

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री के नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. 348/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2013-14)

Varahamma Pydi Late, Visakhapatnam. PAN: BJHPP9886J (अपीलार्थी/ Appellant) अपीलार्थी की ओर से/ Assessee by प्रत्यार्थी की ओर से / Revenue by	Vs.	Income Tax Officer, Ward-4(2), Visakhapatnam. (प्रत्यर्थी/ Respondent) Sri I. Kama Sastry, AR Dr. Satyasai Rath, CIT-DR
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सुनवाई की तारीख / Date of Hearing	:	12/12/2024
घोषणा की तारीख/Date of Pronouncement	:	03/01/2025

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)-NFAC") in DIN & Order No. ITBA/NFAC/S/250/2024-25/1066984019(1), dated 24/07/2024 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 ("the Act") for the AY 2012-13.

2. Briefly stated the facts of the case are that the assessee, Smt. Pydi Varahamma is an individual and filed her return of income for the AY 2012-13 on 11/06/2012 admitting taxable income under the head "capital gains" for Rs. 9,69,932/-. On verification of the assessee's return and the other relevant information filed by the assessee, the Ld. AO noticed that during the AY under consideration, the assessee has sold immovable property along with two others. Further, on verification of the sale deeds executed by the assessee, the Ld. AO observed that the assessee is having 1/3rd of share only on the sale deed value as per the registered document i.e., Rs. 4,15,00,000/- however, the value as per SRO, Dwarakanagar, Visakhapatnam on the transactions entered into with respect to the immovable property sold was at Rs.20,28,64,000/-. Therefore, the Ld. AO observed that the provisions of section 50C applies to the difference amount of Rs. 16,13,64,000/- [Rs. 20,28,64,000 - Rs. 4,15,00,000]. The Ld. AO also observed that the total share of the assessee including the value as per the SRO records U/s. 50C for his share of 1/3rd share works out to Rs. 6,76,21,333/-. Accordingly, the Ld. AO issued a notice U/s. 148 of the Act on 03/11/2014 and served on the assessee on 04/11/2014. Since the assessee filed a letter submitting his changed residential

address, the concerned jurisdictional Assessing Officer issued notice U/s. 142(1) of the Act and called for certain information. In response, the assessee's Authorized Representative appeared before the Ld. AO from time to time and furnished the information as called for. On verification of the computation of income filed before him for the AY 2012-13, the Ld. AO noticed that the assessee admitted the sale consideration amount of Rs. 1,38,33,331/- as against the SRO market value which works to Rs. 6,76,21,333/-. Accordingly, the Ld. AO concluded that the difference amount of Rs. 5,37,88,002/- [Rs. 6,76,21,333 - Rs. 1,38,33,331] was not offered by the assessee to tax by applying the provisions of section 50C of the Act. Accordingly, the Ld. AO computed the Long Term Capital Gains at Rs. 6,74,80,333/-. Further, the Ld. AO also observed that the assessee also claimed Rs. 39,39,656/- as deduction U/s. 54F of the Act. However, in the absence of any details for the investment as specified U/s. 54F of the act, the Ld. AO proposed to disallow the same. Accordingly, the Ld. AO completed the assessment proceedings U/s. 144 r.w.s 147 of the Act and determined the total income at Rs. 6,45,36,541/- and raised a tax demand of Rs.1,98,72,160/-. While passing the assessment order dated 11/03/2016, the Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) of the

Act. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC dismissed the appeal of the assessee and upheld the decision of the Ld. AO. 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. *In the Facts and circumstances of the case and as per law the Ld. CIT(A) is not justified in confirming the adopting of the fair market value of the property sold under section 50C as determined for the purpose of stamp duty valuation as full value of consideration for the purpose of section 48 instead of the fair market value determined as per the provisions of the Urban Land Ceiling and Regulation Act, 1976 or the amount determined as per the capitalization method by the DVO in contiguous properties similarly placed or the amount of actual consideration received by the assessee as per the registered sale deed whichever is higher as claimed by the assessee before the Assessing Officer and also the Commissioner of Income Tax (Appeals).*
2. *The Ld. AO is not correct and the Ld. CIT(A) is not justified in confirming the adopting of the SRO value of the immovable properties as the full of the consideration for the purposes of section 48 even though there is not even an iota of evidence about the receipt of the consideration in excess of the amount mentioned in the sale deed also there is no evidence of any acquisition of assets or deposits in banks with respect to the huge amount (difference between the SRO value and the actual consideration of about Rs. 16 Crs).*
3. *The notice issued under section 148 dated 03/11/2014 issued by the ITO, Ward-1(1) is vague and therefore invalid. Consequently, the entire proceedings in pursuance of such an invalid notice are invalid including the assessment order passed.*
4. *The fair market value adopted by the AO as on 01/05/1981 is not correct instead the Ld. AO ought to have adopted the value as on 01/04/1981 by indexing the SRO value as on the date of transfer in the reverse.*

5. *The Ld. AO is not justified in giving credit for taxes paid before the completion of the assessment.*
6. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*
7. *The appellant craves leave to add to, alter, amend, modify or delete all or any of the above grounds of appeal.”*

3. At the outset, the Learned Authorized Representative (“Ld. AR”) submitted that the core issue involved in the appeal is “*whether the sale consideration received by the assessee is to be adopted for the purpose of computing capital gains*”. This issue came up before this Tribunal in the case of Pydi Venkata Ramana and Pydi Giridhar Babu in ITA Nos. 218 & 219/Viz/2020 (AY 2012-13) who are the sons of the assessee in the present case. The Ld. AR further submitted that on identical issue the Tribunal decided the case in favour of the assessee by holding that the sale consideration received by the assessee as per the sale deed is to be adopted for the purpose of computing the capital gains. Therefore, the Ld. AR pleaded that since there is no change in the facts and circumstances of the case, the same analogy may be applied to the case on hand and prayed to set-aside the orders passed by the Ld. Revenue Authorities.

4. On the other hand, Learned Departmental Representative (“Ld. DR”) strongly relied on the orders of the Ld. AO and the Ld. CiT(A)-NFAC and supported their decision.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the order of this Tribunal in the case of Pydi Venkata Ramana and Pydi Giridhar Babu in ITA Nos. 218 & 219/Viz/2020 (AY 2012-13), dated 01/06/2023. On a perusal of the Tribunal's order (supra), we find that as submitted by the Ld. AR, similar issue was decided by the Tribunal in favour of the assessee (Pydi Venkata Ramana and Pydi Giridhar Babu, who are related to the assessee) after discussing the issues at length. For the sake of reference, we extract the relevant paras from the said Tribunal's order dated 01/06/2023 (supra) herein under:

“6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly, from the submissions made by the Ld. AR, we find that the Tashildar has taken possession of the impugned property situated in Survey No. 59/3, Marrisalem, Visakhapatnam comprising of 12,656.22 sq meters under the Urban Land (Ceiling and Regulation) Act, 1976. It is also admitted that at the time of execution of the sale deed there remains 52 years of unexpired lease period. The Ld. AR also submitted that the valuation of the property as per the rent capitalization method determined in accordance with the Schedule-3 of the Wealth Tax Act, 1957 which stood at Rs. 37,45,070/- as against the sale consideration received by the assessee and others aggregating to Rs. 4,15,00,000/-. We find merit in the argument of the Ld. AR that the similar valuation was adopted in the case of the adjacent property as demonstrated by the Ld. AR. A reference was made by the Ld. AR to the CBDT Circular which is available in page 55 of the paper book which states as follows:

*“(i).....
(ii).....
(iii).....*

(iv) Cases where acquisition proceedings are in advance stage and the intention of the Government to acquire the property is indicated or in case where notice U/s. 10(1) & 10(3) of UL (C&R) Act, 1976 have been issued by the Government.

Mere declaration of land surplus under Urban Land (Ceiling Regulation) Act, 1976 does not deprive the land lords from his rights, title and interest in the excess vacant land. Those will not be extinguished till the date of publication of notification under section 10(3) of UL (C&R) Act, 1976, to acquire the excess land for public purposes. So long as there is no such notification by the Govt. there is no question of land being valued on the basis of rate contained in section 11(1) of UL (C&R) Act, 1976, as such the cases falling under the categories (i) & (ii) of the Act but to be valued at the market rates.

As regards category (iii), it may be assumed that exemption will be given. The time interval between the date of valuation and the date of completion of the group housing after completion of all formalities by the local bodies, is to be estimated and the value be deferred for such time period @ 12% rate of interest P.A.

Note: The Urban Land (Ceiling & Regulation) Act, 1976 has been enacted by the Parliament in the Fiftieth Year of the Republic of India by the Urban Land (Ceiling and Regulation) repeal Act 1999 by No. 15 of 1999, 22nd March, 1999 effective from 11th January, 1999.

As regards the categories (iv), the excess vacant land is to be valued at the rate contained in section 11(i) of the Act.”

7. The arguments of the Ld. DR that since the lease agreement was cancelled first and then sale agreement was entered into by the assessee which is on the same day, cannot alter the character of the land to free hold land, could not be accepted. Further, in our view it does not make any difference when the lease deed was cancelled vide a clause in the sale deed as against two separate deeds in the instant case on the same day. Further, the Revenue has also not disputed the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 for the impugned property. The Hon'ble Supreme Court in the case of S.N. Wadiyar (Dead) through LR vs. Commissioner of Wealth Tax (supra) in para 31 of its judgment held as follows:

“31.When the asset is under the clutches of the Ceiling Act and in respect of the said asset/vacant land, the Competent Authority under the Ceiling Act had already determined the maximum compensation of Rs.2 lakhs, how much price such a property would fetch if sold in the open market? We have to keep in mind what a reasonably assumed buyer

would pay for such a property if he were to buy the same. Such a property which is going to be taken over by the Government and is awaiting notification under Section 10 of the Act for this purpose, would not fetch more than Rs.2 lakhs as the assumed buyer knows that the moment this property is taken over by the Government, he will receive the compensation of Rs.2 lakhs only. We are not oblivious of those categories of buyers who may buy "disputed properties" by taking risks with the hope that legal proceedings may ultimately be decided in favour of the assessee and in such a eventuality they are going to get much higher value. However, as stated above, hypothetical presumptions of such sales are to be discarded as we have to keep in mind the conduct of a reasonable person and "ordinary way" of the presumptuous sale. When such a presumed buyer is not going to offer more than Rs.2 lakhs, obvious answer is that the estimated price which such asset would fetch if sold in the open market on the valuation date(s) would not be more than Rs.2 lakhs. Having said so, one aspect needs to be pointed out, which was missed by the Commissioner (Appeals) and the Tribunal as well while deciding the case in favour of the assessee. The compensation of Rs.2 lakhs is in respect of only the "excess land" which is covered by Sections 3 and 4 of the Ceiling Act. The total vacant land for the purpose of Wealth Tax Act is not only excess land but other part of the land which would have remained with the assessee in any case. Therefore, the valuation of the excess land, which is the subject matter of Ceiling Act, would be Rs.2 lakhs. To that market value of the remaining land will have to be added for the purpose of arriving at the valuation for payment of Wealth Tax. The question formulated is answered in the aforesaid manner."

8. Further, the Ld. DVO has not determined the value of the property as per section 11(1) of the Urban Land Ceiling and Regulation Act, 1976 as mandated by the Guidelines for valuation of Immovable Property issued by the CBDT. Further, from the written submissions of the Ld. AR, we find that orders under Urban Land (Ceiling and Regulation) Act, 1976 is contested and pending before the Hon'ble High Court of Andhra Pradesh. Further, the proceedings of the Competent Authorities under the Urban Land (Ceiling and Regulation) Act, 1976 and eviction proceedings against the lessee are still pending before the concerned Authorities. Since, the impugned property is covered under the proceedings under Urban Land Ceiling and Regulation Act, 1976, it is impracticable to fetch a higher market value. In the instant case, since the property is under dispute and the proceedings are pending before the Hon'ble High Court of Andhra Pradesh, we are of the considered view that this property cannot fetch a fair value when compared to the properties which are not under litigation. Further, the value as per the rent capitalization method is also far below to the actual consideration received by the assessee. We therefore are of the considered view that the sale consideration received by the assessee is to be adopted for the purpose of computing capital gains and accordingly the Ld.

AO is hereby directed to consider Rs.1,38,33,333/- being the share of the assessee from the impugned sale of land and thereby allow the appeal of the assessee. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed.”

6. On a perusal of the facts of the case and the issue decided by the Tribunal in the case of Pydi Venkata Ramana and Pydi Giridhar Babu in ITA Nos. 218 & 219/Viz/2020 (AY 2012-13), dated 01/06/2023 (supra), we find that that issue involved in the present appeal is identical that of the case decided by the Tribunal (supra). Therefore, respectfully following the decision of this Tribunal in the case of Pydi Venkata Ramana and Pydi Giridhar Babu in ITA Nos. 218 & 219/Viz/2020 (AY 2012-13), dated 01/06/2023 (supra), we have no hesitation to come to a conclusion that the sale consideration received by the assessee is to be adopted for the purpose of computing capital gains and accordingly the Ld. AO is hereby directed to consider Rs.1,38,33,331/- being the share of the assessee from the impugned sale of land and thereby allow the appeal of the assessee. It is ordered accordingly.

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

Pronounced in the open Court on 03rd January, 2025.

Sd/-
(श्री के नरसिम्हा चारी)
(K NARASIMHA CHARY)
न्यायिकसदस्य/JUDICIAL MEMBER

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

Dated :03/01/2025

OKK - SPS

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

1. निर्धारिती/ The Assessee – Varahamma Pydi Late,D.No. 36-16-36, Madhavadhara, Muralinagar, Andhra Pradesh-530007.
2. राजस्व/The Revenue – Income Tax Officer, Ward-4(2), Infinity Towers, Sankaramattam Road, Andhra Pradesh-530106.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam