

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM
(through web-based video conferencing platform)****श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष****BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER****आयकर अपील सं./I.T.A.No.131/Viz/2021
(निर्धारण वर्ष / Assessment Year : 2016-17)****Mattapalli Ram Kumar
D.No.8-20-11/1
Madireddy Vari Street
Rajahmundry
[PAN : AFRPM4855P]
(अपीलार्थी/ Appellant)****Vs. Asst.Commissioner of
Income Tax
Circle-1(1)
Rajahmundry
(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri GVN Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri MN Murthy Naik, CIT (DR)

सुनवाई की तारीख / Date of Hearing : 10.03.2022
घोषणा की तारीख/Date of Pronouncement : 16.03.2022

आदेश / O R D E R**Per Shri Duvvuru RL Reddy, Judicial Member :**

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (Pr.CIT), Visakhapatnam-1 dated 27.03.2021 for the Assessment Year (A.Y.) 2016-17, passed u/s 263 of the Income Tax Act, 1961 (in short 'Act').

2. Brief facts of the case are that the assessee is an individual, doing his finance business, filed return of income for the A.Y.2016-17 declaring income of Rs.48,78,230/- under the heads, 'income from Salary', 'income

from House Property', 'income from profits and gains from business', 'income from capital gains' and also income from other sources'. The case was selected for scrutiny under CASS. A notice u/s 143(2) of the Act was issued and served on the assessee. The assessment was completed u/s 143(3) of the Act, assessed taxable income at Rs.49,67,730/-. The Ld.Pr.CIT initiated proceedings u/s 263 of the Act and examined the assessment records. Upon perusal of the records, it is noticed that the assessee received an amount of Rs.1,33,88,000/- towards compulsory acquisition of land. The said amount was credited to assessee's HDFC bank account and the same was given as loan to RM/s SB Developers. As the compensation received attracts the provisions of section 45(5) of the Act, the same needs to be taxed as capital gain. But the Assessing Officer (AO) has not examined this issue to bring the said amount under 'long term capital gains'. Therefore, the Ld.Pr.CIT opined that it is prejudicial to the interest of the revenue and passed order u/s 263 by setting aside the assessment order passed by the AO dated 29.12.2018 and gave direction to the AO to pass necessary order by bringing the long term capital gains earned by the assessee for taxation.

3. On being aggrieved, the assessee preferred an appeal before us and raised the following grounds :

1. *The order of the learned Principal Commissioner of Income Tax is contrary to the facts and also the law applicable to the facts of the case.*
 2. *The learned Principal Commissioner of Income Tax is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order dated 29.12.2018 u/s 143(3) of the Act is neither erroneous nor prejudicial to the interests of revenue.*
 3. *The learned Principal Commissioner of Income Tax is not justified in holding that the assessing officer wrongly allowed the exemption claimed by the appellant in respect of compensation amount of Rs.1,33,88,000 received under the RFCTLARR Act, 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) towards compulsory acquisition of land and I directing the assessing officer to assess the said compensation amount as long term capital gains.*
 4. *The learned Principal Commissioner of Income Tax ought to have appreciated that the assessing officer conducted enquiries in respect of the above issue and as such it is not a case of 'lack of inquiry' to enable the learned Principal Commissioner of Income Tax to invoke the provisions of S.263 of the Act.*
 5. *Any other ground that may be urged at the time of appeal hearing.*
4. Ground No.1 and 5 are general in nature which does not require specific adjudication.
5. Ground No.2, 3 and 4 are related to the order passed by the Ld.Pr.CIT u/s 263 holding that the assessing officer wrongly allowed the exemption claimed by the assessee in respect of compensation amount of

Rs.1,33,88,000/- received under the RFCTLARR Act, 2013. It is the submission of the Ld.Counsel for the assessee that the assessee had received compensation amount of Rs.1,33,88,000/- under the RFCTLARR (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement) Act, 2013 towards compulsory acquisition of land. It is further submission of the assessee that the CBDT had issued circular on 25.10.2016, wherein, it is clearly mentioned that income tax shall not be levied on any award or agreement made under RFCTLARR Act. Therefore, the compensation received for compulsory acquisition of land under RFCTLARR Act is exempted from the levy of income tax. Therefore, the amount of Rs.1,33,88,000/- is not subject to capital gains tax. Hence, the order passed by the Ld.Pr.CIT is erroneous and the Ld.Counsel for the assessee pleaded that the order passed u/s 263 is to be quashed.

6. On the other hand, the Ld.DR submitted that the assessee has not raised this issue before the Ld.Pr.CIT during the 263 proceedings. He further submits that the AO has not examined this issue, hence, the order passed by the Ld.Pr.CIT u/s 263 is to be confirmed.

7. We have heard both the parties and perused the material placed on record. It is undisputed fact that the assessee had received compensation of Rs.1,33,88,000/- under compulsory acquisition of land under RFCTLARR Act. The Ld.Counsel for the assessee has heavily relied on the Circular 36/2015 dated 25.10.2016 issued by the CBDT, wherein, it was mentioned that ***income tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.*** On perusal of the para 2 of the Circular, it is not covered u/s 46 of the RFCTLARR Act. We have also perused the provision of section 96 of the RFCTLARR Act. For the sake of convenience, we extract the provision of section 96 as follows :

“96. Exemption from income-tax, stamp duty and fees. - No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.”

Therefore, after considering the above said provision, if any compensation received under RFCTLARR Act, income tax shall not be levied on any award or agreement. We have also perused the land

acquisition proceedings and the lands were acquired under RFCTLARR Act. Therefore, as per the CBDT Circular and as per section 96 of RFCTLARR Act, income tax shall not be levied. We are of the firm view that the compensation amount which was received by the assessee for an amount of Rs.1,33,88,000/- should not be suffered for capital gains tax. Therefore, we set aside the order passed by the Ld.Pr.CIT u/s 263 as erroneous. Hence, we allow the appeal of the assessee.

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

Order pronounced in the open court on 16th March , 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 16.03.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- Mattapalli Ram Kumar, D.No.8-20-11/1, Madireddy Vari Street, Rajahmundry
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-1(1) Rajahmundry
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income-tax, Visakhapatnam-1
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam