

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, 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.538/Viz/2018
(निर्धारण वर्ष/Assessment Year : 2014-15)**

D.S.N.Malleswara Rao
S/o Guravaiah
Prop.Venkateswara Poultries
Madduru Road
Amaravathi Road
Guntur
[PAN :AESPD7008P]

Vs. Income Tax Officer
Ward-2(3)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri P.Srinivasa Murthy, DR

सुनवाई की तारीख / Date of Hearing : 16.07.2019
घोषणा की तारीख/Date of Pronouncement : 30.08.2019

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)]-1, Guntur vide Appeal No.51/2016-17 dated 27.08.2018 for the Assessment Year (A.Y.)2014-15.

2. Ground No.1 and 3 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to sustaining the addition of Rs.62,02,000/- made u/s 56(2)(vii)(b) of the Income Tax Act, 1961 (in short 'Act'). In the instant case, the assessee filed the return of income declaring total income of Rs.3,39,420/- and the same was processed u/s 143(1) of the Act. Subsequently, notice u/s 148 was issued and the assessment was reopened u/s 147 of the Act. During the financial year relevant to the assessment year 2014-15, the assessee has purchased the immovable property from Sri Balanagu Prasanna Kumar vide Doc.No.1465/2013 of Amaravathi SRO on 31.10.2013 for a consideration of Rs.50,00,000/-, but the market value of the said property was Rs.1,12,02,000/- as per SRO Amaravathi. Therefore, the Assessing Officer (AO) was of the view that the transaction attracts provisions of section 56(2)(vii)(b) of the Act since the purchase price of the property was less than the stamp duty value, hence, issued show cause notice to the assessee as to why the said difference amount of Rs.62.02 lakhs should not be treated as income from other sources. In response to the notice, the assessee filed objection stating that the property in question was purchased as per the agreement entered into by the

assessee on 19.03.2007 and the part payment was made in 2009 by cheque. The Ld.AR further stated that though the assessee had entered into purchase agreement and paid the consideration partly through cheque and cash, the seller was not ready to register the document and therefore, the assessee was forced to file civil suit in the District Judge Court. Subsequently, the matter was settled by arbitration and by compromise agreement, thus argued that the provisions of section 56(2)(vii)(b) is not applicable in this case. However, the Ld.AO did not convince with the explanation offered by the assessee, since, the sale deed was presented and executed on 31.10.2013 and possession of the land and poultry farm was handed over on 31.03.2013 relevant to the A.Y.2014-15. The AO also relied on the sale deed and held that the difference amount of Rs.62,02,000/- being the difference between the purchase consideration and the deemed consideration as per the stamp duty required to be brought to tax u/s 56(2)(vii)(b) of the Act and accordingly made the addition.

4. Aggrieved by the order of the AO, the assessee filed appeal before the CIT(A) and the Ld.CIT(A) upheld the order of the AO taking support from the order of the Hon'ble Supreme Court in the case of Balbir Singh Miani (86 taxmann.com 94) u/s 53A of the Transfer of Property Act, 1882. The

Ld.CIT(A) held that since the assessee has made cash payments, though the agreement stated to have been entered in 2006-07, the argument of the assessee that the transaction was a bonafide transaction and substitution of the value of 2006-07 is not acceptable. Hence, the Ld.CIT(A) held that the AO has rightly invoked the provisions of 56(2)(vii)(b). For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) which reads as under :

"In this regard a careful consideration has been given to the papers submitted and found that this without prejudice argument of the appellant has no strength to stand to the test of appeal. It is clear that the appellant entered into an agreement in 2006-07 and possessed the property by making certain payments. However the payments made were in cash and hence the argument does not sustain. The fiscal law should be read in its letter and spirit. Unless there is any ambiguity there is no authority vested to import certain words to interpret the provisions otherwise. In this case as the appellant paid cash as against the condition prescribed, the argument of the appellant that it is a bonafide transaction and stamp value of the year 2006-07 may be adopted is not acceptable. Primarily as discussed supra the transaction was treated as transfer in the year 2013-14, hence there is no merit in the argument of the appellant also.

The appellant contended that the standard words used in the deed for the purpose of considering the date of possession is incorrect on the part of the AO appears to be correct having regard to the facts of this case. In the present case ample evidences were filed by the appellant to state that the impugned property was held in his possession by paying amounts since 2006-07.

In view of the above discussion though the appellant held in possession of the said property since 2006-07, treatment given by the AO considering the registered document and invoking the provisions of sec. 56(2)(vii)(b) of the Act is correct and require confirmation. Hence the grounds raised by the appellant are dismissed."

5. During the appeal hearing, the Ld.AR submitted that the assessee has entered into an agreement for purchasing the property in 2006-07 precisely on 19.03.2007. The assessee made agreement with the seller of the property and made payments partly in cheque and partly in cash. The vendor of the property was not ready to register the property and honour the commitment, even after making the payments, hence the entire issue has gone to litigation. The assessee furnished the copy of MoU dated 15.12.2006 entered into between Sri Balanagu Prasanna Kumar and the assessee as per which the vendor has handed over the property on 15.12.2006 consisting of land, poultry sheds fitted with cages, bore well with motors, all electrical fittings, fencings with gates. The impugned land was Ac.1.00 cents in Sy.No.142/B. The vendor also delivered the property to the assessee. An MoU was entered with the vendor and as per the MOU the assessee has taken over the outstanding loans of the vendor. According to Clause VII of the MoU, the vendor agreed to register the property in favour of the assessee, once the liability with the Union Bank of India was cleared. The assessee has entered into Addendum to MoU on 19.03.2007 for renewal of the OCC account with Union Bank of India. From the above, it is established that the assessee had entered into agreement for

purchase of the property on 15.12.2006 and the vendor also promised to register the land once, the loan of the Union Bank of India was cleared but failed to honour the commitment, hence filed civil suit in the District Judge Court, Guntur. As per the plaintiff copy filed before the Hon'ble District Court, the assessee has paid the amounts as mentioned in page No.3 of the paper book which reads as under :

"C) It is further submitted that as per the terms and conditions of Addendum Agreement dt.19.03.2007 the plaintiff paid cash of Rs.5,62,000/- & Rs.7,00,000/- on 15.10.2007 and paid cash of Rs.12,62,000/- and also paid an amount of Rs.8,62,622.50, and also paid Rs.9,00,000/- totally paid Rs.17,26,622.50 for discharge of defendant debt to Union Bank of India bearing A/c No.409001010531214 dated 08.05.2009 through Sri Venkateswara Poultry A/c No.571007 and the remaining balance amount of Rs.1,11,377.50 Ps. will be paid later on and on the date of commitment the plaintiff paid amounts to the defendant and he has to register the same in favour of the plaintiff."

Subsequently, both the parties settled the issue on compromise by arbitration. The First Additional District Judge, Guntur has directed to vendor to register the property subject to payment of the consideration as per the sale deed. Accordingly, the vendor has registered the property. The Ld.AR submitted that the assessee had entered into agreement for purchase of the property on 19.03.2007. He has made payment of Rs.17,26,622/- for discharge of debt of the vendor with Union Bank of India account No.409001010531214 dated 08.05.2009 through Sri Venkateswara Poultry A/c No.571007 and the remaining amount of

Rs.1,11,377.50 was paid later on. The amount was partly paid by cheque and partly by cash and the same is evidenced in the suit, filed by the assessee before the District Judge Court, Guntur. The assessee also paid a sum of Rs.17,26,622/- through cheque dated 08.05.2009 to the vendor. Therefore, argued that the assessee's case is squarely covered by the proviso to section 56(2)(vii)(b) of the Act and there is no requirement make any addition. Accordingly, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee. The assessee also relied on the decision of Appana Hari Naga Venkat Rao Vs. ITO -1(4), vide ITA No.222/Viz/2017 dated 06.02.2019 of ITAT, Vizag. In the case law relied upon by the assessee, the issue is with regard to application of 50C for the purpose of computing capital gains. The coordinate bench of ITAT held that it is not mandatory to hold that the application of 50C for sale transactions, when there is an evidence to establish that the assessee had entered into genuine agreement before the amendment came into force and held that the date of agreement has to be considered for the purpose of 50C, hence argued that in the instant case also there is an ample evidence to show that the assessee had entered into agreement for purchase of property much earlier than the amendment has come into force and the

consideration mentioned in sale agreement required to be adopted for the purpose of purchase but not the market value of sale deed date. Accordingly, requested to set aside the order of the CIT(A) and allow the appeal of the assessee.

6. Per contra, the Ld.DR argued that in the instant case, the sale was not in 2006-07 and the property was registered in 2013-14. Though the assessee stated to have entered in to an agreement for purchase of the property, the vendor was not ready to give the property to the assessee for the consideration agreed vide MoU dated 15.12.2006. In the instant case, the assessee has made payment through cheque after the date of agreement, but not before the date of agreement. Hence argued that the proviso to section 56(2)(vii)(b) cannot come to the help of the assessee, hence, requested to uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material placed on record. In the instant case, the property in question was registered on 31.10.2013 relevant to the A.Y.2014-15. However, as seen from the facts of the case, the assessee and the vendor had entered into MoU dated

15.12.2006 to sell the property to the assessee. As per the MoU, the vendor was ready to sell the land to the extent of one acre in S.No.142/B, Door No.7-54, Ward No.7 of Amaravathi Village, Guntur Dist along with six poultry sheds with fitted cages, bore well with motors and all electrical fittings. As per the Clause No.3, the entire property of land and the poultry sheds along with the gates were delivered to the assessee for enjoyment and the possession by the assessee. As per Clause V of the MoU, the property was valued at Rs.31,00,000/- and agreed to make the payment of Rs.5,62,000/- in two instalments i.e. Rs.3,00,000/- on 15.12.2006 and 2nd instalment 2.62 lakhs dated 15.05.2007. Accordingly, the assessee had issued cheques and the assessee also agreed to clear loan of Union Bank of India and the vendor agreed to register the land in favour of the assessee on complete repayment of the loan of Union Bank of India. Though the assessee had complied with the terms and conditions of the agreement, the vendor has not registered the land as per the MOU. Hence the assessee filed civil suit before the District Judge, Guntur as per the details mentioned in the plaintiff filed before the District Judge Guntur. The assessee has furnished the complete details of the payments made to the vendor as per which a sum of Rs.5,62,000/- was paid on 19.03.2007 and Rs.7,00,000 was

paid on 15.10.2007 aggregating to Rs.12,62,000/- in cash. The sum of Rs.17,26,622/- was paid into Union Bank of India account through cheque on 08.05.2009 to clear the Union Bank of India loan as per the terms and conditions of the agreement dated 15.12.2006. Ultimately, the dispute was settled by compromise and arbitration and the District Additional Judge Guntur has ordered for registration of the land to the assessee vide order dated 31.10.2013. Consequent to the order of the District Judge, Guntur, the vendor has registered the land on 31.10.2013. From the above facts, it is clear that the assessee had entered into genuine agreement for purchase of land prior to insertion of proviso u/s 56(2)(vii)(b) of the Act and the provision has come into force w.e.f. 01.10.2009. Further as per proviso to 56(2)(vii)(b), the deemed gift has no application in case, where there is an agreement fixing the amount of consideration for transfer of the immovable property when the date of registration and the date of agreement are not one and the same. In the event of difference in date of agreement and the date of registration, the date of registration goes to the date of agreement for the purpose of section 56(2)(vii)(b) of the Act. As per second proviso to section 56(2)(vii)(b), the said proviso of reckoning the date of agreement to the date of sale also applies in case where the

amount of consideration or part thereof was paid by any mode other than by cash on or before the date of agreement for the transfer of such immovable property. In the instant case, there was agreement between the parties which was entered on 15.12.2006 followed by Addendum dated 19.03.2007. There is no dispute that there was an agreement for sale of the property to the assessee by the vendor. The department also did not dispute the contents of the agreement. The assessee also made the payments in cash as well as in cheque to the vendor as per the details furnished in the preceding paragraphs. The assessee also filed civil suit before the Hon'ble District Judge Guntur for transfer and registration of the property as per the terms and conditions of the agreement. The assessee also filed petition before the Hon'ble District Judge for specific performance of MOU dated 19.03.2007 for execution of the document in favour of the assessee. Subsequently, the First Additional District Judge, Guntur vide order dated 31.10.2013 directed the vendor to execute and register the sale deed in favour of the assessee. All the above evidences placed before us establish that there was an agreement executed between the vendor and the vendee prior to the date of insertion of section 56(2)(vii)(b) of the Act, fixing the amount of consideration for the transfer

of the property. Therefore, the assessee's case is squarely covered by the proviso to section 56(2)(vii)(b) of the Act. The Ld.DR argued that the assessee made cash payments and the cheque payment subsequent to the date of agreement, hence the proviso to section 56(2)(vii)(b) is not applicable which is unacceptable. In the instant case, there is no dispute that there was agreement and both the parties have agreed. The assessee has made the payments as per the agreements which were acknowledged by the recipient, the cheque payment also was made in the bank account to clear the debt of the vendor which was evidenced in the plaintiff copy filed before the District Judge. Therefore, there is no reason to disbelieve the submissions made by the assessee in the civil suit filed before the Hon'ble District Judge and the case of the assessee is squarely covered as exception as per proviso to section 56(2)(vii)(b) of the act and accordingly, we, hold that there is no case for invoking the provisions of section 56(2)(vii)(b) to tax the difference amount between the SRO value and the actual consideration paid as income from other sources. Accordingly, the orders of the lower authorities are set aside and the appeal of the assessee is allowed.

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

I.T.A. No.538/Viz/2018. A.Y.2014-15
D.S.N.Malleswara Rao, Guntur

Order pronounced in the open court on 30th August, 2019.

Sd/-
(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 30.08.2019

L.Rama, SPS

Sd/-
(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. निर्धारिती/ The Assessee- D.S.N.Malleswara Rao, S/o Guravaiah, Prop.Venkateswara Poultries, Madduru Road, Amaravathi Road, Guntur
2. राजस्व/The Revenue - Income Tax Officer, Ward-2(3), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
 ITAT, Visakhapatnam