

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

**श्री रवीश सूद ,न्यायिक सदस्य
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

**आयकर अपीलसं./I.T.A.No.242/VIZ/2025
(निर्धारण वर्ष/ Assessment Year:2010-11)**

Reddi Paiditali Naidu D.No.8-106 Nalla Quarry Colony Pendurthi Visakhapatnam – 531173 [PAN: AHJPR0703K]	Vs.	Commissioner of Income-Tax (Appeals) National Faceless Appeal Centre
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N. Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri D. Hema Bhupal, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	18.02.2026
घोषणा की तारीख/Date of Pronouncement	:	18.02.2026

आदेश /O R D E R

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 18.02.2025, which in turn arises from the order passed by the Assessing Officer (for short, "A.O") under section 144 of the Income-Tax Act, 1961

(for short, “the Act”), dated 28.12.2017 for the Assessment Year 2010-11. The assessee has assailed the impugned order on the following grounds of appeal:

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts.

2. That having regard to facts & circumstances of the case, the Ld. CIT(A) erred on facts and in law in not reversing the action of the Ld. A.O. in treating the difference between Market price and price as per sale deed as income from STCG without considering the corroborative evidence of Rs.25,03,000.

3. That in any case and in any view of the matter, the order under appeal is bad in law and is against the facts and circumstances of the case in as much as the disallowances made by La. A.O. were not deleted by Ld.CIT(A) and therefore assessment order as well as appeal order passed by Ld. CIT(A) are not sustainable on various legal and factual grounds.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Succinctly stated, the assessee had filed his return of income for the A.Y.2010-11 on 25.11.2010, declaring an income of Rs. 5,88,670/-. Subsequently, the AO gathered that the assessee, during the subject year, had, though sold an immovable property vide Registered Document No. 1883/2009 at SRO, Dwarakanagar, but had failed to disclose the “capital gains” arising on the said transfer transaction in his return of income. Also, it was observed by the AO that the difference between the value adopted by the registering authority and the actual sale consideration disclosed in the registered sale deed worked out at Rs. 57,10,000/-. Accordingly, the AO, based on the aforesaid facts, initiated proceedings under section 147 of the Act. Notice under Section 148 of the Act,

dated 31.03.2017, was issued to the assessee after obtaining the prior approval from the competent authority.

3. As the assessee had failed to comply with the notice issued under section 148 of the Act dated 31.03.2017, therefore, the AO proceeded to frame the assessment to the best of his judgment. Also, the notice(s) issued by the AO under section 142(1) of the Act were not responded to by the assessee.

4. The AO, in the course of the assessment proceedings, observed that the assessee had, during the subject year, sold a vacant plot admeasuring 936 Sq. Yards for a consideration of Rs. 65,52,000/- (along with other co-owners). The AO observed that the aforesaid sale transaction was registered vide document No.1883/2009, at SRO, Dwarakanagar, and the assessee had received his 1/4th share of sale consideration of Rs. 16,38,000/- (i.e. 1/4th of Rs.65,52,000/-) vide Cheque No. 80257 drawn at HDFC, Dwarakanagar Branch.

5. The AO, on a perusal of the registered sale deed, observed that the Registering Authority, viz. Sub-Registrar, Dwarakanagar, had, for the purpose of payment of stamp duty, had adopted the segment value of the immovable property at Rs. 1,22,62,000/-. The AO, based on the aforesaid facts, invoked the provisions of section 50C of the Act and adopted the segment value adopted by the Stamp Valuation authority for payment of stamp duty as the “deemed sale consideration”, and determined the Short-Term Capital Gain (for short, “STCG”)

on the transfer of the subject property at Rs.1,00,12,000/-, based on which the assessee's 1/4th share of STCG was determined by him at Rs. 25,03,000/-. Accordingly, the A.O vide his order passed under section 144 of the Act, dated 28.12.2017, determined the income of the assessee at Rs. 30,91670/-.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success.

7. The assessee, aggrieved with the order of the CIT(A), has carried the matter in appeal before the Tribunal.

8. Shri G.V.N. Hari, Advocate, Learned Authorised Representative (for short, "Ld. AR) for the assessee, at the threshold of hearing of the appeal, submitted that the A.O while framing the assessment had lost sight of the material fact that as the subject property was disadvantageously located, therefore, it was for the said reason that the sale consideration received on the transfer of the same during the year under consideration was lower than the value that was adopted by the registering authority for payment of stamp duty. The Ld.AR to buttress his aforesaid contention, had drawn my attention to the copy of the "purchase deed" of the subject property dated 10.01.2007, which revealed that the subject property that was purchased by the assessee for a consideration of Rs.22,50,000/-, was at that time also for purpose of payment of the stamp duty adopted by the registering authority at a high pitch amount of Rs.74,88,000/-.

9. Elaborating further on his contention, the Ld.AR submitted that the AO had grossly erred in summarily adopting the value taken by the Stamp valuation authority as the “deemed sale consideration” under section 50C of the Act and determined the STCG in the hands of the assessee at Rs. 25,03,000/- (1/4th share).

10. Per contra, Shri D. Hema Bhupal, Learned Senior Departmental Representative (for short, “Ld. DR) objected to the contentions advanced by the assessee’s counsel. The Ld. DR submitted that as the assessee had neither participated in the assessment proceedings nor objected to the adoption of the value taken by the stamp valuation authority for the payment of stamp duty as the “deemed sale consideration”, therefore, he cannot now be permitted to challenge the same in the course of the present proceedings.

11. I have heard the Learned Authorised Representatives of both parties, perused the orders of the authorities below, and considered the material available on record.

12. Admittedly, it is a matter of fact discernible from the record that the assessee had failed to comply with the notice issued under section 148 of the Act dated 31.03.2017, and had not filed his return of income in compliance thereto. In fact, I find that though the AO had issued another notice under section 148 of the Act, but the same too met the same fate and was not acted upon by the assessee. Apart from that, I find that the notices issued by the A.O under section

142(1) of the Act were also not responded to by the assessee. In my view, the AO in the aforesaid circumstances was left with no other alternative but to frame the assessment to the best of his judgment under section 144 of the Act.

13. Be that as it may, I am unable to persuade myself to subscribe to the summary adoption by the AO of the value taken by the Stamp Valuation Authority as the “deemed sale consideration” for determining the STCG on the transfer of the subject property. Admittedly, it is a matter of fact that the assessee had neither participated in the assessment proceedings nor objected to the adoption by the AO of the value taken by the Stamp Valuation authority as the “deemed sale consideration” for determining the STCG on transfer of the subject property. However, I am of the view that the AO in all fairness and in the interest of justice ought to have referred the matter to the “Valuation Cell” for determining the “Fair Market Value” (FMV) of the said property, instead of summarily substituting the actual sale consideration by the value so adopted by the stamp valuation authority as the “deemed sale consideration”, while computing the STCG under Section 50C of the Act. My aforesaid view is supported by the decision of the **Hon’ble High Court of Calcutta** in the case of **Sunil Kumar Agarwal v. CIT (2015) 372 ITR 0083 (Cal)**, wherein it was observed as under:

“7. We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has

not been met by the assessee can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

8. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

9. For the aforesaid reasons, **we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.**

10. For the aforesaid reasons, the order under challenge is set aside.

11. The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law. After such valuation is made, the assessment shall be made de novo in accordance with law.”

(emphasis supplied by me)

In the aforesaid case, it was observed by the Hon'ble High Court that even where the assessee had not requested the AO for making reference to the valuation officer before invoking the provisions of section 50C of the Act, the AO, being a quasi-judicial authority, before substituting the sale consideration by the value adopted by the Registering Authority, as the "deemed sale consideration" for computing the "capital gain" on transfer of the same, ought to have referred the matter to the Valuation Cell. In fact, I find that the claim of the assessee that the Fair Market Value (FMV) of the subject property transferred during the year was lower than the value adopted by the Stamp Valuation authority for payment of stamp duty, for the reason that the same was disadvantageously located, is, prima facie, fortified by the fact that even at the stage of purchase of the said property vide a registered purchase deed dated 10.01.2007, there was a substantial variance between the value that was adopted by the stamp valuation authority and the actual purchase consideration.

14. Be that as it may, in my considered view, the matter, in all fairness and interest of justice, requires to be set aside to the file of the AO, who is directed to make a reference to the valuation cell for determining the Fair Market Value (FMV) of the subject property on the date of transfer, and redetermine the STCG based on the value so determined. Needless to say, the AO/DVO shall, in the course of the set-aside proceedings, afford a reasonable

opportunity of being heard to the assessee, who shall remain at liberty to substantiate his contentions based on fresh documentary evidence, if any.

15. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in the open court on 18th February, 2026.

Sd/-
(रवीश सूद)
(RAVISH SOOD)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 18.02.2026
Giridhar, Sr.PS

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

1. निर्धारिती/ The Assessee : **Reddi Paiditalli Naidu**
D.No.8-106
Nalla Quarry Colony
Pendurthi
Visakhapatnam – 531173
2. राजस्व/ The Revenue : **Commissioner of Income-Tax (Appeals)**
National Faceless Appeal Centre
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam