

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकर अपीलसं./I.T.A.No.482/Viz/2024
(निर्धारण वर्ष/ **Assessment Year: 2020-21**)

Income Tax Officer Ward-3(1) Visakhapatnam	Vs.	Shri Surendra Nath Gubbala 4-58-4, Lawsonsbay Colony Visakhapatnam PAN : AFBPG8196F
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

CO No.03/Viz/2025
(Arising out of आयकर अपीलसं./I.T.A.No.482/Viz/2024)
(निर्धारण वर्ष/ **Assessment Year: 2020-21**)

Shri Surendra Nath Gubbala 4-58-4, Lawsonsbay Colony Visakhapatnam PAN : AFBPG8196F	Vs.	Income Tax Officer Ward-3(1) Visakhapatnam
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Y.V. Bhanu Narayana Rao, CA, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	02.09.2025
घोषणा की तारीख/Dt. of Pronouncement	:	10.10.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.09.2024, which in turn arises from the order passed by the Assessing Officer (for short, "A.O.") under Section 143(3) r.w section 144B of the Income Tax Act, 1961 (for short "the Act") dated 20.09.2022 for A.Y. 2020-21. The revenue has assailed the impugned order on the following grounds of appeal before us:

"1. The order of the Ld. CIT(A), National Faceless Assessment Centre (NFAC) is erroneous both on facts and in law.

2.1. The Ld. CIT(A) erred in deleting the addition of Rs.9,00,00,000/- made by the AO in the assessment order u/s.143(3) dated 20.09.2022 towards disallowance of the expenditure claimed by the assessee in connection with transfer of immovable property i.e. land of 10,164 sq. yards situated at R.S.No.199/1, Rajahmundry.

2.2. The Ld. CIT(A) erred in not appreciating the fact that the amount of Rs.7,00,00,000/ is not the expenditure wholly and exclusively incurred by the assessee in connection with the transfer of the properties as the same were not taken by the assessee for acquisition of the property or further construction and modification of the properties. In fact, these loans were taken by the companies for their own business purposes by giving the properties as collateral securities. Therefore, the same cannot be the expenditure in relation to transfer of properties from sale consideration.

2.3. The Ld. CIT(A) erred in not appreciating the fact that the amount in question i.e. Rs.7 crores being settlement of outstanding loans which were directly paid by the buyer to the creditor ie SBI and Axis Bank is to be considered as part of sale consideration received by the assessee, the same are not deductible in computing the capital gains on the said property, which is in the name of the assessee.

2.4. The Ld. CIT(A) erred in not appreciating the fact that the onus casts on the assessee to show how the liability of the said companies would have a connect with the transfer of the immovable property for the purpose of claiming the same as a deduction from Long Term Capital Gains.

2.5. The Ld. CIT(A) erred in not appreciating the fact that in the case of the assessee, the burden of charge as collateral security had been created by the assessee on the property sold by him. As the burden had been created for his own benefits by offering the property as collateral security to the lenders of the company in which the assessee was a director, the amounts spent for discharging that burden of the vendor i.e. assessee whether prior to sale, or at the time of sale, by payment to such creditors including the mortgagees, directly by the vendee, cannot be regarded as expenditure wholly and exclusively in connection with the transfer.

2.6. The Ld. CIT(A) erred in not appreciating the fact that the assessee had created a charge on his property with a view to benefit two other entities for a purpose totally not relatable in any way towards improvement of the impugned property. It is another matter that these companies had defaulted in the repayment of loans, but the consequences of such default cannot be rubbed on to the assessee as regards the question of computation of capital gains is concerned.

2.7. The Ld. CIT(A) ought to have appreciated the fact that the loans taken by the Companies were squared off by the purchaser of the immovable property and it would have been reflected in the books of the companies as reduction in its liabilities; and hence, the Claim of expenditure by the assessee of Rs.7 crores from its capital gains would not be an allowable expenditure u/s.48(i) of the Income-tax Act, 1961.

2.8. The Ld. CIT(A) erred in not appreciating the fact that the assessee has paid the dues of the banks owed by the companies out of the sale consideration, which means that the assessee has now become the creditor of the companies and assessee should retain the right to receive the loan amounts cleared on behalf of the companies and hence the amount utilized to square off the loans cannot be claimed as deduction from the Long Term Capital Gains.

3.1. The Ld. CIT(A) erred in not appreciating the fact that the claim of deduction of expenditure of Rs.2 cores paid to Kothapeta Settibalija Ramamandiram Committee is not an allowable expenditure from the computation of long term capital gains by the assessee due to the fact that as per agreement to sale, the assessee is the sole owner of the said property and also the said payment to M/s. Kothapeta Settibalija Ramamandiram Committee for title Clearance is not proved with proper explanation and documentary evidence during the course of assessment proceeding.

3.2. The Ld. CIT(A) erred in not calling for remand report from the Assessing Officer on the additional evidence submitted by the assessee during the course of appeal proceedings.

4. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

5. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that the disallowance/additions made by the Assessing Officer be restored.”

Also, the assessee is before us as a cross-objector supporting the order of the CIT(A) on the following grounds:

1. On the facts and in the circumstances of the case, the addition is bad in law and on facts.

2. The learned CIT (A) has rightly deleted the addition of Rs. 9,00,00,000/- made by the A.O in Assessment order u/s 143 (3) dated 20.09.2022 towards disallowance of the expenditure claimed by the assessee in connection with transfer of immovable property i.e. land of 10,164 sq. yards situated at R.S No. 199/1, Rajahmundry.

3. The learned CIT (A) rightly held that the amount of Rs.7,00,00,000 is an expenditure wholly and exclusively incurred by the assessee in connection with transfer of the properties and rightly held that the same is allowable as expenditure allowable as deduction from sale consideration of the property.

4. The learned CIT (A) rightly held that the above amount of Rs.7,00,00,000 is an allowable expenditure while computing Capital Gains by concurring with the claim of the assessee as the same were directly paid by the buyer to the creditors i.e. SBI and Axis bank to perfect the title of the property.

5. The learned CIT (A) rightly held that an amount of Rs.2,00,00,000/- is an allowable expenditure while calculating Capital Gains property by duly considering the fact that the property was in dispute and that to clear the dispute the buyer paid Rs 2,00,00,000/- (Rs Two Crores) directly to the title dispute holder Kothapeta Settibalija Sangam vide Cheque No 787357 and it is the kind of expenditure incurred towards expenditure on transfer and allowable expenditure for calculation of capital gain.

6. The appellant craves leave to add/alter any of the cross objections on or before the date of hearing.”

2. Succinctly stated, the assessee had filed his original return of income for A.Y. 2020-21 on 25.12.2020, declaring an income of 2,55,56,270/-. Subsequently, the assessee filed a revised return of income on 29.03.2021, disclosing an income of Rs. 2,56,62,270/-. Thereafter, the case of the assessee was selected for scrutiny assessment, and notice under Section 143(2) of the Act, dated 29.06.2021, was issued by the A.O.

3. During the course of the assessment proceedings, the A.O. observed that the assessee, during the subject year, had sold immovable properties for an aggregate sale consideration of Rs. 12,04,45,000/-. Out of the sale consideration, the purchaser had paid an amount aggregating to Rs. 9,00,00,000/- directly to, viz. (i) SBI (Rs. 3.50 crores) and (ii) Axis Bank (Rs. 3.50 crores) to clear mortgage/encumbrances on the title of the property that was provided as collateral security by the assessee as a guarantor for the loans raised by third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd.; and (iii) M/s Kothapeta Settibalija Ramamandiram Committee (Rs. 2.00 crores) to settle a title dispute. The AO observed that the balance sale consideration of Rs. 3,04,45,000/- was paid to the assessee, out of which

advance tax and tax deducted at source (TDS) were deposited, and only the balance amount of Rs. 28,41,320/- was received in his bank account.

4. The A.O observed, that the assessee while computing the “capital gain” on the sale of the subject properties during the year under consideration, had reduced the abovementioned payments aggregating to Rs. 9 crores (supra) as an expenditure that was claimed by him to have been incurred “wholly and exclusively in connection with transfer” under section 48(i) of the Act. The A.O. disallowed the claim observing, viz. (i). the loans due to SBI and Axis Bank were the liabilities of third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd., and the assessee was only a director/guarantor; (ii). payment to a rival claimant was not an expenditure in connection with the transfer but a voluntary settlement; and (iii) the assessee was the absolute owner of the property and the sale consideration of Rs. 12.04 crores (approx.) was fully received by him. Accordingly, the A.O., based on his aforesaid observations, rejected the claim of deduction raised by the assessee and recomputed his total income at Rs. 11,56,62,270/-, after treating the aforesaid amount of Rs. 9 crores as non-deductible.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The assessee submitted before the CIT(A) that the property was encumbered under SARFAESI proceedings that were initiated by both banks, as the same was mortgaged as collateral for loans advanced by the banks to the aforementioned companies, viz. (i). M/s. Siva Sivani Surgical Cottons Pvt. Ltd.; and (ii). M/s. Maddipoti Consultants Pvt. Ltd. Further, the assessee submitted that the rival claim regarding the title of the subject property raised by M/s Kothapeta Settibalija Ramamandiram Committee (for short, "Society") was in respect of ownership of the property, which was supported by decrees and proceedings before the District Court that were obtained by the society. The assessee submitted that to clear these encumbrances and rival claims and to enable a marketable transfer, the purchaser had agreed, under a contemporaneous "Memorandum of Understanding" (MoU) dated 13.06.2019, as per which the said purchaser was to discharge the liabilities directly to the banks and the rival claimant. Copies of SARFAESI notices, One Time Settlement (OTS) correspondence from banks, press clippings of auction notices, and orders of the District Court and Debt Recovery Tribunal (DRT) were placed by the assessee on the record of the CIT(A). It was the assessee's claim, that unless such payments were made, the transfer of the subject properties could not have

been completed, and therefore, they were deductible as an expenditure under section 48(i) of the Act.

6. We find that the CIT(A), after considering the contentions advanced by the assessee in the backdrop of the evidence placed on his record, held that the payments of Rs. 9 crores (supra) were directly and inextricably connected with the transfer of the subject property. It was observed by him that the existence of encumbrances and rival claims was established on record, and that the purchaser had discharged the liabilities as per the sale deed and MoU, as without such clearance, a marketable title could not have passed to the purchaser. The CIT(A) accordingly directed the Assessing Officer to allow deduction of Rs. 9 crores under section 48(i) of the Act and deleted the disallowance made by the A.O. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A), as under:

“5. Findings & Decision:

5.1 I have gone through the Assessment Order, Statement of Facts and Grounds of Appeal filed by the appellant and the written submissions filed by the appellant before me as well as the Assessing Officer.

5.2 The appellant has taken as many as 29 grounds of appeal out of which ground nos. 1, 2 and 29 are general in nature which do not call for separate adjudication.

5.3 Ground nos. 3 to 28 are appeal specific which revolve round the one and only issue involved in the case on hand. During the year of account, the assessee sold land of 10,164 sq. yards situated at Rajahmundry, Andhra Pradesh for a

total consideration of Rs. 12,04,45,000/- vide Registered Sale Deed dated 13-06-2019 to M/s. APSN Properties LLP, Rajahmundry. As seen from this sale deed at page 2, the impugned property has been executed not only by its owner, the appellant, but also by another person viz., M/s. Kothapeta Settibalija Ramamandiram Committee, Rajahmundry (PAN: AAGAK2943P). The very inclusion of a second person in the list of executors of the transfer shows that M/s. Kothapeta Settibalija Ramamandiram Committee, Rajahmundry has certain right/interest in the transfer of the impugned property. A copy of the sale deed that has been filed before the AO during the course of assessment proceedings as well as during the course of appellate proceedings.

5.4 The assessee while computing his income under the head "Long Term Capital Gains" has reduced an amount of Rs. 9,00,00,000/- from the gross sale consideration and arrived at net sale consideration of Rs. 3,04,50,000/-, from which indexed cost of the property of Rs. 50,70,714/- has been deducted so as to arrive at chargeable Long -term Capital Gains of Rs. 2,53,79,286/-. The details of the amounts reduced are as under: i) Rs. 2,00,00,000/- paid by the purchaser directly to M/s. Kothapeta Settibalija Ramamandiram Committee, Rajahmundry (PAN: AAGAK2943P), the dispute holder by way of cheque no: 787357 with regard to clearance of title of the impugned property. ii) Rs. 3,50,00,000/- paid directly to SBI SARB Branch, Visakhapatnam by the purchaser by way of cheque no. 787358 for release of the impugned property from mortgage in connection with loan taken from the said bank by M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd. on the mortgage of the impugned property as a collateral security. iii) Rs. 3,50,00,000/- paid directly to Axis bank Ltd., Rajamahendravaram by the purchaser by way of cheque no. 787359 for release of the impugned property from mortgage in connection with loan taken from the said bank by M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd. on the mortgage of the impugned property as a collateral security.

5.5 In the assessment completed, the A.O has not accepted the above said reduction from gross sale consideration of Rs. 12,04,45,000/- and brought to tax mentioning the following reasons in the Assessment order: a) The assessee is only the absolute owner of the impugned property which has clear, perfect and marketable title in the schedule property. b) The amount of Rs. 7 crores (Rs. 3.5 crores +Rs. 3.5 crores) paid to the Bankers is not the expenditure incurred wholly and exclusively in connection with the transfer on the ground that the loan was not taken by the assessee for acquisition of the property or for further construction and modifications of the properties. The loans were taken by the said companies for their own business purpose after giving the impugned properties as collateral securities. Therefore, the expenditure is not in relation to transfer of property. c) As a principle, the amount spent to get rid of any liability or encumbrance cannot be regarded as cost of improvement of a capital asset. d) Since the buyer has directly paid the amount to the creditor banks, the same is not deductible in computing the capital gains on the sale of the assessee's

property. e) The loans taken by M/s. Maddipoti Consultants Pvt. Ltd. and M/s. Siva Sivani Surgical Cottons Pvt. Ltd. have been squared off by the purchaser of the property, the amounts will be reflected in the books of the companies as reduction in their liabilities. f) The amount of Rs. 2 crores paid to M/s. Kothapeta Settibalija Ramamandiram Committee is also not allowable on the ground that the sale agreement clearly states that the assessee is the absolute owner of the schedule property. g) The onus is cast on the assessee to show how the liability of the said companies would have a 'connect' with the transfer of the impugned property for the purpose of claiming the same as a deduction from Long Term Capital Gains. h) There is no evidence on record to show that the property under consideration was disputed. i) The assessee is presumably aware of the burden of taxation in regard to long term capital gains tax, has paid huge advance tax by taking money from the buyer and has claimed the same as refund in the return of income.

5.6 On a careful consideration of the A. O's objections, the facts of the case, the written submissions filed and the provisions of section 48 of the I.T. Act, 1961, I am of the considered view that the impugned expenditure and claim for Rs. 9,00,00,000/- (Rs. 2,00,00,000/- + Rs. 3,50,00,000/- + Rs. 3,50,00,000/-) is an allowable deduction from the gross sale consideration of Rs. 12,04,45,000/-. As per the provisions of section 48 of the I.T. Act, 1961, the income chargeable under the head "Capital Gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the following amounts, namely (i) Expenditure incurred wholly and exclusively in connection with such a transfer; (ii) The cost of acquisition of the asset and the cost of any improvement there to. The observation of the A.O. that the amount of Rs. 2 crores paid to M/s. Kothapeta Settibalija Ramamandiram Committee is not an allowable expenditure on the ground that the assessee is the absolute owner of the impugned schedule property which has clear, perfect and marketable title and that there is no evidence on record to show that property was in dispute, is factually incorrect. As has been mentioned in the foregoing paras of this order, on coming to know about the proposed auction of the impugned property by SBI, Rajahmundry, some advocates on behalf of M/s. Kothapeta Settibalija Ramamandiram Committee duly gave a public notice in local news papers (Telugu) about the dispute involved with the ownership of the impugned property, the copies of which have been filed before the A.O at the time of assessment as well as during the appellate proceedings. With regard to the same dispute, the appellant has also filed a copy of the judgement of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-X Additional District & Sessions Judge, Rajahmundry in O.S 155 of 2013 dated 27-06-2018 between M/s. Kothapeta Settibalija Ramamandiram Committee, Rajahmundry (Plaintiff) and SBI, Rajahmundry, Axis bank, Rajahmundry, the appellant and Others.

5.7 Also, the assessee has filed before the A.O as well as during appeal proceedings, a copy of the Memorandum of Understanding dated 13-6-2019

entered into between the assessee and M/s. Kothapeta Settibalija Ramamandiram Committee which gives the details of rivalry existing between the assessee and the said committee and the outcome of the negotiations. Further, there is a clear mention in this Memorandum of Understanding about the amounts payable by the purchaser to both the Banks and M/s. Kothapeta Settibalija Ramamandiram Committee.

5.8 During the appeal assessee had produced few copies of correspondence that had taken place between the banks, the assessee and the loanees M/s. Siva Sivani Surgical Cottons Pvt. Ltd.. On a close observation of the whole correspondence of the appellant with the bankers it is noted that an amount of Rs. 7 crores (Rs. 3.50 crores+ Rs. 3.50 crores) reduced/deducted from the sale consideration in computing the chargeable capital gains is wholly and exclusively incurred by the appellant in connection with the impugned transfer. It is also noted from the facts of the case that the entire amount of Rs. 9,00,00,000/- (Rs. 2,00,00,000+ Rs. 3,50,00,000/- + Rs. 3,50,00,000/-) has been incurred wholly and exclusively in connection with the impugned transfer by the appellant. It does not take the character of the amount spent to get rid of any liability or encumbrance so as to be treated as 'cost of improvement' of the property transferred. The payment of amounts of Rs. 2.00 crores, Rs. 3.50 crores and Rs. 3.50 crores made directly by the purchaser to M/s. Kothapeta Settibalija Ramamandiram Committee, SBI and Axis Bank respectively are in accordance with the said Memorandum of Understanding dated 13-6-2019 and in accordance with the recovery proceedings of the banks with regard to their non-performing assets.

5.9 The observation of the AO that the loans taken by M/s. Maddipoti Consultants Pvt. Ltd. and M/s. Siva Sivani Surgical Cottons Pvt. Ltd. Have been squared off by the purchaser of the property and that the amounts will be reflected in the books of the companies as reduction in their liabilities has no reference here in the appellant's claim. On a careful consideration of the facts of the case on hand, it is to be held that the appellant had discharged the onus cast on him to show that the liability of M/s. Maddipoti Consultants Pvt. Ltd. And M/s. Siva Sivani Surgical Cottons Pvt. Ltd. had a connect with the transfer of the impugned property.

5.10 It is also to be held that the payment of Rs. 2.00 crores to M/s. Kothapeta Settibalija Ramamandiram Committee has a 'direct connect' with the impugned transfer and that the appellant has discharged the onus cast on him with regard to the necessity of the payment.

5.11 Merely because the appellant has paid advance tax on the capital gains by taking into consideration the total amount of sale value of Rs. 12,04,45,000/- and then claimed a refund in computation as per the return of income filed, it cannot be said in the scrutiny assessment that the impugned deduction of Rs. 9,00,00,000/- is not allowable in the hands of the appellant.

5.12 While disallowing the claim made for Rs. 9,00,00,000/-, the AO has relied on the Hon'ble Supreme Court decision in the case of Roshan Di Hatti (1977) 107 ITR 938 (SC) which is distinguishable on facts. On the other hand, the appellant, in the case on hand has relied in support of his claim on the decisions rendered in the following cases: i) CIT Vs. Brandford Trading Co. (P) Ltd. (2002) 125 Taxmann 632 (Mad). ii) Gopee Nath Paul 7 Sons Vs. CIT (2002) 147 Taxmann 629 (Cal). iii) CIT Vs. P. Rajendran (1981) 127 ITR 810 (Ker). iv) CIT Vs. A. Venkataraman (1982) 137 ITR 846 (Mad). v) Damodar G. Nagolia Vs. CIT (2007) 12 SOT 600 (Mum). vi) CIT Vs. Roshanbabu Mohammed Hussain Merchant (2002) 144 Taxmann 720 (Bom). vii) Rajendra Mining Syndicate Vs. CIT (1991) 43 ITR 460 (AP). viii) CIT Vs. Jagadish Sugar Mills (1974) Tax LR 526 (All.) ix) CIT Vs. MD Manohar Rao (1985) 155 ITR 696 (AP). x) Rohtak Textile Mills Ltd (1982) 138 ITR 195 (Del). xi) B.N. Pinto Vs. CIT (1974) 96 ITR 306 (Kar). xii) CIT Vs. C.V. Soundararajan (1984) 150 ITR 80 (Mad). xiii) CIT Vs. Abrar Ali (2001) 247 ITR 312 (Bom). xiv) Mala Kumar Vs. Asst. CIT (2020) Tax Pub (DT) 2107 (Delhi-Trib.) xv) CIT Vs. Eagle Theaters (2021) 205 Taxmann 449 (Del). xvi) Devendra Kumar Shroff, Kolkata Vs. ITO, Ward-7(2), Kolkata in I.T.A no: 158/Kol/2016 dated 26-02-2020 (ITATC Bench, Kolkata). xvii) CIT Vs. Smt. Thressiamma Abraham (1997) 227 ITR 802 (Ker).

5.13 In the case of CIT Vs. A. Venkataraman (1982) 137 ITR 846 (Mad), the assessee, owner of certain land which was in possession of two tenants entered into an agreement for sale to a third party who insisted on getting vacant possession of the land. Consequently, the assessee paid certain amounts to the tenants to get the land vacated. It was held that the amount paid to tenants was allowable as deduction in computing capital gains under section 48 (1) of the Act. The same view was taken in CIT Vs. Shakuntala Rajeshwar (1986) 160 ITR 840 (Del).

5.14 In the case of CIT Vs. Eagle Theatres (2012) 205 Taxmann 449 (Del), it has been held that the amount paid to tenant for vacating the premises is allowable as deduction while computing the capital gains if it is wholly and exclusively connected and linked with transfer/sale. Similarly, it is noted that all the case laws relied on by the appellant in support of his claim are found to be applicable to the facts of the case on hand. It is also noted that there existed a dispute between the appellant and M/s. Committee well before the impugned sale. Further, it is noted that the appellant's rights in the impugned property have been transferred much earlier to the date of impugned transfer of land to the bankers when SARFAESI notice was given. The fact remains that there existed several disputes over a period of time with regard to the title of the impugned property as seen from the documents furnished. The fact also remains that SBI, Rajahmundry/ SBI, SARB and Axis Bank, Rajahmundry invoked SARFAESI Act against their borrowers M/s. Maddipoti Consultants Pvt. Ltd. and M/s. Siva Sivani Surgical Cottons Pvt. Ltd and therefore that the appellant was before the Debt Recovery Tribunal, Visakhapatnam. Further, all the SAs filed by the bankers and the said parties were allowed by the Courts and the Debt Recovery Tribunal.

6. In view of the foregoing discussions, it is held that the entire expenditure of Rs. 9,00,00,000/- (Rs. 2,00,00,000/- + Rs. 3,50,00,000/- + Rs. 3,50,00,000/-) shall be treated as spent wholly and exclusively by the appellant in connection with the impugned transfer of the property and it is eligible for deduction under section 48 of the I.T. Act, 1961 while computing the Capital Gains. Moreover since the property was mortgaged with bank without clearing the loan of bank was not possible for assessee to dispose the property. The payment was made by assessee to bank for Title clearance charges. Accordingly, ground nos. 3 to 28 are allowed and the AO is directed to delete the addition of Rs.9,00,00,000/-".

7. The Revenue being aggrieved with the CIT(A) order has carried the matter in appeal before us, contending, viz. (i) the liabilities to banks were not of the assessee but of third parties; (ii) the payments directly made by the purchaser should form part of the sale consideration and cannot be reduced as an expenditure; (iii) the assessee had failed to prove the nexus of expenditure with the transfer; and (iv) the CIT(A) had erred in admitting additional evidence without affording opportunity to the A.O as mandated by Rule 46A of the Income-tax Rules, 1962. Also, the assessee is before us as a cross objector supporting the CIT(A)'s order.

8. Dr. Aparna Villuri, Ld. Senior Departmental Representative ("D.R", for short), at the threshold of hearing of the appeal, submitted that the CIT(A) had grossly erred in law and facts of the case in admitting additional documentary evidence without calling for the objections of the A.O. as was indispensably required per the mandate of Rule 46A of the Income-tax Rules, 1962. However, on a specific query by the bench as to what

additional evidences were admitted by the CIT(A) at the back of the A.O., i.e., in violation of the procedure contemplated under Rule 46A of the Income-tax Rules, 1962, the Ld. DR failed to come forth with any reply.

9. On merits, the Ld. DR relied on the assessment order and submitted that as the payments to banks were the liabilities of the companies and not that of the assessee, thus, the same could not have been allowed as a deduction under Section 48 of the Act. Also, the Ld. DR objected to allowing the assessee's claim for deduction of an amount of Rs. 2 crores that was paid by the purchaser of the property to M/s Kothapeta Settibaliya Ramamandiram Committee (supra), while computing the capital gain on the sale of the subject properties. The Ld. DR submitted that as the CIT(A) had without any basis allowed the assessee's claim for deduction of an amount of Rs. 9 crores (supra) by concurring with him that the same were incurred wholly and exclusively in connection with transfer of the subject properties, therefore, his order was liable to be set aside and that of the A.O be restored.

10. Per Contra, Shri. YV Bhanu Narayana Rao, learned Authorized Representative for the assessee ("A.R", for short), at the threshold of hearing, rebutted the Ld. DR's contention that the CIT(A), while disposing

of the appeal, had admitted certain additional evidence at the back of the A.O., i.e., in violation of Rule 46A of the Income-tax Rules, 1962. The Ld. AR to buttress his contention had drawn our attention to the observations of the CIT(A) at Page 23 – Para 4.2 of his order, wherein he had referred to the various documents that were filed by the assessee before the A.O from time to time during the assessment proceedings. Elaborating further on his contention, the Ld. AR submitted that the CIT(A) had not admitted any fresh/additional evidence in violation of Rule 46A (supra) as alleged by the department.

11. On merits, the Ld. AR supported the CIT(A)'s order. The Ld. AR submitted, that as without clearing the encumbrances under SARFAESI and settling rival claims, transfer of the subject properties during the year under consideration was not possible, therefore, the CIT(A) had rightly found favour with the assessee's claim for deduction of the amount of Rs. 9 crore(supra), and observing that the same was well in order and as per the mandate of law, vacated the disallowance made by the AO. The Ld. AR to fortify his contention that the assessee's claim for deduction of the amount of Rs. 9 crores (supra) had rightly been allowed by the CIT(A), relied on a host of judicial pronouncements.

12. We have heard the Ld. Authorised Representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

13. Apropos the grievance of the revenue that the CIT(A) had while disposing of the appeal violated the procedure for admission of additional evidence as contemplated in Rule 46A of the Income tax Rule, 1962, we find that as observed by the CIT(A) in his order the said documents were filed by the assessee in the course of the assessment proceedings before the AO and formed part of record. As observed by us hereinabove, the CIT(A) had at Page 23 – Para 4.2 of his order specifically taken note of the fact that the various documents were filed by the assessee from time to time during the course of the assessment proceedings before the A.O. Apart from that, we find that the CIT(A) has given his findings based on the sale deed and other contemporaneous evidence. Also, the Ld. DR despite being specifically queried about which all documents were stated to have been admitted by the CIT(A) at the back of the assessee, i.e., in violation of the procedure contemplated in Rule 46A of the Income tax Rules, 1962, had failed to come forth with any reply much the less refer to any such

document that was acted upon by the first appellate authority in violation of the prescribed procedure. We, thus, finding no merit in the department's allegation that the CIT(A) had, while disposing of the appeal, admitted certain additional evidence in violation of the procedure contemplated in Rule 46A (supra), reject the same. The **Ground of appeal No. 3.2** is dismissed.

14. On merits, the controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the sum of Rs. 9 crores paid directly by the purchaser of the subject property to, viz. (i). SBI (Rs. 3.50 crores) and (ii). Axis Bank (Rs. 3.50 crores) to clear mortgage /encumbrances on the title of the property that was provided to the said banks as collateral by the assessee as a guarantor for the loans raised by third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd.; and (iii). M/s Kothapeta Settibalija Ramamandiram Committee (Rs. 2.00 crores) to settle the title disputes of the rival claimant - qualifies and falls within the meaning of an expenditure "wholly and exclusively in connection with transfer" and, thus, was rightly claimed as deductible by the assessee under section 48(i) of the Act while computing the "Capital gains" on the sale of the subject property.

15. We shall, before dealing with the controversy in hand, i.e., sustainability of the CIT(A)'s view that the sum of Rs. 9 crores paid directly by the purchaser of the subject property to, viz. (i) SBI (Rs. 3.50 crores) and (ii) Axis Bank (Rs. 3.50 crores) to clear the mortgage /encumbrances on the title of the property that was provided to the said banks as collateral by the assessee as a guarantor for the loans raised by third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd.; AND (iii) M/s Kothapeta Settibalija Ramamandiram Committee (Rs. 2.00 crores) to settle the title disputes of the rival claimant, qualifies and falls within the meaning of an expenditure "wholly and exclusively in connection with transfer" and, thus, was rightly claimed as a deductible by the assessee under section 48(i) of the Act while computing the "Capital gains" on the sale of the subject properties, deem it apposite to cull out the facts involved in the present case.

16. As is discernible from the record, the assessee along with M/s Kothapeta Settibaliga Ramamandriram Committee, Rajahmundry, had during the subject year executed a sale deed dated 13.06.2019 of land admeasuring 10,164 sq. yards situated at Rajahmundry municipal

corporation, in favour of M/s APSN Properties LLP, D. No. 74-7-3, Prakash Nagar, Rajahmundry & Ors. for a consideration of Rs. 12,04,45,000/-.

17. Background of the case reveals that the assessee had, vide guarantee agreements executed on 09.02.2011, given the subject land admeasuring 10,164 Sq. yards, as security, i.e., guarantee of Rs. 5 crore each for the loans that were taken by two companies, viz. (i). M/s Siva Sivani Surgical Cottons (P) Ltd.; and (ii). M/s Maddipoti Consultants (P) Ltd. by depositing the title deeds of the subject property with the State Bank of India., Branch: Rajahmundry and Axis Bank Ltd., Branch: Rajahmundry [Mortgage by deposit of title deeds – each bank 5,082 Sq. yards].

18. On a perusal of the record, we find that as the loan given by the banks to the aforementioned companies became a Non-Performing Asset (for short, “NPA”), therefore, both of the banks invoked the provisions of Section 13(2) of the Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFASI Act, 2002] against the assessee on 04.07.2012. Thereafter, the banks had also put the land of the assessee to public auction and had given advertisements in the local newspapers for the sale of the subject property.

In the meantime, the banks had also come out with a one-time settlement (OTS).

19. Further, on the subject land, M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry (a registered society), on learning about the proposed public auction of the subject property by the abovementioned banks, had also raised a claim of ownership of the said property and filed a case with the Debt Recovery Tribunal, Vishakapatnam (for short, "DRT") against the said banks, viz. State Bank of India and Axis Bank Ltd. The aforesaid society was successful, and the DRT, Vishakapatnam, had confirmed its right, title, and interest in the subject property. Thereafter, the SBI and Axis Bank preferred appeals to the Debt Recovery Appellate Tribunal, Kolkata ("DRAT").

20. As the dispute about the ownership of the subject property between the assessee and the society continued, therefore, the aforesaid banks, had preferred appeals to the higher forums against the decision of the DRT.

21. We find that in the meantime, a memorandum of understanding (MoU) was entered into on 13.06.2019 amongst the assessee, the society, and the purchaser of the land, viz. M/s APSN Properties LLP & Ors. As per the MoU, it was agreed, viz. (i). the assessee had agreed to execute the

sale deed in favour of the purchasers of the land admeasuring 10,164 Sq. yards; (ii). the society had agreed to give up its claim of title in all courts, and a lok adalat settlement between the assessee and the society was to be recorded, and the sale consideration as mentioned in the sale deed was agreed to be paid to the society; (iii). that out of the sale consideration of the property amount shall be paid to SBI and Axis Bank Ltd., Vishakapatnam, directly by the purchaser for the release of the mortgaged property, i.e., the subject property; and (iv). the purchasers of the property shall deduct TDS and the capital gains tax payable by the assessee.

22. Thereafter, the registered sale deed, dated 13.06.2019, was executed, wherein the assessee (vendor of the 1st part) and the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry (vendor of the 2nd part) had transferred the subject property to the purchasers, viz. M/s APSN Properties LLP & Ors.. Also, as per the registered sale deed, the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry, had given up its claim for title in the subject property before the civil court and DRAT, Kolkata, subject to the payment of an amount of Rs. 2 crore.

22.1. After the MoU, the sale deed was executed on 13.06.2019, and the purchaser of the property, i.e., M/s APSN properties LLP, made the following payments directly to the banks and the society, as under:

- (a). A sum of Rs. 2 crore was paid by the purchaser directly to the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry, vide cheque no. 787357, dated 12.06.2016, drawn on SBI, SME Branch, Rajamahendravaram;
- (b). A sum of Rs. 3.50 crores was paid directly to SBI, SARB Branch, Vishakapatnam, vide cheque No. 787358, dated 12.06.2019 drawn on SBI, SME Branch, Rajamahendravaram to release the land from the mortgage in connection with the loan given by the bank to Siva Sivani Surgical Cottons (P) Ltd. and Muddipoti Consultants (P) Ltd with the assessee as a guarantor;
- (c). A sum of Rs. 3.50 crores was directly paid to Axis Bank Ltd, Rajahmundry, vide cheque no. 787359, dated 12.06.2019, drawn on SBI, SME Branch, Rajamahendravaram, for the release of the mortgaged title deeds given as guarantor for the loans that were given to the aforesaid two companies.

23. Thus, the purchaser of the property, viz. M/s APSN Properties LLP had directly paid a sum of Rs. 9 crore [Rs. 2 crore + Rs. 3.5 crore + Rs. 3.5 crore], out of the sale consideration of Rs. 12,04,45,000/- to the aforementioned society and banks. The assessee, while computing the Long-term capital gain (LTCG), claimed the aforesaid payment of Rs. 9 crore (supra) as a deduction under Section 48(i) of the Act.

24. To sum up, as per the sale deed, dated 13.06.2019, and the MoU, the subject property was under encumbrance with SBI and Axis Bank, as it was provided as collateral by the assessee as a guarantor for the loans raised by the aforementioned third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd. Also, the title of said property was subject to a rival claim by M/s Kothapeta Settibalija Ramamandiram Committee. As the purchaser would not have obtained a clean marketable title unless the aforesaid encumbrances on the property were cleared, therefore, to clear these encumbrances and rival claims and to enable a marketable title, the purchaser had agreed, under a contemporaneous "Memorandum of Understanding" (MoU) dated 13.06.2019, as per which he was to discharge the liabilities directly to the banks and the rival claimant. Accordingly, the purchaser of the property

had, as per the MoU, dated 13.06.2019, paid an amount aggregating to Rs. 9 crores directly to the aforementioned parties.

25. We have carefully considered rival submissions and perused the material on record. The undisputed facts are that the property sold was encumbered under SARFAESI proceedings with both SBI and Axis Bank, and was also simultaneously subject to a rival claim of ownership. As observed hereinabove, the purchaser agreed to clear the aforementioned dues and encumbrances as a condition precedent for sale. Admittedly, the sale deed and MoU specifically record such an arrangement and the fact that Rs. 9 crores were paid directly by the purchaser to the banks and the rival claimant.

26. The core issue for determination of which our indulgence has been sought is that as to whether or not the aforementioned payments are expenditure incurred wholly and exclusively in connection with the transfer of the subject property within the meaning of section 48(i) of the Act.

27. We find that the expression “wholly and exclusively in connection with transfer” has been judicially interpreted to include not only expenses incurred directly on execution of the conveyance, but also amounts necessarily incurred to perfect title, to remove encumbrances, or to secure

vacant possession to enable transfer of the subject property. As our indulgence in the present appeal has been sought to adjudicate the allowability of the assessee's claim for the deduction of Rs. 9 crore (supra) that it had paid towards, viz. (i) payments made to banks, i.e., SBI and Axis Bank Ltd. (Rs. 3.50 crores each) to clear mortgage/encumbrances on the title of the property that was provided as collateral by the assessee as a guarantor for the loans raised by third-party companies; and (ii) the payment made to a rival claimant of the property, viz. M/s Kothapeta Settibalija Ramamandiram Committee (Rs. 2.00 crores) to settle the title dispute of the said rival claimant, therefore, we shall deal with the said respective issue separately, as under:

Re:Payment made to M/s Kothapeta Settibalija Rama mandiram Committee in settlement of their rival claim of title in the subject property that was supported by judicial pronouncements: Rs. 2 crore

28. As observed by us hereinabove, both the banks, viz. (i). SBI; and (ii). Axis Bank Ltd. had invoked the SARFASI Act, 2002, and issued notices under Section 13(2) of the Act and taken possession of the subject property. On the other hand, M/s Kothapeta Settibalija Ramamandirum Committee (for short, "Society") had raised a counter claim to the title of the subject property. Thereafter, the society on learning about the auction

of the subject property by the banks under SARFASI Act, 2002, had given a notice in the local newspapers about the dispute of the ownership a/w photocopies of the legal notices/press notifications, and had issued warnings to the general public from buying the subject property in auction of the banks as the matter was sub judice in the court. Also, the society had filed with the Debt Recovery Tribunal, Vishakapatnam (for short, "DRT") S.A No. 196 of 2015 against SBI, Main Branch, Rajamahendravaram, and S.A No. 164 of 2015 against Axis Bank, T Nagar Branch, Rajamahendravaram. The DRT had vide its order dated 30.10.2015 allowed both the S.A's and confirmed the right, title, and interest of the society in the subject property. Thereafter, SBI and Axis Bank Ltd. had preferred appeals against the order of the DRT, dated 30.06.2015, before the Debt Recovery Appellate Tribunal, Kolkata (for short, "DRAT"). Further, the society had filed O.S no. 155 of 2013 with the Xth Additional District Court, Rajamahendravaram for the declaration of absolute ownership of the subject property and granting of a permanent injunction restraining the other parties from interfering with its possession and enjoyment of the said property, which, however, was dismissed by the court as barred by law as per Section 34 of the SARFASI Act, 2002.

29. Thus, on the one hand, the banks had initiated proceedings under Section 13(2) of SARFASI Act, 2002, against the assessee on 04.07.2012 and had put his subject property for public auction, while, on the other hand, the society, viz. M/s Kothapeta Settibalija Ramamandirum Committee had disputed the title of the subject property and had vide S.A Nos. 196 & 164 of 2015 filed against the banks, got an order from the DRT, Vishakapatnam, confirming its right, title, and interest in the subject property. Also, the society had approached the court for the declaration of absolute ownership of the subject property and grant of a permanent injunction restraining the other parties from interfering with its possession and enjoyment of the said property.

30. In the meantime, as the banks had come up with a One-Time Settlement (OTS), and the assessee had come across a purchaser of the subject property, viz. M/s APSN Properties LLP & Ors., therefore, a memorandum of understanding (MoU), dated 13.06.2019, was executed between, viz. (i). the assessee; (ii). M/s Kothapeta Settibalija Ramamandirum Committee (for short, "Society"); and (iii) M/s APSN Properties LLP & Ors, i.e., the purchasers of the property. As per the MoU, it was, inter alia, amongst other agreed upon, viz. (i). the assessee shall

execute the sale deed in favour of the purchasers of the land admeasuring 10,164 Sq. yards; (ii). the society had agreed to give up its claim towards title in the subject property in all courts and a lok adalat settlement between the assessee and the committee was to be recorded; and (iii). the sale consideration was agreed to be paid to the society as mentioned in the registered sale deed. Thereafter, the registered sale deed, dated 13.06.2019, was executed, wherein the assessee (vendor of the 1st part); AND the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry (vendor of the 2nd part) had transferred the property in favour of the purchasers. Also, as per the registered sale deed, the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee, Rajahmundry, had given up its claim for title in the subject property both before the civil court and DRAT, Kolkata, subject to the payment of Rs. 2 crore that it had received vide cheque no. 787357, dated 12.06.2016, drawn on SBI, SME Branch, Rajamahendravaram directly from the purchasers.

31. We, thus, in the backdrop of the aforesaid facts, have been called upon to adjudicate that, as to whether or not the payment of Rs. 2 crores (supra) made to the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee (supra) have rightly been claimed by the

assessee as a deduction while computing the capital gains on the transfer of the subject property.

32. We have given thoughtful consideration to the issue in hand in the backdrop of the orders of the authorities below. In our view, the fact that the society, viz. M/s Kothapeta Settibaliga Ramamandhiram Committee (supra) had along with the assessee joined as a “Vendor” (i.e., as a vendor of the second part), in itself establishes that the consideration of Rs. 2 crores (supra) that it had received was towards its interest, right and title in the subject property and, thus, the sale consideration to the said extent could by no means be assessed in the hands of the present assessee before us.

33. Alternatively, we even otherwise, are of a firm conviction that, in the backdrop of the facts borne on record, viz. (i). the counter claim raised by the society towards the title of the subject property; (ii). the fact that the society on learning about the auction of the subject property by the banks under SARFASI Act, 2002, had given a notice in the local newspapers about the ongoing dispute about the ownership of the subject property a/w photocopies of the legal notices/press notifications, and issued warnings to the general public from buying the subject property in auction of the banks as the matter was sub judice in the court.; (iii). the DRT order, dated

30.10.2015, wherein the SA Nos. 196 & 164 of 2015 filed by the society against both the banks were allowed in its favour and its right, title and interest in the subject property was confirmed; and (iii). the fact that the society had filed a petition i.e. O.S no. 155 of 2013 with the Xth Additional District Court, Rajamahendravaram, for the declaration of absolute ownership of the subject property and granting of a permanent injunction restraining the other parties from interfering with its possession and enjoyment of the said property; thus, establishes beyond doubt that there was a strong encumbrance to the title of the subject property, and the assessee could not have sold the same without removing the said encumbrance.

34. We, thus, are of a firm conviction that the payment of Rs. 2 crore (supra) made to the society to discharge the encumbrance, which was absolutely necessary to effect the transfer of the subject property, was beyond doubt an expenditure covered by clause (i) of Section 48(1) of the Act. Our aforesaid view is supported by the following judicial pronouncements:

**(A). Smt. A. Rita Vs. CIT
(2025) 173 taxmann. Com 921 (Mad) :**

In the case before the Hon'ble High Court, the assessee had sold property and paid a portion of the sale proceeds to his sister, who had raised a rival claim to the title of the property. The assessee had paid the amount to settle the dispute and obtain a clear title. Thereafter, the assessee claimed the amount paid to his sister as a deduction u/s 48 of the Act, i.e., as an expenditure incurred wholly and exclusively in connection with the transfer. The Hon'ble High Court held that the amount paid by the assessee to obtain a clear title of the property was rightly claimed by the assessee as a deduction u/s 48 of the Act as an expenditure incurred wholly and exclusively in connection with the transfer or as a part of the cost of acquisition. Accordingly, it was held that a payment made to perfect the title or settle ownership disputes to facilitate the sale of a property will qualify as a deductible expenditure u/s 48 of the Act.

**(B). CIT Vs. Shakuntla Kantilal
(1991) 190 ITR 56 (Bom).**

The assessee in the present case had executed an "agreement to sell" and paid compensation to the earlier party to release the property from encumbrance. The High Court held that the payment made by the assessee was allowable as a deduction under Section 48 of the Act.

(C). Yogesh Patel Vs. DCIT

(2025) 170 Taxmann.com 130 (Delhi Tribunal)

The Tribunal in the aforesaid case, had held that the expenditure paid by the assessee to confirming parties and occupant on sale of property was an allowable expenditure u/s 48(1) of the Act.

**(d). Gopee Nath Paul & Sons Vs. Dy. CIT
(2005) 198 CTR 116 (Calcutta).**

The Hon'ble High Court had held that the payments to discharge encumbrances in order to enable the sale of the asset was a deductible expenditure. It was observed that any amount the payment of which is absolutely necessary to affect the transfer will be an expenditure covered by clause (i) of Section 48(1). In other words, if, without removing any encumbrance, sale or transfer could not be affected, the amount paid for removing that encumbrance will fall under clause (i) of Section 48 of the Act.

35. We thus, in terms of our aforesaid deliberations, read in light of the settled position of law, are unable to concur with the AO, who, being of the view that the payment of Rs. 2 crore (supra) made by the assessee to the society, being a gratuitous payment, thus, was not allowable as a deduction. Accordingly, in terms of our aforesaid observations, we find no infirmity in the view taken by the CIT(A), who had allowed the assessee's

claim for deduction of Rs. 2 crore (supra) and, thus, uphold his order to the said extent. The **Ground of appeal No. 3.1** and **Ground of appeal No. 2.1 (to the extent relevant to the subject issue)** raised by the revenue are dismissed.

Re: Payments made to Banks, viz (i). State Bank of India: Rs. 3.50 crore; and (ii).Axis Bank Limited: Rs.3.50 crore: Rs. 7 crores

36. As we have observed at length hereinabove, based on the memorandum of understanding (MoU) that was entered on 13.06.2019 amongst the assessee, the committee, and the purchaser of the land, viz. M/s APSN Properties LLP & Ors, it was agreed, viz. (i). the assessee had agreed to execute the sale deed in favour of the purchasers of the land admeasuring 10,164 Sq. yards; (ii). the society had agreed to give up its claim of title in all courts and a lok adalat settlement between the assessee and the society was to be recorded, and the sale consideration was to be paid to the society as mentioned in the sale deed; (iii). that out of the sale consideration of the property amount shall be paid to the aforementioned banks, viz. SBI and Axis Bank Ltd., Vishakapatnam, directly by the purchaser for the release of the mortgaged property, i.e., the subject property; and (iv). the purchasers of the property shall deduct TDS and the capital gains tax payable by the assessee.

37. Thereafter, the purchasers as per the terms of the MoU, dated 13.06.2019 had at the time when the registered sale deed was executed, inter alia, directly made payments aggregating to Rs. 7 crores out of the sale consideration to the aforementioned banks, viz. (i). SBI, SARB Branch, Vishakapatnam, vide cheque No. 787358, dated 12.06.2019, drawn on SBI, SME Branch, Rajamahendravaram to release the land from the mortgage in connection with the loan given by the bank to Siva Sivani Surgical Cottons (P) Ltd. and Muddipoti Consultants (P) Ltd with the assessee as a guarantor: Rs. 3.50 crores; and (ii). Axis Bank Ltd, Rajahmundry, vide cheque no. 787359, dated 12.06.2019, drawn on SBI, SME Branch, Rajamahendravaram, for the release of the mortgaged title deeds given as guarantor for the loans that were given to the aforesaid two companies: Rs. 3.50 crores.

38. Coming back to the controversy involved, we find that the same boils down to the solitary issue that as to whether the aforesaid amount of Rs. 7 crores (supra) paid by the purchasers of the property out of the sale consideration directly to the aforesaid banks to release the subject property from the mortgage of the bank and remove the encumbrance on the same, i.e., diversion of the funds to the banks based on their overriding title had

rightly been reduced by the assessee from the sale consideration for computing the capital gains assessable in his hands.

39. As observed by us hereinabove, the assessee had, vide guarantee agreements executed on 09.02.2011, given his land admeasuring 10,164 Sq. yards, as security, i.e., guarantee of Rs. 5 crore each for the loans that were taken by two companies, viz. (i). M/s Siva Sivani Surgical Cottons (P) Ltd.; and (ii). M/s Maddipoti Consultants (P) Ltd. by depositing the title deeds of the subject property with State Bank of India and Axis Bank Ltd., Branch: Rajahmundry [Mortgage by deposit of title deeds – each bank 5,082 Sq. yards]. However, as the loan given by the banks to the aforementioned companies became a Non-Performing Asset (for short, “NPA”), therefore, both the banks invoked the provisions of Section 13(2) of the SARFASI Act, 2002 against the assessee on 04.07.2012. Also, the banks had put the subject property of the assessee that was mortgaged with them to public auction and had given advertisements in the local newspapers for the sale of the subject property. In the meantime, as the banks had come out with a one-time settlement (OTS), therefore, they had settled for an amount of RS. 3.50 crore each.

40. As observed hereinabove, the purchasers of the property, viz. M/s APSN Properties LLP & Ors., as per the terms of the MoU, dated 13.06.2019, had agreed to directly make payment to the banks, viz. SBI and Axis Bank Ltd., Vishakapatnam, for the release of the subject property that was mortgaged with them.

41. Accordingly, as the subject properties were mortgaged with the banks for loans raised by third parties, viz. (i). M/s Siva Sivani Surgical Cottons (P) Ltd.; and (ii). M/s Maddipoti Consultants (P) Ltd. and not for any loan raised by the assessee, therefore, the sum of Rs. 7 crores was taken by them from the purchasers of the property based on the principle of diversion of income by overriding title as they had a superior tile over the subject mortgaged property based on the demand notices issued by them under Section 13(2) of the SARFASI Act, 2002 and notices of public auction of the said property issued by them.

42. We may herein observe, that as per Section 48 of the Act the income chargeable under the head "Capital gains" shall be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset the amounts therein specified, viz. (i). expenditure incurred wholly and exclusively in connection with such

transfer; and (ii). cost of acquisition of the land and cost of improvement. However, as in the case of the present case, as the aforesaid banks had a superior title over the mortgaged property, i.e., the subject property, and the purchasers of the subject property, viz. M/s APSN Properties LLP & Ors. had directly paid the amount of Rs. 7 crores (supra) to the said banks, therefore, no part of the said sale consideration was either received or accrued in favour of the assessee as a result of the transfer of the capital asset, i.e., the subject property which the assessee not for any loan raised by him, but as a guarantor had given as collateral security to the banks for the loans raised by the aforementioned companies.

43. Our aforesaid view, that based on the principle of diversion of income by overriding title, the amount of Rs. 7 crores (supra) paid by the purchasers of the subject property, i.e., M/s APSN Properties LLP & Ors. could not have been assessed in the hands of the assessee is supported by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Sitaldas Tirathdas (1961) 41 ITR 367 (SC)**. Also, as there was a binding contract between the assessee and the banks, viz. (i). SBI; and (ii). Axis Bank Ltd., wherein by mortgaging the subject property for the loans raised by the third parties, the said banks based on the contractual obligation as

per their superior title over the said property had appropriated the sale proceeds to the tune of Rs. 7 crore (supra), therefore, there was no real income accrued to the assessee to the said extent which could be assessed in its hands under Section 48 of the Act. Our aforesaid view that based on the principle of diversion of income by overriding title and real income theory, the amount of Rs. 7 crores (supra) paid by the purchasers of the property, viz M/s APSN Properties LLP & Ors. directly to the banks, could not have been assessed in the hands of the present assessee before us, is supported by the following judicial pronouncements:

**(A). CIT Vs. Smt. Thressiamma Abraham (No.1)
(1997) 227 ITR 802 (Ker)**

In the case before the Hon'ble High Court, the assessee stood as guarantee for repayment of a loan taken by an industrial concern from the Kerala Finance Corporation and had also mortgaged certain immovable property belonging to her. Thereafter, Kerala Finance Corporation sold the mortgaged property of the assessee and appropriated the sale proceeds against the loan taken by the Industrial concern. **On appeal, it was held that as Kerala Finance Corporation had acted in exercise of the overriding title in its favour, thus, there was no income to the**

assessee, and much the less any “Capital gain” was liable to be brought to tax in her hands on the sale of the same.

(emphasis supplied by us)

**(B). Addl. CIT Vs. Glad Investments (P) Ltd.
(2006) 8 SOT 612 (Delhi)**

In the case before the Tribunal, the assessee owned 11,72,900 shares costing Rs. 20.06 crores and such shares were offered as guarantee for the loan taken by a company. Thereafter, the company defaulted and the lender sold the shares and appropriated the sale proceeds against the loan given to third party company. The assessee did not receive any amount on the sale of the shares.

On appeal, the Tribunal observed that the profits and gains cannot be charged to capital gain tax in the hands of the assessee, because no sale consideration was either received or accrued in his favour as a result of the transfer of those shares. Further, it was observed that there was a diversion of the entire consideration at source before it became income in the hands of the assessee.

The Tribunal in its order had distinguished the judgments of the **Hon’ble Supreme Court** in the case of, viz. (i). **V.S.M.R**

Jagdishchandran Vs. CIT (1997) 227 ITR 240 (SC); and (ii). CIT Vs. Attli N. Rao (2001) 252 ITR 880 (SC). It was observed that in neither of those cases, the Hon'ble Apex Court was considering a situation pertaining to loss of a capital asset on account of a guarantee given for a third party loan. Rather, in both the said cases, the encumbrance was created by the owner of the capital assets for his own benefit and, thus, the respective assessee's, had already received the value corresponding to the mortgage liability. It was further observed that in none of the said cases, there was any loss or erosion in the value of a capital asset without any benefit whatsoever to the owner.

(emphasis supplied by us)

(C). ITO, Ward 1(1), Hyderabad Vs. Arka Properties (P) Ltd., (2025) ITA No. 58/Hyd/2024, dated 17.04.2025.

In the case before the Tribunal, the assessee had given its agricultural land as security and deposited the title deeds of the land with ICICI Bank Ltd. in respect of the loan taken by the assessee's sister concern, viz. M/s Soma Infrastructure (P) Ltd. Thereafter, the sister concern defaulted in repayment of the loan taken, and the ICICI bank gave 15 days time for releasing the charge on the assessee's land, subject to the payment of Rs. 50 crores. Accordingly, the assessee had sold the land for a sum of Rs. 61.25 crores

(sale proceeds routed through the lender bank) out of which an amount of Rs. 50 crores was retained by the bank towards the recovery of the loan given to the sister concern. The assessee claimed the amount of Rs. 50 crore (supra) adjusted by the bank towards recovery of the loan of the sister concern as a deduction while computing capital gain on transfer of the subject property. **On appeal, the Tribunal by relying on the principle of diversion of income by overriding title, observed that based on the binding contract between the assessee and the bank a charge was created in favour of the bank for a sum of Rs. 50 crore. It was further observed, that as the real income in the hands of the assessee was only Rs. 11.25 crores out of the total sale consideration of Rs. 61.25 crores, thus, the principle of diversion by the overriding title was applicable in the case of the assessee and, thus, the said payment made by the assessee for release of charge on its land was an expenditure incurred by the assessee necessary for transfer/sale of the property and allowable as a deduction under Section 48(1) of the Act.**

(emphasis supplied by us)

**(D). PCIT Vs. Rinki Shashikant Gandhi
(2024) 471 ITR 321 (Guj)**

In the case before the Hon'ble High Court, the property owned by the guarantor was sold, and the purchaser had paid the amount directly to the lender. On appeal, the High Court held that the amount paid by the purchaser directly to the lender was allowable as a deduction u/s 48 for computing the capital gains on the sale of the property in the hands of the assessee.

We may further observe that in the aforesaid case before the Hon'ble High Court, the department had relied upon the judgment of the **Hon'ble Supreme Court** in the case of, viz. **(i). V.S.M.R Jagdishchandran Vs. CIT (1997) 227 ITR 240 (SC)**. It was observed that in the case of **V.S.M.R Jagdishchandran (Decd.) Vs. CIT (supra)**, the **Hon'ble Apex Court** had **dismissed the appeal in the facts of the said case on the ground that the mortgage was created by the assessee himself**. For the sake of clarity, we deem it apposite to cull out the observations of the **Hon'ble High Court of Gujarat in PCIT Vs. Rinki Shashikant Gandhi (supra)**, as under:

4. The assessee filed his return of income for the Assessment Year 2013-14 declaring total income of Rs. 25,000/- which was assessed under section 143(3) of the Act, 1961 by determining the total income of Rs. 3,15,05,000/-. During the year under consideration, the assessee sold an immovable property for a sale consideration of Rs. 5,50,00,000/- and out of the same, deducted expenses incurred in connection with the transfer, a sum of Rs. 3,25,00,000/- being payment made to various illegal occupants and a sum of Rs. 1,50,00,000/- being the payment made to Titco Limited for removing the charge created on the property. The Assessing Officer did not accept the claim of Rs. 3,25,00,000/-

towards payment to illegal occupants. However, the Assessing Officer allowed the deduction for payment of Rs. 1,50,00,000/- made to Titco Ltd.

5. The PCIT, therefore issued a show-cause notice on the ground that the Assessing Officer had incorrectly allowed the deduction of payment to Titco Ltd amounting to Rs. 1.5 cores in view of the decision of the Apex Court in case of **V.S.M.R. Jagdadishchandran vs Commissioner of Income Tax** reported in **227 ITR 240** wherein it is held that where the property was not mortgaged by previous owner but by assessee himself, then the amount paid to discharge mortgage debts could not be treated as cost of acquisition so as to allow same as deduction. Accordingly, the PCIT set aside the assessment order on the ground that the order has been passed without making inquiry and verification which should have been made in terms of Explanation 2 to section section 263 of the Act,1961.

XX

XXX

XX

10. Having heard learned advocates for the respective parties and considering the impugned order as well as the facts and the findings arrived at by the Tribunal, it is clear the Apex Court in the case of **V.S.M.R. Jagdadishchandran (supra)** has dismissed the appeal in the facts of the said case on the ground that the mortgage was created by the assessee himself. Relevant facts and the findings arrived at by the Apex Court are as under:

“3. The assessee sold a house property No. 22, Chairman Muthurama Iyer Road, Madurai for a sum of Rs. 90,000 subject to incumbrance in the asst. yr. 1975-76 and for the same assessment year he sold plot Nos. 1, 3 and half of plot No. 4 for a sum of Rs. 12,600. The ITO computed the capital gains in respect of the said properties at Rs. 68,400. The assessee questioned the computation of capital gains before the AAC and contended that the debts in respect of which mortgage had been executed were discharged by the buyer himself out of the sale proceeds, that the debts should be considered as increase in cost of acquisition of the properties and that in any event the debts may be treated as improvement to the property or as the cost of obtaining clear title to the property. The AAC rejected the said contention. He, however, upheld the contention of the assessee that there was an overriding title of the creditors in respect of the sale proceeds and, therefore, there was diversion at source on the basis of such overriding title and the assessee was not liable to charge under the capital gains in respect of the sale of the properties and, therefore, he deleted the capitals gains of Rs. 68,400 as computed by the ITO. The Tribunal, following the decision of the Kerala High Court in *Ambat Echukutty Menon vs. CIT* (1 (1978) 111 ITR 880 (Ker) , and the decision of the Madras High Court in *CIT vs. V. Indira* (1979) 119 ITR 837 (Mad) held that clearing of the mortgage debt could neither be treated as cost of acquisition nor as an cost of improvement made by the assessee. The

Tribunal, therefore, held that the deduction of the capital gains was not justified. Since the Tribunal declined to refer to the High Court the questions referred to above, the assessee filed an application under s. 256(2) of the Act before the High Court which has been rejected by the impugned order. The High Court has relied upon the decision of the Full Bench of the High Court in *S. Valliammai & Anr. vs. CIT* (1981) 127 ITR 713 (Mad) and has held that by discharging the mortgage debt subsisting on the property which was the subject-matter of a sale, the assessee was not either improving or perfecting his title or improving the property in any manner and, therefore, the amount paid for discharging the mortgage debt cannot be taken to be for the cost of acquisition as contended by the assessee.

4. In Civil Appeals Nos. 6098- 6101 of 1983 [since reported as *R. M. Arunachalam etc. vs. CIT* (1997) 141 CTR (SC) 348 filed against the judgment of the Full Bench of the Madras High Court in *S. Valliammai & Anr. vs. CIT* (supra) we have examined the correctness of the view of the Kerala High Court in *Ambat Echukutty Menon vs. CIT* (supra) and have held that the said decision does not lay down the correct law in so far as it holds that where the previous owner had mortgaged the property during his life time the clearing off the mortgage debt by his successor can neither be treated as cost of acquisition nor as cost of improvement made by the assessee. It has been held that where a mortgage was created by the previous owner during his time and the same was subsisting on the date of his death, the successor obtains only the mortgagors interest in the property and by discharging the mortgage debt he acquires the mortgagees interest in the property and, therefore, the amount paid to clear off the mortgage is the cost of acquisition of the mortgagees interest in the property which is deductible as cost of acquisition under s. 48 of the Act. In the present case, we find that the mortgage was created by the assessee himself. It is not a case where the property had been mortgaged by the previous owner and the assessee had acquired only the mortgagors interest in the property mortgaged and by clearing the same he had acquired the interest of the mortgagee in the said property. The questions raised by the assessee in the application submitted under s. 256(2) of the Act do not, therefore, raise any arguable question of law and the said application was rightly rejected by the High Court. In the circumstances, even though we are unable to agree with the reasons given in the impugned order, we are in agreement with the order of the High Court dismissing the application filed by the assessee under s. 256(2) of the Act.”

11. In the facts of the present case, the findings of fact arrived by the Tribunal is to the effect **that the assessee did not create any mortgage on the property but he had given a personal guarantee to Titco Ltd for discharge of the debt for which there was a charge over the property and for release of the**

mortgage on the personal guarantee of the assessee, the amount was paid by the buyer directly to the Titco Ltd. It is also not in dispute that the assessee did not avail any loan on mortgage of the property sold by him.

12. In view of such factual aspect, the Tribunal has rightly held that the assessment order by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue.”

(emphasis supplied by us)

44. We thus, in terms of our aforesaid deliberations, are of the considered view that as the sum of Rs. 7 crores (supra) was taken by the aforementioned banks, viz. (i). SBI; and (ii) Axis Bank Ltd. directly from the purchasers of the property, viz, M/s APSN Properties LLP & Ors., therefore, as per the principle of diversion of income by overriding title as the said banks had a superior tile over the subject mortgaged property based on the demand notices issued by them under Section 13(2) of the SARFASI Act, 2002; and further as per the real income theory, when no part of the sale consideration was either received or accrued to the assessee, therefore, drawing support from the aforesaid judicial pronouncements it can safely be concluded that the said amount could not have been assessed in the hands of the present assessee before us.

45. We, thus, finding no infirmity in the order of the CIT(A), wherein he had based on a well-reasoned order, observed that the sum of Rs. 9 crores paid directly by the purchaser of the subject property to, viz. (i) SBI (Rs.

3.50 crores) and (ii) Axis Bank (Rs. 3.50 crores) to clear mortgage /encumbrances on the title of the property that was provided to the said banks as collateral by the assessee as a guarantor for the loans raised by third-party companies, i.e., M/s. Siva Sivani Surgical Cottons Pvt. Ltd. and M/s. Maddipoti Consultants Pvt. Ltd.; AND (iii) M/s Kothapeta Settibalija Ramamandiram Committee (Rs. 2.00 crores) in order to settle the title disputes of the rival claimant, was rightly claimed as a deductible by the assessee under section 48(1) of the Act, while computing the “Capital gains” on the sale of the subject properties, uphold his order. The **Grounds of appeal Nos. 2.2 to 2.8** and **Ground of appeal No. 2.1 (to the extent relevant to the subject issue)** raised by the revenue are dismissed.

46. As we have upheld the view taken by the CIT(A) and dismissed the appeal filed by the revenue, therefore, the cross-objections filed by the assessee, which are supportive of the CIT(A) order, having been rendered as merely academic in nature, are dismissed as not pressed.

47. In the result, the appeal of the revenue is dismissed in terms of our aforesaid observations, while for the cross-objections filed by the assessee, which are supportive of the CIT(A) order, having been rendered as merely academic in nature, are dismissed as not pressed.

Order pronounced in the Open Court on 10th October, 2025.

<p>Sd/- (एस. बालकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
--	--

Hyderabad, dated 10.10.2025.

#*L.Rama /sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/ The Assessee	:	Shri Surendra Nath Gubbala, 4-58-3, Lawsons Bay Colony, Visakhapatnam
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward-3(1), 2 nd Floor, Infinity Towers, Sankaramatam Road, Santhipuram, Visakhapatnam
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam