAC, considering the submissions of the assessee allowed the appeal of the assessee by relying on the decision of the Hon'ble Supreme Court in the case of R.M. Arunachalam vs. CIT (1997) 227 ITR 222 (SC). Being aggrieved by the order of the Ld. CIT(A)-NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

> *"1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
>
> *2. The Ld. CIT(A) erred in deleting the addition of Rs. 3.75 Crs made by the AO towards disallowance of additional cost of acquisition claimed by the assessee in respect of expenditure incurred for overriding title towards the discharge of mortgage loan.*
>
> *3. The Ld. CIT(A) erred in not taken into consideration that the term loans raised by the company and firm in which assessee and her deceased husband are having interest and not directly by the assessee's themselves and property was sold by the assessee only having rightful title and does not have any overriding title to the bank against mortgage.*
>
> *4. The Ld. CIT(A) erred in not observing that the term loans were raised for the purpose of business of M/s. Amaravati Inn (P) Limited and M/s. Amaravathi Residency directly by the company / firm and only stood as guarantors.*
>
> *5. The Ld. CIT(A) erred in not observing the fact that since the Banker has not invoked the SARFAESI Act, 2002 and the assessee has directly disposed the property, there is no overriding title with the banker and hence the*

> *assessee's claim of mortgaged loan repayment cannot be considered as cost of acquisition U/s. 48 of the Act.*
>
> *6. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that addition made by the Ld. AO be restored."*

3. The only contention of the Revenue emanating from the Grounds raised is with respect to deletion of addition of Rs. 3.75 Crs by the Ld.CIT(A)-NFAC.

4. At the outset, the Ld. Departmental Representative [DR] submitted that the decision of the Hon'ble Supreme Court relied on by the Ld. CIT(A)-NFAC is with respect to Estate Duty and cannot be made applicable to the instant case. The Ld. DR further submitted that the Ld. CIT(A)-NFAC erred in relying on the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. R.M. Arunachalam {(1997) 141 CTR 0348}. The Ld. DR placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Paville Projects (P.) Ltd [2023] 453 ITR 447 wherein the Ld. CIT treated the said assessment order as erroneous and prejudicial to the interest of the revenue as allowed by the Ld. AO, being the payment made by the assessee-company to its shareholders as encumbrance charges from the sale proceeds of building as cost of improvement while computing the long-term capital gains. The Ld. DR therefore pleaded that the same ratio may be applied to the instant case.

5. Per contra, the Ld. Authorized Representative [AR] heavily relied on the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. R.M. Arunachalam (supra). The Ld. AR further argued that the assessee acquired 50% in the share of her husband late Sri Saripalli Ranga Raju by way of inheritance and the balance of 50% was conveyed by way of inheritance to her daughter. The Ld.AR further submitted that at the time of inheritance, the assessee's husband who has created a mortgage of the property during his life time and was subsisting at the time of death of the husband of the assessee. The Ld. AR further submitted that the Hon'ble Supreme Court in Para No.14 of the order in the case of CIT vs. R.M. Arunachalam (supra) held that for the purpose of acquiring of the property, interest of the mortgagee has been acquired by the legal heir and therefore the payment made by the legal heir should be regarded as cost of acquisition U/s. 48 r.w.s 55(2) of the Act. The Ld. AO also submitted that the assessee in order to get a clear marketable title of the property has to discharge the mortgage loans taken by her late husband. The Ld. AR therefore pleaded that the amount paid for clearance of the mortgage loan should be treated as cost of acquisition to the extent of the share acquired/inherited by the assessee.

6. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. The facts of the case are that the assessee sold a property for a consideration of Rs. 10 Crs which was jointly purchased along with her husband during the year 2004 by way of making equal contribution by the assessee and her husband. Subsequently, these properties were mortgaged for the purpose of their business with State Bank of India during the year 2007 / 2008. Subsequently, the husband of the assessee Shri Saripalli Ranga Raju died intestate on 29/6/2010. It is an undisputed fact that the property acquired by the assessee along with her husband was held equally by both. It is alleged that the assessee has paid an amount of Rs. 10 Crs towards the loan amount existing at the time of sale of the property. It was argued by the Ld.AR that the assessee therefore claimed an additional amount of Rs.5 Crores as cost of acquisition of the property being 50% of the share in the inherited property of her late husband who was the owner of ½ share of the property which was under mortgage. We are not in agreement with the Ld.AR that the assessee has repaid an amount of Rs. 10 crores. It is noticed from the order of the Ld.AO in Para No. 4 that the assessee has repaid an amount of Rs. 10 Crores for the entire tenure of the loan period. However, it is found that assessee has paid only Rs. 4.78 crores from State bank of India for the entities which

the assessee and her husband are interested. Since the assessee's husband expired when the property was under mortgage, the right on the property devolved on the assessee and her daughter, both being legal heirs. It was claimed by the Ld. AR that the title of the property was not absolute as there was pre-existed mortgage on the property created by her late husband of the assessee. It was the argument of the Ld. AR that in order to perfect the title of the legal heirs, the right of the mortgagee has to be cleared. Further, there is no dispute on the original cost of purchase and the indexed cost of property purchased originally. The main dispute is with regard to the payment of Rs. 5 Crores for acquiring the valid title by removing the interest and the right of the mortgagee. The assessee being a co-owner of the property inherited 50% of the share of her husband which amounts to 25% of the total value of the property. The remaining 25% of the total value of the property has been inherited by her daughter Smt. Indukuri Uma Maheswari. The assessee has, therefore, computed the capital gains as follows:

(Rs.)

A	Sale consideration of both properties	10,00,00,000
B	Indexed cost of purchase	2,51,36,716
C	Husband share of payment towards removable of mortgage	5,00,00,000
D	Total cost of acquisition= (B + C)	7,51,36,716
E	Total capital gain	2,48,63,284
F	Assessee's share of capital gain = (75% of 'E')	1,86,47,463

However, it is noticed from the order of the Ld. AO that the Ld. AO has not considered Rs. 5 Crs as cost of acquisition as claimed by the assessee. The Ld.AO did not accept the contention of the assessee regarding consideration of Rs.3.75 crores of cost of acquisition. From the material available before us, we noticed that assessee has borrowed Rs.4.78 crores from SBI which was ought to have been considered by the Ld.CIT(A) while arriving at the cost of acquisition.

7. Reliance placed by the Ld. AR on the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. R.M. Arunachalam (supra) wherein vide Para No. 14 of the order, the Hon'ble Supreme Court has held as under:

> ***14.*** *While we are affirming the impugned judgment of the High Court, we are unable to endorse the view of the Kerala High Court in Ambat Echukutty Menon's case (supra)to which reference has been made by the High Court in the impugned judgment. In that case, the assessee, as one of the heirs, had inherited property from the previous owner who had mortgaged the same during his lifetime and after his death the heirs, including the assessee, had discharged the mortgage created by the deceased. The said property was subsequently acquired under the Land Acquisition Act, 1894, and for the purpose of capital gains the assessee sought deduction of the amount spent to clear the mortgage. The High Court held that the capital asset had become the property of the assessee by succession or inheritance on the death of the previous owner under section 49(1) and the cost of acquisition of the asset is to be deemed to be the cost for which the previous owner acquired it, as increased by the cost of any improvement of the assets incurred or borne either by the previous owner or by the assessee. According to the High Court, having regard to the definition of the expression 'cost of improvement' contained in section 55(1)(b) in order to entitle the assessee to claim a deduction in respect of the cost of any*

improvement, the expenditure should have been incurred in making any additions or alterations to the capital asset that was originally acquired by the previous owner and if the previous owner had mortgaged the property and the assessee and his co-owners cleared off the mortgage so created, it could not be said that they incurred any expenditure by way of effecting any improvement to the capital asset that was originally purchased by the previous owner. This decision has been followed in subsequent decisions of the High Court in Salay Mohamad Ibrahim Sait v. ITO [1994] 210 ITR 700 (Ker.) and K.V. Idiculla v. CIT [1995] 214 ITR 386 / 81 Taxman 190 . A contrary view has been taken by the Gujarat High Court in CIT v. Daksha Ramanlal [1992] 197 ITR 123 . In taking the view that in a case where the property has been mortgaged by the previous owner during his lifetime and the assessee, after inheriting the same, has discharged the mortgage debt, the amount paid by him for the purpose of clearing off the mortgage is not deductible for the purpose of computation of capital gains, the Kerala High Court has failed to note that in a mortgage there is transfer of an interest in the property by the mortgagor in favour of mortgagee and where the previous owner has mortgaged the property during his lifetime, which is subsisting at the time of his death, then after his death his heir only inherits the mortgagor's interest in the property. By discharging the mortgage debt his heir who has inherited the property acquires the interest of the mortgagee in the property. ***As a result of such payment made for the purpose of clearing off the mortgage the interest of the mortgagee in the property has been acquired by the heir. The said payment has, therefore, to be regarded as 'cost of acquisition' under section 48, read with section 55(2).*** *The position is, however, different where the mortgage is created by the owner after he has acquired the property. The clearing off the mortgage debt by him prior to transfer of the property would not entitle him to claim deduction under section 48 because in such a case he did not acquire any interest in the property subsequent to his acquiring the same.* ***In Daksha Ramanlal's case (supra) the Gujarat High Court has rightly held that the payment made by a person for the purpose of clearing off the mortgage created by the previous owner is to be treated as cost of acquisition of the interest of the mortgagee in the property and is deductible under section 48.***

8. The Hon'ble Supreme Court has clearly stated that the payment made for the purpose of clearing of mortgage, the interest of mortgagee in the property has been cleared by the legal heirs and therefore the said payment has to be regarded as cost of acquisition

U/s. 48 r.w.s 55(2) of the Act. Further, the Hon'ble Supreme Court has also observed

> *The position is, however, different where the mortgage is created by the owner after he has acquired the property. The clearing off the mortgage debt by him prior to transfer of the property would not entitle him to claim deduction under section 48 because in such a case he did not acquire any interest in the property subsequent to his acquiring the same.*

9. In the instant case, the assessee acquires interest in the 25% share in the property only by removing the mortgage created by her husband. It is the case that where the property had been mortgaged by the previous owner and the assessee acquired only the mortgager interest in the property mortgaged and by clearing the same, she had acquired proportionate share in the interest of the mortgagee in the said property.

10. Further the Hon'ble High Court of Madras N.Rajarajan v. Assistant Commissioner of Income Tax, Corporate Circle XIV, Chennai reported in [2020] 120 taxmann.com 402 (Madras) by following the ratio laid down in CIT vs. R.M. Arunachalam (supra) held as follows:

> ***13.** While overruling the Judgment of the Kerala High Court in the case of Ambat Echukutty Menon v. CIT [1973] 87 ITR 129 the Hon'ble Supreme Court has clearly held that in the later part of the afore quoted part that that by discharging the mortgage debt, his heir, who has inherited the property with the charge of mortgage, such legalheir acquires the interest of*

the mortgagee in the property and as a result of such payment made for the purpose of clearing off the mortgage, the heir and the said payment, therefore, has to be regarded as cost of acquisition under section 48 read with section 55(2) of the Act. However, where the mortgage is created by the owner or heir himself after his acquiring the property, the payment to redeem the mortgage will not be cost of acquisition or improvement under section 48 of the Act.

14. *Therefore, the encumbrance by way of mortgage whether by way of direct mortgage or as collateral security, as is the case in hand and if that encumbrance has to be cleared off by the legal heir or person in whose favour the property has been settled like the Assessee before us, the amount paid by the Assessee to clear that encumbrance has to be treated as part of cost of acquisition or cost of improvement under section 48/49 of the Act.*

16. *In view of the above, we do not consider it necessary to go into such judgements cited before us as, the position of law seems to be clear and the facts narrate d above also prima facie indicate that the land of 3 acres in question, which was in the form of collateral security with SBI, has been settled by Mrs Susila Ammal in favour of the assessee and to clear off that debt, the sale of the land in question along with other parts of the land had to be undertaken in the settlement of dues to the SBI under the OTS Settlement.*

17. *Therefore, while there is no doubt that the said contribution of the Assessee to the extent of the land settled in his favour would be part of cost of acquisition or cost of improvement of the asset acquired by him as per Section 48 and Section 55 of the Act, the computation of the same deserves to be gone by the Tribunal, being a fact finding body, to find out whether the said sum of Rs.1,06,76,905/- vide the Table quoted above is correct amount or not and whether the advance of Rs.4 crores received from the Purchaser M/s Martin Group on 19.08.2009 vide Demand Draft payable to ASREC (India) Limited is correct fact or not."*

11. Respectfully following the aforesaid judicial precedents, in our view the amount paid by the assessee in the clearance of the mortgage to acquire a valid title amounts to cost of acquisition as per the provisions of section 48 r.w.s 55(2) of the Act. Further, in the instant case, we find that the assessee is entitled to claim only 50% being assessee's share in the inherited property, however, has wrongly claimed 75% as the cost of acquisition on the repayment of mortgage

loan amounting to Rs. 5 Crs, being her late husband's share in the loan. We agree with the plea of the Ld AR that the assessee is entitled only to proportionate share (25% of value) on repayment of principal amount of mortgage loan for acquiring valid title by way of inheritances, paid to clear the title equally along with another legal heir being daughter Smt. Indukuri Uma Maheswari. We therefore remit the matter back to the file of the Ld. AO directing to re-compute the capital gains and pass appropriate order in tune with the observations of the Tribunal as discussed in the aforesaid paragraphs of this order. It is ordered accordingly.

12. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Pronounced in the open Court on the conclusion of hearing on 18th December, 2024.

Sd/-	Sd/-
(दुव्वूरु आर.एल रेड्डी)	**(एस बालाकृष्णन)**
(DUVVURU RL REDDY)	(S.BALAKRISHNAN)
उपाध्यक्ष /VICE PRESIDENT	**लेखा सदस्य**/ACCOUNTANT MEMBER

Dated :18.12.2024
OKK - SPS

Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Saripalli Vimala Devi, Flat No. 103, Sun N Sea Apartments, East Point Colony, Visakhapatnam, Andhra Pradesh – 530017.
2. राजस्व/The Revenue –Income Tax Officer, Ward-3(3), 2nd Floor, Infinity Towers, Shankaramatam Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam