

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.251/Viz/2017
(निर्धारण वर्ष/Assessment Year:2007-08)**

A.V.V.N.Prasad Reddy
D.No.38-40-13
104 Area, Marripalem
Visakhapatnam
[PAN : AAPPR0698N]

Vs Income Tax Officer
Ward-4(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Shri Rama Krishna Bandi, AR

सुनवाई की तारीख / Date of Hearing

: 03.03.2020

घोषणा की तारीख/Date of Pronouncement

: 11.03.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2,Guntur in Appeal No.261/2015-16 dated 16.02.2017 for the Assessment Year (A.Y.)2007-08.

2. All the grounds of appeal are related to the addition sustained by the Ld.CIT(A) in respect of market value of the property sold u/s 50C of the Income Tax Act, 1961 (in short 'Act'). Brief facts of the case are that the assessee is an individual having income from business, filed his return of income for the A.Y.2007-08. Having reason to believe that the income chargeable to tax had escaped assessment, the Assessing Officer (AO) issued notice u/s 148 and in response to which the assessee filed the return of income admitting total income of Rs.12,21,370/-. The AO found that the assessee has sold the immovable property located at Gopalapatnam Sub Registrar Office, Purushottampuram, Visakhapatnam in Survey, 30/2C admeasuring 1204.5 sq yds of land vide registered document No.1503 to 1514 dated 05.03.2007 for a sale consideration of Rs.40,78,000/-. The AO found that SRO value of the said property was Rs.65,27,500/-, hence requested the assessee to explain as to why the difference amount (6527500-4078000) of Rs.24,49,500/- should not be brought to tax as per section 50C of the Act. In response to which the assessee has filed explanation stating that he had received the advance in the F.Y.2002-03 from Sri M.Ravi Kumar by way of cheque and agreement was entered with the prospective buyer for sale of the property, therefore, argued that the value of the property for the purpose of capital gains

required to be taken as per the date of sale agreement, but not as on the date of sale deed. However, the AO did not accept the contention of the assessee, since the sale deed does not contain the details of payments and mention of sale agreement in the sale deed. Hence, rejected the contention of the assessee and held that capital gains required to be assessed adopting the SRO value as per the sale deed in the A.Y.2007-08, accordingly brought to tax, the sum of Rs.65,27,000/- for capital gains u/s 50C of the Act.

3. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) has confirmed the order of the AO on the same reasoning that the transaction was not completed as on 07.04.2003 as per the recitals of the agreement and accordingly, the Ld.CIT(A) confirmed the action of the AO.

4. Against the order of the AO the assessee filed appeal before the Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee had entered into an unregistered sale agreement with the buyer Shri M.Ravi Kumar on 07.04.2003 for sale of the pieces of land. He has taken our attention to page No.46 of the paper book wherein, the advance payment was made to the assessee to the extent of Rs.19,50,000/- on various dates as under :

02.11.2002	Rs.3,50,000	By Cheque No.8118972, dt. 02.11.2002 Union Bank, Gopalapatnam
11.12.2002	Rs.6,00,000	By Cheque No.110259 dt.11.12.2002 Visakhapatnam Co-operative Bank, Gopalapatnam
06.02.2003	Rs.5,00,000	By Cheque No.110275 dt.06.02.2003 Visakhapatnam Co-operative Bank, Gopalapatnam
10.02.2003	Rs.5,00,000	By Cheque No.24654 dt.10.02.2003 Visakhapatnam Co-operative Bank, Gopalapatnam
Total	Rs.19,50,000	

The assessee agreed to register the land to Sri M.Ravi Kumar or the person authorized on behalf of Sri Ravi Kumar. The Ld.AR submitted that the lands could not be registered due to ongoing dispute with the Government of Andhra Pradesh which has placed restrictions on registration of the land, which was ultimately settled by the orders of Hon'ble High Court of Andhra Pradesh in Writ Petition No.2679 of 2007 dated 13.02.2007 and subsequently the assessee has registered the lands to the buyers. The assessee also placed copy of the order of Hon'ble High Court of Andhra Pradesh in page No.53 to 56 of the paper book. Therefore, submitted that there was sufficient and reasonable cause for not registering the land as agreed by the agreement and as per the proviso to section 50C of the Act, the SRO value as on the date of agreement required

to be considered for the purpose of capital gains. Hence requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

5. On the other hand, the Ld.DR argued that there was no mention of the original agreement in the sale deed. In the absence of the mention of original agreement in the sale deed, year of taxability would be as per the sale deed i.e. F.Y.2006-07 relevant to A.Y.2007-08, hence argued that the SRO value in the sale deed required to be taken for the purpose of capital gains. The Ld.DR further argued that no credence to be given to unregistered agreement, hence requested to uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

6. We have heard both the parties and perused the material placed on record. The assessee has registered the sale deed for sale of the property by document No.1503 to 1514 dated 05.03.2007. However, there was an agreement for sale of the property for a consideration of Rs.26,51,350/- entered in to by the assessee vide the sale agreement dated 07/04/2003 placed in the paper book, which was also furnished before the AO. Neither the AO nor the Ld.CIT(A) has doubted the genuineness of the agreement. The AO also did not examine the prospective buyer who had entered into the agreement for purchase of immovable property from the assessee, to

verify the credentials of the agreement or to elicit the facts with regard to advance payments made for purchase of the immovable property and the genuineness of the transaction as recorded in the agreement dated 07.04.2003. The AO merely choose to assess the income adopting the SRO value as per section 50C as on the date of sale deed without verifying the contents of the agreement and correctness of the contents by making cross verifications with the intended purchaser. Therefore, we are unable to accept the argument of the Ld.DR that no credence to be given to the unregistered agreement. The dates of payments were mentioned and the payments were made by cheque. Therefore, we have no reason to disbelieve the genuineness of the contents of the agreement. It is also brought to our notice that the assessee has filed writ petition before the Hon'ble High Court of Andhra Pradesh in Writ Petition No.2679 of 2007 stating that the Government had issued the notification u/s 22-A of the Registration Act, 1908 in respect of the said land placing restrictions on registration, therefore, the Sub Registrar, Gopalapatnam has not accepted the documents for registration. The issue of registration was resolved by an order of the Hon'ble High Court of Andhra Pradesh dated 13.02.2007. From the agreement, we observe that the payment was received by the assessee by cheque for transfer of land, therefore, the case is squarely

covered by the proviso to section 50C of the Act. On identical facts, this Tribunal in the case of Smt.Chalasanani Naga Ratna Kumari, Visakhapatnam in I.T.A.No.639/Viz/2013 dated 23.12.2016 directed the AO to adopt the value of the property as on the date of execution of the agreement for capital gains. For the sake of clarity, we extract para No. 12 and 13 of the order of this Tribunal which reads as under :

"12. Having heard both the sides and considered materials on record, we find that the A.O. has adopted stamp duty value of the property as on the date of sale deed. The facts relating to the market value as on the date of agreement to sale and as on the date of sale deed is not disputed. The only dispute is whether the stamp duty value as on the date of agreement to sale or sale deed to be considered for the purpose of computation of capital gain. The purpose of introducing section 50C of the Act was to counter suppression of sale consideration of sale of immovable properties. Before insertion of section 50C of the Act to the statute, there are lot of litigations as to consideration shown in document conveying title and payment of stamp duty. To overcome the litigations, the provision of section 50C of the Act has been inserted to the statute w.e.f. 1.6.2003 wherein it is made mandatory to adopt value u/s 50C of the Act for the purpose of determination of consideration. A proviso to section 50C of the Act has been inserted by the Finance Act, 2016 w.e.f. 1.4.2007 to resolve the genuine and intended hardship, in the case in which the date of agreement to sale is prior to the date of sale and market value of the property as on the date of agreement to sale and date of sale deed is different. The said proviso to section 50C of the Act has been examined by the coordinate bench of ITAT, Ahmedabad bench in the case of Dharma Sibai Sonani Vs. DOT in ITA No.1237/Ahd/2013 dated 30.09.2016 and held that the proviso to section 50C of the Act inserted by the Finance Act, 2016 w.e.f. 1.4.2007 is curative in nature and intended to remove an undue hardship to the assessee and accordingly given retrospective effect from 1st April, 2003 i.e. the date effective from which section 50C of the Act was introduced. Accordingly, as per the proviso, the stamp duty value of the property on the date of execution of the agreement to sale should be adopted instead of value on the date of execution of sale deed.

13. In the present case, on perusal of the facts available on record, we

find that the assessee has entered into a sale agreement in the year 2007 and as on that date, the stamp duty value of the property was less than sale consideration agreed to be paid between the parties. Although, stamp duty value of the property has been changed as on the date of sale deed, for the purpose of determination of deemed consideration u/s 50C of the Act, stamp duty value of the property as on the date of execution of agreement to sale should be adopted, instead of value on the date of execution of sale deed. Therefore, we are of the view that the A.O. was erred in adopting value of the property as on the date of sale deed to determine deemed consideration u/s 50C of the Act. Hence, we direct the A.O. to adopt value of the property as on the date of agreement to sale for the purpose of computation of capital gain u/s 50C of the Act.”

Since the facts are identical, we direct the AO to adopt the value of the property for the purpose of section 50C of the Act for computing capital gains as on the date of execution of agreement to sale, but not as on the date of sale deed. Accordingly, we set aside the order of the Ld.CIT(A) and remit the matter back to the file of the AO for limited purpose of verification of SRO value as on the date of sale agreement for determination of the capital gains. The AO is required to give opportunity to the assessee before passing the order. Accordingly, appeal of the assessee is allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11th March, 2020.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO)</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)</p>
<p>न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>लेखा सदस्य/ACCOUNTANT MEMBER</p>
<p>विशाखापटणम /Visakhapatnam</p>	
<p>दिनांक /Dated : 11.03.2020</p>	
<p>L.Rama, SPS</p>	

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

1. निर्धारिती/ The Assessee- A.V.V.N.Prasad Reddy, D.No.38-40-13, 104 Area, Marripalem, Visakhapatnam
2. राजस्व/The Revenue – Income Tax Officer, Ward-4(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam