

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI MANJUNATHA .G, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.129/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2010-11)

Ramesh Vuppugalla, Income Tax Officer,
Karimnagar. Vs. Ward-2,
[PAN : AEYPV2755H] Karimnagar.

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR

राजस्व द्वारा/Revenue by: Shri Karthik Manickam, Sr. AR

सुनवाई की तारीख/Date of hearing: 30/10/2024

घोषणा की तारीख/Pronouncement on: 13/12/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 15/12/2023 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("learned CIT(A)"), in the case of Ramesh Vuppugalla ("the assessee"), assessee preferred this appeal for the AY 2010-11.

2. Brief facts of the case are that the assessee, an individual, has not filed his return of income for the AY 2010-11. As per the information received from the Director of Income Tax (Intelligence), Pune, the assessee along with two others viz., Shri Sana Yadi Reddy and Shri M.

Sathya Rangaiah, being General Power of Attorney (“GPA”) holders, sold the property and the same was registered by the Sub-Registrar Office (“SRO”), Gandipet, R.R. District on 13/05/2009 for a total consideration of Rs. 11,77,20,000/-. Taking the said information on record the learned Assessing Officer (“learned AO”), after recording the reasons for satisfaction and obtaining the necessary approval from the competent authority, issued a notice U/s. 148 of the Income Tax Act, 1961 (“the Act”) on 30/03/2017. In response, the assessee filed his return of income for the AY 2010-11 on 22/11/2017 admitting a total income of Rs. 1,20,000/- as salary income.

3. On a perusal of the submissions made by the assessee, the learned AO observed that the assessee has executed the agreement of sale-cum-GPA on 03/09/2007 vide Document No. 8540/2007 along with other two persons viz., Shri Sana Yadi Reddy and Shri M. Satya Rangaiah for a total sale consideration of Rs. 50,00,000/- out of which Rs. 25,00,000/- was paid in cash Rs. 25,00,000/- was paid by Demand Drafts.

4. Further, the learned AO also observed that the assessee, along with two others viz., Shri Sana Yadi Reddy and Shri M. Satya Rangaiah, has executed the sale deeds vide Document Nos. 1093, 1094, 1095, 1096, 1097 & 1098/2009 and got registered by the SRO, Gandipet, R.R. District on 13/05/2009 for a total consideration of Rs. 11,77,20,000/-.

5. Moreover, the learned AO also observed that the property admeasuring 12 Acres 31 Guntas is an evacuee property and was originally allotted to Jassibai Dayabux on 2/8/1963. After peaceful possession of the property quite long time, the said property was purchased by Kamala Bai and others on 13/05/2009 from the legal heirs of Smt. Jassibai Dayabux. Prior to such AGPA, on 06/06/2005, the Government of Andhra Pradesh issued G.O.Ms. NO.1091, Revenue (Registration I) treating the said land as Government land and also issued a Gazette Notification dated 26/09/2013 prohibiting the registrations of the said property. Later on, the Tahasildar found that the said Government notified land was occupied by various persons and

therefore, filed a criminal case of trespass. Under these circumstances, Shri Sana Yadi Reddy and the owners together filed a Writ Petition before the Hon'ble High Court of Andhra Pradesh and the same is pending.

6. Considering the above facts and circumstances of the case, the learned AO concluded that the assessee has executed the sale deeds, as discussed above, and registered by the SRO, Gandipet, R.R. District on 13/05/2009 for the total consideration of Rs. 11,77,20,000/-. However, the assessee failed to admit the short term capital gains on the above mentioned transactions.

7. Accordingly, the learned computed the short term capital gains in the hands of the assessee at Rs. 3,92,23,333/- and added the same to the total income of the assessee. Thus, total income of the assessee was determined at Rs. 3,93,43,333/- and the passed the assessment order U/s. 143(3) read with section 147 of the Act, dated 21/12/2017. While passing the assessment order, the learned AO also initiated the penalty proceedings U/s. 271(1)(c) of the Act. Aggrieved, the assessee preferred an appeal before the learned CIT(A).

8. Before the learned CIT(A), the assessee made various submissions. The learned CIT(A) did not consider the submissions of the assessee and dismissed the assessee's appeal by observing as under:

"I have carefully considered the facts of the case as well as submissions filed by the appellant. I find no force in the arguments of the appellant. The assessee taken the same defense which was taken before the AO, that is simply deny the registered sale deed. However, he has submitted no evidence in support of his contentions. His name figures in the sale deed as one of the GPA holders. To plead that the sale deed itself is a farce is not logical. The sale deed clearly mentioned the sale consideration at Rs. 11,77,20,000/-. The AO is correct to take this value and determine the gain to the assessee from this transaction. Accordingly, the addition of Rs. 3,92,23,333/- in the returned income of the assessee on account of short term capital gains on sale of the above mentioned immovable property, is hereby confirmed....."

Aggrieved by the order of the learned CIT(A), the assessee is in appeal before the Tribunal.

9. Before us, the learned AR submitted that the immovable property of 12 Acres 31 Guntas is situated in Survey No. 324 of Puppalaguda Village, Rajendranagar Mandal, R.R. District and is an evacuee property and is notified by the Government of Andhra Pradesh as a Government land. The learned AR further submitted that even though the Government has issued notification allotting certain properties in favour of Smt. Jassibai Dayabux, the said property situated in S.No. 324 of Puppalaguda Village (supra) was not a part of such allotment and therefore, Smt. Jassibai Dayabux has never become owner of the said property. However, after the demise of Smt. Jassibai Dayabux, her legal heirs, without having any legal rights over the said property, executed a GPA in favour of the assessee and the two others and therefore, the GPA executed has no validity in the eyes of law as the executants have no ownership rights over the said property. The learned AR further submitted that no sale consideration was passed to the assessee through the said GPA. Thus, the learned AR submitted that without examining all these facts, the learned AO made addition in the hands of the assessee on account of short term capital gains which is unsustainable in law.

10. Per contra, learned Departmental Representative ("learned DR") vehemently opposed to the submissions of the learned AR. Learned DR further submitted that after thorough examination of the sale documents registered with the SRO Gandipet, R.R. District on 13/05/2009 and on verification of the submissions made by the assessee during the assessment proceedings, the learned AO came to a conclusion that even though the assessee has executed the sale deeds 1093 to 1098/2009, dated 13/05/2009 for a total sale consideration of Rs. 11,77,20,000/-, since the assessee failed to admit the short term capital gains in his return of income, the assessee's share of 1/3rd in the total sale consideration amounting to Rs. 3,92,23,333/- was brought to tax in the hands of the assessee as short term capital gains. Even before the learned CIT(A), the assessee has not submitted any cogent documentary evidence to negate the findings of the learned AO. Therefore, the learned DR

submitted that the orders passed by both the learned Revenue Authorities are in accordance with law and there is no need to interfere with their decisions.

11. In reply, learned AR submitted that levy of capital gains tax in this matter is the result of non-examination of vital questions in the light of the circumstances surrounding the transactions and therefore, the addition cannot be sustained. In the alternative, learned AR prayed that the matter may be remitted to the file of the learned AO to examine the issue at length on the basis of the submissions made above.

12. We have gone through the record in the light of the submissions made on either side. On examining the facts of the case, we find that the core issue involved in this appeal is whether the learned AO is correct in determining the short term capital gains in the hands of the assessee arising out of the sale deeds dated 13/09/2009 executed by the GPA holders viz., Sana Yadi Reddy, M. Satya Rangaiah and the assessee? On this issue, the main contention of the assessee is that the immovable property of 12 Acres 31 Guntas, which is said to have been transferred vide sale deeds dated 13/09/2009, is situated in Survey No. 324 of Puppalaguda Village, Rajendranagar Mandal, R.R. District and is an evacuee property and is notified by the Government of Andhra Pradesh as a Government land.

13. In this context, the contention of the learned AR that Smt. Jassibai Dayabux has never become owner of the said property and therefore, her legal heirs have no any legal ownership rights to enter any transaction on such property; that even though, since the legal heirs of Smt. Jassibai Dayabux, without having any legal rights, have executed a GPA in favour of the assessee and the two others and therefore, the GPA has no validity in the eyes of law and the addition made in the hands of the assessee on account of capital gains is unsustainable in law; and that the Revenue has also not brought on record any documentary evidence to prove that Smt. Jassibai Dayabux is the owner of the property and therefore, her legal heirs have drawn their authority to enter into the transaction with

respect to such property assumes significance. It could be seen from the assessment order that vide G.O. Ms. No. 1091, the Government has notified and treated the said land as Government Land and since it was under litigation. We find force in the argument of the learned AR that these vital aspects require thorough investigation in the light of the material available on record and consequently in the prayer of the learned AR that the issue requires reconsideration by the learned AO.

14. Under these facts and circumstances, we are of the considered view that the matter needs to revisit the file of the learned AO to examine whether Smt. Jassibai Dayabux had marketable title to the property, whether the legal heirs have any right and are entitled to enter into any transaction on such property, whether the GPA has any legal validity in the eyes of law, whether the property is situated in Survey No. 324 of Puppalaguda Village, Rajendranagar Manal, Ranga Reddy District and finally whether any real consideration was passed under the impugned documents to be brought to tax? Therefore, we hereby remit the matter to the file of the learned AO with a direction to examine the issue at length in tune with the points discussed and pass a speaking order in accordance with law. It is ordered accordingly.

15. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced in the open court on this the 13th December, 2024.

Sd/-
(MANJUNATHA .G)
ACCOUNTANT MEMBER
Hyderabad, Dated: 13/12/2024
OKK

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Ramesh Vuppugalla, 7-6-22, Vidya Nagar, Jagtial, Karimnagr, Telangana-505327.
2. Income Tax Officer, Ward-2, Karimnagar, Telangana.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD