

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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.702/Viz/2019
(निर्धारण वर्ष / Assessment Year : 2007-08)

Adilakshmi Srungavarapu, Visakhapatnam. PAN: AOPPS 2770 E (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1(2), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri Subrahmanyam, CA
प्रत्यर्थी की ओर से / Respondent by	:	Sri SPG Mudaliar, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	02/06/2022
घोषणा की तारीख/Date of Pronouncement	:	28/06/2022

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. CIT(A), Visakhapatnam in appeal No.112/2015-16/CIT(A)-1/VSP/2019-20, dated 10/10/2019 passed U/s. 144 r.w.s 147 of the Act for the AY 2007-08.

2. Brief facts of the case are that the assessee is an individual has purchased an immovable property in Survey No. 174/175,

Madhurawada, Visakhapatnam vide sale deed No.3349/2006, dated 30/10/2006. Since the assessee has not filed the return of income, notice U/s. 148 was issued on 14/03/2014 and served on the assessee. As there was no response to the notice issued U/s 148, another notice U/s. 148 was issued on 20/08/2014. In response to the second notice the assessee filed the return of income along with computation of income stating that the assessee sold gold jewellery of 40 Tulas valuing at Rs. 3,25,000/- and used her own savings of Rs. 3 lakhs to purchase the above said property. Since the assessee failed to appear before the AO, the Ld. AO issued one more notice on 13/2/2015 to file the evidences by 20/02/2015. Since the assessee did not respond to this notice, the AO completed the assessment U/s. 144 of the Act and added a sum of Rs. 6 lakhs towards unexplained investment to the total income returned by the assessee. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. The assessee's representative appeared before the CIT(A) and argued that the transaction was between husband and wife and was no real money exchange in the registration. The Ld. CIT(A) relying on the recitals in the sale deed, confirmed the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

3. The assessee has raised the following grounds in her appeal:

- “1. *The order of the Ld. CIT(A) is erroneous in law and contrary to the facts of the case.*
2. *The Ld. CIT(A) is not justified without appreciating the explanations given by the appellant and sustaining the addition to the tune of Rs. 6,00,000/-.*
3. *The Ld. CIT(A) ought to have considered the affidavit filed by the appellant that no cash has been paid to her husband at the time of acquisition of the property.*
4. *The Ld. CIT(A) ought to have considered the substance of the transaction rather than going by the documentary evidences.*
5. *The Ld. CIT(A) failed to appreciate the fact that the transaction has been done in order to safeguard the interest on the property but no cash consideration has been passed as the transaction is between husband and wife.*
6. *For these and any other ground or grounds that may be urged at the time of hearing, it is prayed that the impugned order of the CIT(A) may please be deleted.”*

3.1. The assessee has also raised additional ground which reads as under:

“The failure on the part of the Ld. AO to supply copy of the reasons recorded before the issue of notice U/s. 148 of the IT Act is jurisdictional defect which goes into the root of the matter, failure to do so, makes the assessment null and void.”

4. The only issue in this case is with respect to sustenance of addition of Rs. 6 lakhs as unexplained money to the income returned by the assessee. The Ld. AR argued that the assessee’s husband Sri SNN Bhogalingeswararao acquired the said property by way of General Power of Attorney in order to sell the property

at a later date. The Ld. AR further submitted that the assessee later on decided to retain the property and in order to secure the document the assessee has executed a sale deed in favour of his wife Smt. Adilakshmi. The Ld. AR also submitted that the transaction was between husband and wife and the assessee's wife is a regular assessee and files her returns of income regularly. The Ld. AR also submitted that the assessee's wife sold her gold jewellery in order to close the loan taken by the assessee's husband for the purchase of the property with possession, through General Power of Attorney. Per contra, the Ld. DR relied on the orders of the Authorities below.

5. We have heard the rival contentions and perused the material available on record and the orders of the Authorities below. We find from the written submissions made by the Ld. AR that the vacant site was purchased on 19/12/2005. The transactions has been registered as a document styled as "General Power of Attorney clubbed with possession". Admitted facts are that the husband of the assessee in order to retain the property got the property registered in the assessee's name and has repaid the loans borrowed by him by sale of gold jewellery and personal savings of the assessee. We also find merit in the

argument of the Ld. AR that the transactions are between the husband and wife and there was no actual consideration passed on between the husband and wife. The consideration mentioned in the sale deed was only for the purpose of stamp duty determination and hence it cannot be treated as a consideration received by the husband of the assessee nor paid by the assessee. Considering the peculiarity in the nature of transaction in the instant case, we find merit in the Ld. AR's argument that no real consideration has been transferred by the assessee for the purchase of land. In view of the disclosure made by the assessee while filing the return of income as required U/s 148 of the Act, we are of the considered opinion that section 69 of the Act cannot be invoked as it applies only to the investments which are not recorded in the books of accounts. Considering the peculiar facts and circumstances in the instant case, actual transfer of money was not done by the assessee to her husband and since the registration was done only to save the property without real consideration, we are of the considered view that the order of the ld. CIT(A) deserves to be quashed and we allow the appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 28th June, 2022.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 28.06.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – Adilakshmi Srungavarapu, W/o. Naga Venkata Bhogalingeswara Rao, D.No.28-16-30, Suryabagh, Visakhapatnam, Andhra Pradesh, 530020.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(2), Direct Taxes Building, MVP Colony, Visakhapatnam, Andhra Pradesh, 530017.
3. The Principal Commissioner of Income Tax-1, Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (A)-1, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam