

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

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.415/Viz/2019
(निर्धारण वर्ष/Assessment Year:2014-15)**

Asst.Commissioner of
Income Tax,
Circle-4(1)
Visakhapatnam

Vs. Sri Anala Anjibabu
D.No.44-23-26
Railway New Colony
Visakhapatnam
[PAN :ADVPA1890L]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.10/Viz/2020
(Arising out of I.T.A. No.415/Viz/2019)
(निर्धारण वर्ष/Assessment Year:2014-15)**

Sri Anala Anjibabu
D.No.44-23-26
Railway New Colony
Visakhapatnam
[PAN :ADVPA1890L]

Vs. Asst.Commissioner of
Income Tax,
Circle-4(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से /Revenue by
निर्धारिती की ओर से / Assessee by

: Shri T.S.N.Murthy, CIT, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 30.07.2020

घोषणा की तारीख/Date of Pronouncement

: 17.08.2020

आदेश / ORDER

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

Delay: There was a delay of 6 days in filing the appeal by the department. The Assessing Officer (AO) has filed the affidavit explaining the reasons for delay in filing the appeal and requested to condone the delay. After hearing both the parties, the delay is condoned.

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Visakhapatnam in ITA No.10477/2016-17/DCIT,C-5(1)/VSP/2018-19 dated 06.03.2019 and cross objections are filed by the assessee in support of the order of the Ld.CIT(A).

2. Ground Nos.(i) to (v) are related to taxing the difference amount between the consideration paid by the assessee and the Sub Registrar Office (SRO in short) value u/s 56(2)(vii)(b) of the Income Tax Act, 1961 (in short 'Act'). During the assessment proceedings, the AO found that the assessee has purchased the immovable property bearing D.No.9-137/3, Srivalli Nagar, Madhurawada, Visakhapatnam from Smt. Simhadri Sunitha and the transaction was registered vide document No.4539/2013 on 28.10.2013 at SRO, Madhurawada for a consideration of Rs.5 crores, whereas the Govt. value of the said property for registration purpose was

fixed at Rs.12,67,82,500/-. The AO invoked provisions of section 56(2)(vii)(b) of the Act and taxed the difference between the consideration paid and the SRO value as on the date of agreement amounting to Rs.4,55,11,750/- and completed the assessment.

3. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee taking support from the decision of this Tribunal in the case of M.Siva Parvathi &Ors. reported in 129 TTJ 463. Though the decision in the case of M.Siva Parvathi was rendered in the context of section 50C of the Act, the Ld.CIT(A) viewed that the decision is squarely applicable in the assessee's case, since the agreement for sale was entered into by the assessee for the purpose of purchase of the property in August, 2012 related to the Financial Year 2012-13, relevant to the Assessment Year 2013-14, which is prior to insertion of section 56(2)(vii)(b) of the Act. The provisions of section 56(2)(vii)(b) was introduced in the Finance Act, 2013 w.e.f. A.Y.2014-15. Hence, the Ld.CIT(A) held that section 56(2)(vii)(b) has no application in the assessee's case and accordingly deleted the addition made by the AO and allowed the appeal of the assessee.

4. Against the order of the Ld.CIT(A) the revenue has filed appeal before us and raised grounds mostly on application of section 50C and section 56(2)(vii)(b) of the Act. The contention of the revenue is that section 50C and section 56(2)(vii)(b) are independent provisions related to different situations and the case law decided for application of section 50C cannot be applied for deciding the issue relating to the provisions of section 56(2)(vii)(b) of the Act. The Ld.DR further submitted that the issue involved in this case is the applicability of section 56(2)(vii)(b) and argued that the decision rendered in the context of section 50C is not relevant in the instant case. The Ld.DR further argued that the assessee had entered into an agreement for purchase of property on 13.08.2012 and the property was registered in the F.Y.2013-14 relevant to the A.Y.2014-15. By the time the property was registered the provisions of section 56(2)(vii)(b) has come into force and hence, argued that the provisions of section 56(2)(vii)(b) are squarely applicable in the instant case and the stamp duty value as on 13.08.2012 required to be taxed as income in the hands of the assessee. The Ld.DR further submitted that the decision in the case of M.Siva Parvathi &Ors (supra) do not come to the rescue of the assessee and the AO has rightly invoked the provisions of section 56(2)(vii)(b) of the Act,

hence, argued that the order of the Ld.CIT(A) required to be set aside and the assessment order to be restored.

5. Per contra, the Ld.AR submitted that in the grounds of appeal, the department has not challenged the issue with regard to non applicability of section 56(2)(vii)(b) in this case and in ground Nos. (i) to (v) the department challenged the application of case law rendered in the context of section 50C. The Ld.AR further argued that the assessee had entered into agreement for purchase of the property on 13.08.2012 and registered the property in the F.Y.2013-14 relevant to the A.Y.2014-15 and as on the date of agreement, there was no provision of section 56(2)(vii)(b)(ii) in the Act and thus argued that there is no case for application of 56(2)(vii)(b) in the instant case. The Ld.AR further submitted that though the assessee had entered into agreement for purchase of property on 13.08.2012, the assessee could not get the property registered due to the problems in obtaining the original title deeds which were in the custody of bank due to the loans as evidenced from the order of the Ld.CIT(A). Therefore, submitted that there is sufficient evidence available from the order of the Ld.CIT(A) that there is genuine cause for delay in registration, which is beyond the control of the purchaser. The advance payment was made by

cheque and there was an agreement for purchase of the property for Rs.5 crores, hence, submitted that there is no application of section 56(2)(vii)(b)(ii) of the Act in the instant case. The Ld.AR further submitted that the Ld.CIT(A) has rightly allowed the appeal of the assessee and no interference is called for, and requested to uphold the order of the Ld.CIT(A). The assessee also relied on the decision of this Tribunal in the case of D.S.N.Malleswara Rao in I.T.A. No.538/Viz/2018 dated 30.08.2019, Venkateswara Vara Prasad Rao Karipineni in I.T.A.No.178/Viz/2019 dated 15.11.2019 and argued that the case of the assessee is squarely covered by the decisions of M.Siva Parvathi, D.S.N.Malleswara Rao and Venkateswara Vara Prasad Rao Karipineni(supra) of this Tribunal.

5.1. Responding to the argument of the Ld.AR, the Ld.DR submitted that proviso to section 56(2)(vii)(b) is applicable in the instant case, hence requested to restore the assessment order.

6. We have heard both the parties and perused the material placed on record. The question to be decided in the instant case is whether in the facts and circumstances of the case, provisions of section 56(2)(vii)(b)(ii) are applicable or not. The provisions of section 56(2)(vii)(b)(ii) came into statute by Finance Act 2013 w.e.f. 01.04.2014 i.e., A.Y.2014-15. In the

instant case, the assessee had entered into agreement for purchase of the property on 13.08.2012 for a consideration of Rs.5.00 crores and paid the part of sale consideration by cheque. This fact is evidenced from the assessment order. In the assessment order, the AO acknowledged the fact that the assessee had entered into an agreement for purchase of the property for a sum of Rs.5 crores and paid the advance of Rs.5 crores on 13.08.2012. There is no dispute with regard to existence of agreement. From the order of the Ld.CIT(A), it is observed that the property was in dispute due to bank loan and the original title deeds were not available for complying with the sale formalities. Therefore, there was a delay in obtaining the title deeds for completing the registration. Thus, we find that there is genuine cause for delay in getting the property registered. The Ld.CIT(A) relied on the decision of M.Siva Parvathi and Ors, which is rendered in the context of application of section 50C of the Act. In the decision cited, this Tribunal has considered the decision of Hon'ble Supreme Court in the case of K.P.Varghese and held that the provisions of section 50C which were not available in the statute cannot be applied during the interim period. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) in 6.3 and 6.4 which reads as under :

"6.3. On a careful perusal of the judicial pronouncement cited by the appellant, I find that the facts are almost identical in nature to the facts of the appellant's case. In the said case of M. Siva Parvathi & Drs., (Supra) the decision was rendered in the context of s.SOC of the Act. s.56(2)(vii)(b) is nothing but an extension of the provisions of s.50C of the Act. The provisions of s.SOC are applicable to the vendor and the provisions of s.56(2)(vi)(b) are applicable to the buyer. But for this difference, the provisions are identical in all respects. In the case before the Hon'ble ITAT, Visakhapatnam Bench the agreement was entered into in August, 2001 and the sale took place in October, 2004. In the interim period, the provisions of s.50C were introduced w.e.f. AY.2003-04. Thus, the agreement was prior to AY.2003-04 and the sale was subsequent to A.Y.2003-04. While addressing the issue whether the provisions of s.50C can be made applicable in such a situation, the ITAT held as under:

'8.10. The periods of the impugned transactions have fallen in the transition phase of law, i.e., the sale agreement was entered before the introduction of s. 50C and the registration was completed after the introduction of said section. As pointed out by Hon'ble apex Court in the case of K.P. Varghese (supra), the assessee has only fulfilled the contractual obligation imposed upon them by virtue of the sale agreement. The ratio of the decisions in the cases of Nirmal Textiles (supra) and Laxman Singh (supra) is that the character of the transaction vis-a-vis IT Act should be determined on the basis of the law that prevailed on the date the transaction was initially entered into. However actual computation of income and income-tax would be made as per the law existing on the 1st April of the relevant assessment year. If we look at the impugned transactions from the point of view of this legal proposition, we notice that the provisions of s. 50C cannot be applied to the sale agreement as the said section was not available in the statute book at that time. Even otherwise, as stated earlier, there is no suppression of actual consideration. Consequently, since the final registration of the sale is only in fulfilment of the contractual obligation, the logical conclusion is that the provisions which do not apply at the time of entering into the transaction initially would not also at the time the transaction is completed. In view of the above, we are unable to agree with the arguments of learned Authorised Representative that the computation provisions fail in the facts and circumstances of the case. In our opinion, the final argument of the learned Authorised Representative that the FMV cannot be substituted in the absence of charging section is not relevant under the peculiar facts and circumstances of the case.

8.11. In view of the foregoing discussions and on consideration of the facts and circumstances of the case and legal propositions discussed in the preceding paras, we are led to the logical conclusion that the provisions of s. 50C should not be made applicable to these assessee and we order accordingly."

6.4. The facts in the case of the appellant are identical to the facts of the appellant. The agreement was entered into prior to insertion of the provisions of s.56(2)(vii)(b) of the Act and the sale deed was registered subsequent thereto.

Therefore, respectfully following the decision of the jurisdictional bench, I hold that the provisions of s.56(2)(vii)(b) are not applicable to the appellant and I hereby direct the Assessing Officer to delete the entire addition of Rs.4,55,11,750/-. Thus, the appeal made by the appellant on this ground stands allowed."

6.1. Hon'ble Supreme Court in the case of K.P.Vargheese observed that the vendor has fulfilled the contractual obligation which was cast up on him by sale agreement. It was held by the Hon'ble Apex court in Nirmal Textiles that the character of the transaction vis-à-vis I.T. Act to be decided on the basis of the law that is prevalent as on the date of transaction which was initially entered into. Final transaction was only the fulfilment of the contractual obligation, thus, this Tribunal viewed that the proviso which was not in existence at the time of entering into the transaction would not apply at the time of completion of the transaction also. As observed from the facts, in this case, agreement was entered on 13.08.2012 for purchase of the property and paid part consideration as discussed above. Hence, the provisions existing as on the date of entering into agreement required to be applied for deciding the taxable income. The provisions u/s 56(2)(vii)(b) which are applicable for the A.Y. 2013-14 reads as under :

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

6.2. For the period from 01.10.2009 to 01.04.2014 i.e. up to A.Y. 2014-15, the above provisions are applicable. Thus where any individual or Hindu Undivided Family receives any immovable property without consideration, the stamp duty value of such property required to be considered as the consideration paid and the said amount to be taxed u/s 56(2)(vii)(b) of the Act. In the instant case, as discussed earlier the assessee has paid the consideration and there was no evidence from the department to show that the assessee has paid the excess consideration over and above the sale deed. With effect from 01.04.2014, the Act has been amended and the new sub clause(ii) has been introduced to section 56(2)(vii)(b) in the statute which reads as under :

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

As per the provisions the Act from the A.Y.2014-15 sub clause (ii) has been introduced so as to enable the AO to tax the difference consideration if the consideration paid is less than the stamp duty value. The AO is not permitted to invoke the provisions of section 56(2)(vii)(b)(ii) in the absence of sub clause (ii) in the Act as on the date of agreement.

6.3. In this connection, we also refer to the decision relied upon by the assessee in the case of D.S.N.Malleswara Rao cited supra which is related to the A.Y.2006-07 which is prior to the insertion of section 56(2)(vii)(b) and the same has no relevance in the instant case. However in the cited case of D.S.N.Malleswara Rao also the Hon'ble ITAT held that the law as applicable as on the date of agreement required to be applied for taxing the income. The department has not made out any case of application of 56(2)(vii)(b) and since the provisions of section 56(2)(vii)(b)(ii) were not available in the statute as on the date of entering into the agreement, following the reasoning given in the case of M.Siva Parvathi & Others (supra), the same cannot be made applicable to the assessee. The department has not brought any evidence to show that there was extra consideration paid by the assessee over and above the sale agreement or sale deed. No other case law of any high court supporting the contention of the department was brought to our notice by the Ld.DR. Therefore, we hold that the Ld.CIT(A)

has rightly applied the decision of this Tribunal in the assessee's case and deleted the addition. Hence, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld.

7. Ground No.(vi), (vii) and (viii) are related to the adoption of fair market value as certified by the registered valuer for the purpose of section 56(2)(vii)(b) of the Act. Since, we have decided the appeal on the issue with regard to application of provision of section 56(2)(vii)(b) in favour of the assessee and against the revenue, we consider, it is not necessary to adjudicate the ground Nos.(vi), (vii) and (viii), though the Ld.AR argued that the assessee's case is covered by the decision of this Tribunal in the case of Venkateswara Vara Prasad Rao Karipineni in I.T.A.No.178/Viz/2019 dated 15.11.2019. Accordingly, the appeal of the revenue is dismissed.

8. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since, we have dismissed the appeal of the revenue, the cross objections of the assessee stands dismissed.

9. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 17th August, 2020.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

दिनांक /Dated : 17.08.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. राजस्व/The Revenue –The Asst.Commissioner of Income Tax, Circle-4(1), Visakhapatnam
2. निर्धारिती/ The Assessee–Sri Anala Anjibabu, D.No.44-23-26, Railway New Colony, Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam