

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, 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.40/Vizag/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Manne Rajesh Kumar
Vizianagaram

[PAN No.ANLPK1705C]
(अपीलार्थी / Appellant)

The Deputy Director of
Income Tax (IT & TP)
Visakhapatnam

(प्रत्यार्थी / Respondent)

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

: Shri D. Balaji, AR
: Shri S. Ravi Shankar
Narayan, DR

सुनवाई की तारीख / Date of hearing

: 30.08.2017

घोषणा की तारीख / Date of Pronouncement

: 06.09.2017

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-10 {CIT(A)}, Hyderabad vide ITA No.0008/CIT(A)-10/2014-15 dated 24.3.2016 for the assessment year 2012-13.

2. The assessee has raised following grounds of appeal:

1. *The Appellate Order passed by the Learned Commissioner of Income Tax Appeals - X, Hyderabad, in ITA No. 008/CIT(A)-10114-15 is contrary to the law and facts of the case, insofar as it is against the assessee.*
2. *The Learned CIT (Appeals) ought to have seen that interest u/s 201(1A), is chargeable on the tax which is not paid, which is also in line with the CBDT Instruction No. 2/2014, and in the case of the assessee such interest is NIL as there was no tax payable by the seller.*
3. *Without prejudice to ground No. 2, the Learned CIT (Appeals) ought to have allowed the contention of the assessee discussed in paragraph 4.9 of the order passed by the Learned CIT (Appeals) as the ground taken by the assessee is a legal ground.*
4. *The Learned CIT (Appeals) ought to have seen that the provisions of Section 195 are applicable to payments made to non-resident or its agent, and not to a bank which provided a loan and to a GPA holder.*
5. *The Learned CIT (Appeals) ought not to have used 20.6% as the rate of TDS that requires to be deducted.*
6. *The Learned CIT (Appeals) ought to have seen that the Assessing Officer in his remand report has admitted that no interest may be levied, that the Assessing Officer was already aware during the proceedings u/s 201(1A) that the seller has filed his return on 14-12-2012 after declaring long term capital loss.*
7. *The appellant craves leave to add, alter, amend or delete any of the grounds.*

2. Ground Nos.1 & 7 are general in nature and do not require specific adjudication. Ground No.4 is related to the contention of the assessee that the payment made to the GPA holder who is an agent of non-

resident and the payments made to the Dewan Housing, is not liable for deduction of TDS as per the provisions of section 195 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). In the assessee's case, the assessee purchased the property from Mr. G. Satish Kumar, resident of the USA vide document No.1492 on 11.4.2011 and registered before the SRO, Vizianagaram for a sum of ₹ 34 lakhs. As per the provisions of section 195 of the Act, tax is to be deducted on any sum payable to Non-resident which is chargeable to tax. The assessee contended that the assessee has given a General power of attorney to Smt. Allam Baby and the sale consideration was paid partly to Dewan Housing Finance Ltd. and the GPA holder on behalf of seller. The purchaser had paid a sum of ₹ 28,14,000/- to M/s. Dewan Housing Private Limited towards the adjustment of loan taken by the seller and the balance amount of ₹ 5,86,000/- was paid to the GPA holder. Since the payment was made to the GPA holder and the Dewan Housing Finance Ltd. and it was not paid to NRI directly, the provisions of section 195 of the Act are not attracted.

3. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has purchased the property belonging to Shri Satish Kumar, who is a resident of USA and who happens to be NRI. Smt. Allam Baby

is a GPA holder for the purpose of facilitating the transaction in India. Similarly, the housing loan was taken by the seller from Dewan Housing Limited, hence, the payments made to Dewan Housing Limited as well as with Smt. Allam Baby constitutes the payments made to the non-resident and the TDS is deductible as per the provisions of section 195 of the Act and this ground of appeal of the assessee is dismissed.

4. Ground nos.2, 3, 5 & 6 are related to the charging of interest u/s 201(1A) of the Act on the payment made to NRI. The assessee has purchased the property from Shri Satish Kumar an NRI. As per the provision of I.T. Act, the assessee required to deduct the tax at source u/s 195 of the Act on the payment made to Non-resident but not deducted the tax. However, the non-resident who sold the land to the assessee has filed the return of income disclosing the long term capital gains on 14.12.2012. The A.O. charged the interest u/s 201(1A) of the Act from the date of payment made to NRI to the date of filing of the return of income by the non-resident. Accordingly, levied the interest @ 1% amounting to ₹ 1,52,938/- on the assessee. Aggrieved by the order of the A.O., the assessee went in appeal before the CIT(A) and the CIT(A) confirmed the order of the A.O. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

5. Appearing for the assessee, the Ld. A.R. argued that the deductee Mr. Satish Kumar has filed the return of income declaring long term capital gains which resulted in long term capital loss. Consequently, there was no demand or tax payable by the seller for sale of the property to the assessee. The seller had filed the return of income and the same was admitted by the A.O. in the remand report filed before the Ld. CIT(A). The Ld. A.O. also accepted that there was no sum chargeable to tax as per the return of income filed by the non-resident. Since there is no tax payable by the non-resident and the sale of the property does not result into any tax liability, there is no case for charging interest u/s 201 or 201(1A) of the Act. The fact that the deductee has no tax liability was known to the assessing officer at the time of passing the order u/s 201(1A) of the Act and the same was brought to the notice of CIT(A) but the CIT(A) did not agree since there was no such ground raised by the assessee. The Ld. A.R. argued that there is no case for charging interest u/s 201(1A) of the Act when there is no tax liability. This view is supported by instruction No.2 of 2014 issued by the CBDT dated 26.2.2014. Hence, the Ld. A.R. argued that the orders of the lower authorities be set aside.

6. On the other hand, the Ld. D.R. relied on the orders of the lower authorities.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In the instant case, the assessee has purchased the property from Mr. G. Satish Kumar who is a non-resident. As per the provisions of section 195 of the Act, the assessee is required to deduct the tax at source on sums paid to the non-resident. However, the Central Board of Direct Taxes has issued an instruction No.2 of 2014 dated 26.2.2014 clarifying that the interest u/s 201(1A) of the Act should be restricted to the appropriate portion of the sum chargeable to tax, even in cases where there is no application made by the assessee under sub-section (2) of section 195 of the Act. For ready reference, we reproduce hereunder relevant paragraph No.3 of the circular No.2 of 2014 which reads as under:

"The matter has been examined in the Board and accordingly, in exercise of powers vested under section 119 of the Act, the Board hereby directs that in a case where the assessee fails to deduct tax under section 195 of the Act, the Assessing Officer shall determine the appropriate proportion of the sum chargeable to tax as mentioned in sub section (1) of section 195 to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201 of the Act, and the appropriate proportion of the sum will depend on the facts and circumstances of each case taking into account nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion".

8. In the instant case, the deductee has filed the return of income on 14.12.2012 and the long term capital gains resulted into capital loss which resulted into nil demand. According to the assessee, there was

no tax payable by the deductee on the transaction of sale of immovable property. When there is no tax payable by the deductee on sale of land, there is no question of charging interest u/s 201(1A) of the Act, as per instruction No.2 of 2014 dated 26.2.2014 and the circulars are binding on the Departmental officers. Therefore, we hold that there is no case for charging interest u/s 201(1A) of the Act as per instruction No.2 of 2014 and accordingly, the orders of the lower authorities are set aside and the appeal of the assessee is allowed.

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

The above order was pronounced in the open court on 6th Sept'17.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 06.09.2017

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. अपीलार्थी / The Appellant – Shri Manne Rajesh Kumar, MIG Plot No.23, Babametta, Vizianagaram-535001.
2. प्रत्यर्थी / The Respondent – The Dy. Director of Income Tax (IT & TP), Visakhapatnam
3. आयकर आयुक्त / The CIT (IT&TP), Hyderabad
4. आयकर आयुक्त (अपील) / The CIT (A)-10, Hyderabad

5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /

DR, ITAT, Visakhapatnam

6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM

