आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL, VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं

श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.639/Vizag/2013**

(निर्धारण वर्ष / Assessment Year: 2009-10)

Smt. Chalasani Naga Ratna Kumari, Visakhapatnam [PAN: AJMPR0953L] (**अपीलार्थी** / Appellant)	Vs.	ITO, Ward-3(2), Visakhapatnam (**प्रत्यार्थी** / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C.V.S. Murthy, AR

प्रत्यार्थी की ओर से / Respondent by : Shri M. Narayana Rao, DR

सुनवाई की तारीख / Date of hearing : 09.12.2016

घोषणा की तारीख / Date of Pronouncement : 23.12.2016

आदेश / O R D E R

PER G. MANJUNATHA, Accountant Member:

This appeal filed by the assessee is directed against order of the CIT(A), Visakhapatnam dated 26.8.2013 and it pertains to the assessment year 2009-10.

2. The brief facts of the case are that the assessee is an individual, derived income from house property and income from other sources, filed her return of income for the assessment year 2009-10 on 29.12.2009 declaring total income of ₹ 6,30,160/-. The case has been selected for scrutiny under CASS and accordingly notices u/s 143(2) & 142(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') were issued. In response to notices, the authorized representative of the assessee appeared from time to time and furnished the details called for. During the course of assessment proceedings, the A.O. noticed that the assessee along with other co-owners had sold vacant land measuring 5.89 acres situated at Vemulavalasa village, Anandapuram Mandal, Visakhapatnam for a consideration of 3,40,00,000/- in which the assessee had 1/3rd share. The A.O. further observed that the market value of the property for the purpose of stamp duty was fixed at ₹ 4,12,30,000/-. Since, the assessee has not offered capital gains on the said transaction, the A.O. issued a show cause notice and asked to explain why capital gains income was not offered to tax on sale of land.

3. In response to notice, the assessee submitted that land sold is agricultural land which is situated beyond 8 kms. from the local limits of Visakhapatnam Municipal Corporation and hence the land is not capital

assets within the meaning of section 2(14) of the Act and not liable to capital gain tax. It is further submitted that land is not situated within the territorial jurisdiction of any Municipality or within the specified distance of 8 kms. from any individual municipal limits and hence treated as agricultural lands and not liable for capital gains. However incorporated a note in her return of income furnished for the assessment year 2009-10. It was further submitted that though, lands are situated within 8 kms. from the limits of GVMC, notification issued by the Govt. of A.P. extending Visakhapatnam Municipal Corporation limits was notified by the Government of Andhra Pradesh on 21.5.2005 vide GOMS No.937 dated 21.5.2015, however, the Central Government has not notified the extended limits of GVMC for the purpose of determination of capital assets within the meaning of section 2(14) of the Act, therefore, to decide whether a particular land is a capital asset or not, notified municipal limits has to be considered, but not newly notified GVMC limits. Alternatively, the assessee contended that in case the lands are considered as capital assets liable for capital gains, she had invested sale consideration for construction of residential house property and hence eligible for exemption u/s 54F of the Act. Therefore, requested to allow exemption u/s 54F of the Act, for an amount of ₹

79,50,000/- for which she had furnished necessary valuation report along with bills and vouchers.

4. The A.O. after considering the explanations of the assessee and also considering the definition of capital asset as defined u/s 2(14) of the Act, held that the lands sold by the assessee are not an agricultural lands and also situated within 8 kms. from the distance of GVMC. The A.O. further held that though assessee claims to have sold agricultural lands, the land sold by the assessee is only a vacant land not suitable for agricultural operations and also there is no agricultural operations carried out for past several years. Therefore, there is no meaning in the arguments of the assessee that the lands are agricultural lands and not liable for capital gains. The A.O. further held that in so far as the assessee's contention that for the purpose of determination of a characteristics of lands whether the lands are agricultural lands or not, the distance from the notified Visakhapatnam Municipal Corporation limits has to be considered, but not the newly incorporated Greater Visakhapatnam Municipal Corporation limits is not correct, as Visakhapatnam Municipal Corporation is a notified municipal corporation u/s 2(14) of the Act, for the purpose of determination of whether the lands are capital assets or not vide notification no.9477 dated 6.1.1994,

which was further enhanced to Greater Visakhapatnam Municipal Corporation with extended boundary of Municipal Corporation limits by the Government of Andhra Pradesh vide their notification no. GOMS 937 dated 21.5.2005. Therefore, any lands situated within the extended limits of GVMC are coming within the definition of capital assets as defined u/s 2(14) of the Act and hence liable for capital gains. Since, the assessee has failed to offer any capital gains on transfer of such lands, the A.O. held that the lands sold by the assessee are capital assets liable for capital gain tax and accordingly computed capital gains. In so far as exemption u/s 54F of the Act is concerned, the A.O. held that since the assessee is already having one residential house at Vijayawada and also the fact that the assessee has constructed 3 independent residential units at Dr.No.56-49-7/A, she is not eligible for exemption u/s 54F of the Act.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated submissions made before the A.O. The assessee further contended that the lands sold by her are agricultural lands suitable for agricultural operations and also situated beyond 8 kms. from the limits of Visakhapatnam Municipal Corporation and hence, not liable for capital

gains. The assessee further contended that the A.O. was incorrect in considering the extended limits of GVMC to determine the limits for the purpose of computation of distance to decide whether particular land is capital asset or not. But, the fact is that as per the notification issued by the Government of India, vide notification no.9477 dated 6.1.1994, only Visakhapatnam Municipal Corporation is included in the notification, therefore, the newly incorporated Greater Visakhapatnam Municipal Corporation limits cannot be considered to determine the distance for the purpose of deciding the characteristics of land.

6. The assessee further contended that as regards applicability of the provisions of section 50C of the Act, the A.O. was erred in adopting value of the property u/s 50C of the Act, as on the date of registration of the property. But, the fact is that the assessee had entered into a registered sale agreement in the year 2007 and as on that date, stamp duty value of the land is below the consideration received for transfer of the land, therefore, the guidance value as on the date of agreement to sell has to be considered, but not the guidance value as on the date of registration of sale deed. In so far as deduction claimed u/s 54F of the Act, the assessee contended that she had invested sale consideration for the purpose of construction of residential house and invested an amount

of ₹ 79,50,000/-, therefore, the A.O. was erred in rejecting exemption claimed u/s 54F of the Act. It was further submitted that as per the provisions of section 54F of the Act, the assessee can claim exemption in respect of new house, provided the assessee should not own more than one residential house as on the date of transfer of asset. Since the assessee is having one residential house, she can claim exemption u/s 54F of the Act for second house.

7. The CIT(A) after considering the explanations of the assessee, held that lands sold by the assessee are not agricultural lands and hence liable for capital gains. The CIT(A) further held that the assessee has not furnished any proof for having carried out agricultural operations in the impugned lands, therefore, opined that the lands are not agricultural lands. The CIT(A) further observed that since the lands sold by the assessee are held as non-agricultural lands, the issue of whether the particular land is a capital asset or not within the meaning of section 2(14) of the Act, becomes academic. In so far as adoption of value u/s 50C of the Act, for the purpose of determination of capital gains, the CIT(A) held that the date of transfer of land is important for the purpose of determination of value u/s 50C of the Act, but not the date of agreement for sale. As on the date of sale deed, the guidance value of

the land for the purpose of payment of stamp duty is more than the consideration shown in the sale deed, therefore, the A.O. was rightly invoked the provisions of section 50C of the Act. In so far as disallowance of expenditure of transfer, the CIT(A) held that the assessee failed to produce any evidences in support of expenses of transfer, therefore, upheld the disallowance of expenses by the A.O. Similarly, as regards exemption u/s 54F of the Act, the CIT(A) held that the assessee has constructed only a single residential house though it may have 3 floors with independent residential unit in them. The section 54F of the Act uses the expression 'a' residential house and in the facts given above, the assessee has invested in a residential house and would be entitled to exemption u/s 54F of the Act and accordingly directed the A.O. to allow exemption claimed by the assessee after verifying the claim regarding the quantum of investment in the residential house. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

8. The first issue that came up for our consideration is whether the lands sold by the assessee are agricultural lands or capital assets liable for capital gains. The fact relating to the issue are that the assessee has sold a land for a consideration of ₹ 3,40,00,000/- by entering into a sale

agreement on 15.12.2007. The said land was transferred by a registered sale deed on 1.9.2008 for a consideration of ₹ 3,40,00,000/-, whereas the market value of the property for the purpose of stamp duty was fixed at ₹ 4,12,30,000/-. The assessee claims that the impugned land is an agricultural land situated beyond 8 kms. from the limits of Visakhapatnam Municipal Corporation and hence not liable for capital gains. The A.O. observed that the impugned lands are not agricultural lands and merely a vacant land not used for agricultural operations. The A.O. further observed that the lands are situated within 8 kms. from the limits of GVMC and hence liable for capital gains.

9. Having heard both the sides and considered materials on record, we find that the A.O. computed capital gains on transfer of lands for the reason that the lands sold by the assessee are not agricultural lands and liable for capital gains. The A.O. further observed that the lands are situated within 8 kms. from the limits of GVMC and hence, previous limits of Visakhapatnam Municipal Corporation is irrelevant to determine the distance. Since, as on the date of transfer of lands, the extended limits of GVMC has been notified by the Govt. of Andhra Pradesh, the distance from the extended limits of GVMC has to be considered to determine whether the particular land is situated within 8 kms. from

such distance or not. The assessee claims that the lands are agricultural lands and agricultural operations were carried out till 2007 and after which there were disputes and as a result agricultural operations could not be carried out. We find force in the arguments of the assessee for the reason that the impugned lands are classified as agricultural lands in the revenue records of the State Government. Though there is no agricultural operation carried out by the assessee, the lands held by the assessee are classified as agricultural lands in the revenue records and also suitable for agricultural operations. Therefore, impugned lands cannot be held as non-agricultural lands, just because the assessee has not carried out any agricultural operations. Once, the lands are classified as agricultural lands in the revenue records and suitable for agricultural operations, whether or not agricultural operations carried out by the assessee, the characteristics of land does not change from agricultural land to non-agricultural lands. Therefore, we are of the view that the lower authorities were erred in holding the impugned lands are non agricultural lands.

10. Having said, let us examine whether the lands sold by the assessee are capital assets within the meaning of section 2(14) of the Act or agricultural lands not liable for capital gain tax. Admittedly, the

lands sold by the assessee are within 8 kms. from the distance of GVMC, however, the lands are beyond 8 kms. from the limits of Visakhapatnam Municipal Corporation. It is the contention of the assessee that for the purpose of determination of distance, notified municipal limits of Visakhapatnam Municipal Corporation has to be considered, but not newly incorporated extended limits of GVMC. We do not find any merits in the arguments of the assessee, for the reason that the Visakhapatnam Municipal Corporation is a notified municipality vide notification no.9477 dated 6.1.1994. As per said notification, any land situated within 8 kms. from the distance of Visakhapatnam Municipal Corporation is agricultural land coming within the definition of capital asset. We further observed that the Visakhapatnam Municipal Corporation has been upgraded to Greater Visakhapatnam Municipal Corporation by the State Government of Andhra Pradesh, vide notification no.937 dated 21.5.2005 with extended boundary. Since, the lands sold by the assessee are situated within 8 kms distance from the newly incorporated boundary of GVMC, the distance should be measured from the limits of GVMC to determine whether a particular land is a capital asset or not for the purpose of section 2(14) of the Act. In the present case, it is no doubt lands are situated within 8 kms. from the limits of GVMC. Therefore, we are of the view that the lands sold by the

assessee are capital assets within the meaning of section 2(14) of the Act and liable for capital gains. The CIT(A) after considering the relevant facts, has rightly held that the lands are capital assets and liable for capital gain tax. Therefore, we uphold the CIT(A) order and reject ground raised by the assessee.

11. The next issue that came up for our consideration is adoption of value u/s 50C of the Act, for the purpose of determination of capital gains. The A.O. adopted market value of the property u/s 50C of the Act as on the date of sale deed for the purpose of computation of capital gains. The contention of the assessee is that stamp duty value as on the date of agreement to sale has to be considered, but not the stamp duty value as on the date of sale deed. We find force in the arguments of the assessee, for the reason that the assessee has sold the impugned lands by way of registered sale agreement dated 15.12.2007 for a consideration of ₹ 3,40,00,000/- and received an advance of ₹ 2,52,00,000/-. As on the date of agreement, the market value of the property for the purpose of payment of stamp duty is less than the consideration shown in the sale agreement. The said property has been conveyed through a registered sale deed on 1.9.2008 for a consideration of ₹ 3,40,00,000/-, whereas the stamp duty valuation of the property

was fixed at ₹ 4,12,30,000/-. The A.O. adopted stamp duty value of the property as on the date of sale deed for the purpose of section 50C of the Act, to compute the deemed consideration for the purpose of capital gains. It is the contention of the assessee that market value as on the date of agreement to sale has to be considered, but not as on the date of sale deed for the purpose of determination of deemed consideration to compute capital gains.

12. Having heard both the sides and considered materials on record, we find that the A.O. has adopted stamp duty value of the property as on the date of sale deed. The facts relating to the market value as on the date of agreement to sale and as on the date of sale deed is not disputed. The only dispute is whether the stamp duty value as on the date of agreement to sale or sale deed to be considered for the purpose of computation of capital gain. The purpose of introducing section 50C of the Act was to counter suppression of sale consideration of sale of immovable properties. Before insertion of section 50C of the Act to the statute, there are lot of litigations as to consideration shown in document conveying title and payment of stamp duty. To overcome the litigations, the provision of section 50C of the Act has been inserted to the statute w.e.f. 1.6.2003 wherein it is made mandatory to adopt value

u/s 50C of the Act for the purpose of determination of consideration. A proviso to section 50C of the Act has been inserted by the Finance Act, 2016 w.e.f. 1.4.2007 to resolve the genuine and intended hardship, in the case in which the date of agreement to sale is prior to the date of sale and market value of the property as on the date of agreement to sale and date of sale deed is different. The said proviso to section 50C of the Act has been examined by the coordinate bench of ITAT, Ahmedabad bench in the case of Dharma Sibai Sonani Vs. DCIT in ITA No.1237/Ahd/2013 dated 30.09.2016 and held that the proviso to section 50C of the Act inserted by the Finance Act, 2016 w.e.f. 1.4.2007 is curative in nature and intended to remove an undue hardship to the assessee and accordingly given retrospective effect from 1st April, 2003 i.e. the date effective from which section 50C of the Act was introduced. Accordingly, as per the proviso, the stamp duty value of the property on the date of execution of the agreement to sale should be adopted instead of value on the date of execution of sale deed.

13. In the present case, on perusal of the facts available on record, we find that the assessee has entered into a sale agreement in the year 2007 and as on that date, the stamp duty value of the property was less than sale consideration agreed to be paid between the parties.

Although, stamp duty value of the property has been changed as on the date of sale deed, for the purpose of determination of deemed consideration u/s 50C of the Act, stamp duty value of the property as on the date of execution of agreement to sale should be adopted, instead of value on the date of execution of sale deed. Therefore, we are of the view that the A.O. was erred in adopting value of the property as on the date of sale deed to determine deemed consideration u/s 50C of the Act. Hence, we direct the A.O. to adopt value of the property as on the date of agreement to sale for the purpose of computation of capital gain u/s 50C of the Act.

14. The next issue that came up for our consideration is disallowance of expenditure of transfer. The assessee has claimed an expenditure of ₹ 4,20,000/- being litigation expenses and development expenses while computing the capital gains. The assessee contended that she had incurred various legal expenses from 1995, which should be considered for deduction. The A.O. observed that the assessee has failed to produce any evidences in support of expenses on transfer, therefore, disallowed entire expenditure of transfer for want of proper supporting evidences. We do not find any merits in the findings of the A.O. for the reason that though assessee need to substantiate expenditure with

necessary evidences, the possibility of certain expenditure on transfer cannot be ruled out. Therefore, considering the overall facts and circumstances of the case, we are of the view that certain expenditure being litigation expenses and development expenses should be allowed while computing the capital gains. Hence, we direct the A.O. to allow 50% of the expenditure claimed under the head litigation expenses and development expenses.

15. The next issue that came up for our consideration is rejection of exemption claimed u/s 54F of the Act. The assessee has claimed exemption of ₹ 79,50,000/- u/s 54F of the Act, towards re-investment of sale consideration for construction of residential house property. The assessee has filed necessary evidences in the form of valuation report and bills and vouchers to substantiate the claim. The A.O. observed that the assessee is not eligible to claim exemption u/s 54F of the Act, because as on the date of transfer of asset, she had one residential house and also constructed three residential units in the new property, therefore, opined that the assessee is not eligible to claim exemption. The CIT(A) after considering the relevant details filed by the assessee and also analysis of the provisions of section 54F of the Act, held that the expression 'a residential house' used in the section 54F of the Act to

mean 'a single residential house' even though, there are more than one independent residential unit in the house and accordingly, directed the A.O. to allow the exemption after verifying the claim regarding quantum of investment in the residential house. The relevant portion of the CIT(A) order is extracted below.

> *"In this ground, the appellant has challenged the AO's action in denying the claim of exemption u/s 54F. It was submitted that the appellant had invested an amount of 79.5 lakhs in constructing a house property at No.50-49-7/A, Plot No.112, P&T colony, Seethammadhara by utilizing the sale proceeds. The AO had rejected the claim of deduction on the ground that the appellant had constructed building consisting three residential units – first, second and third floors, and took the view that as three residential units were constructed the assessee would not be entitled to deduction even for one residential house. The AR contended that only one building was constructed which comprised three floors, and that the AO is not justified in treating it as three residential units. The AR also relied on the decision of Hon'ble High Court of Delhi in the case of CIT Vs. Gita Duggal. I have considered the submissions made and find merits in the same. In my view the appellant has constructed only a single residential house, though it may have three floors with independent residential unit in them. The section 54F of the Act uses the expression 'a residential house', and in the facts given above the appellant had invested in a residential house and would be entitled to exemption u/s 54F. The AO is directed to allow deduction u/s 54F, however after verifying the claim regarding the quantum of investment in the residential house. Accordingly, this ground is allowed in favour of the appellant."*

16. The Ld. A.R. submitted that though, the CIT(A) directed the A.O. to allow exemption claimed u/s 54F of the Act, the A.O. in the consequential assessment proceedings has allowed an amount of ₹ 63,83,000/- as against the claim made by the assessee of ₹ 79,50,000/-. The A.R. further submitted that the assessee has produced a valuation report, wherein the value of the property has been determined at ₹

75,20,000/-, therefore requested to consider the value of the property as determined by the valuer. We find force in the arguments of the assessee, for the reason that the assessee has furnished a copy of valuation report in support of cost of construction of the property, wherein registered valuer has determined the cost of construction of ₹ 75,20,000/-. Though the A.O. has allowed exemption of ₹ 63,83,000/- in the consequential proceedings, the A.O. has not given any reasons for not considering the evidences filed by the assessee. Therefore, we set aside the issue to the file of the A.O. and direct the A.O. to examine the evidences filed by the assessee and allow exemption accordingly.

17. In the result, the appeal filed by the assessee is **partly allowed** for statistical purposes.

The above order was pronounced in the open court on 23rd Dec'16.

Sd/-	Sd/-
(वी. दुर्गाराव)	**(जी. मंजुनाथा)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 23.12.2016
VG/SPS

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

1. अपीलार्थी / The Appellant – Smt. Chalasani Naga Ratna Kumari, Dr.No.50-49-7/A, Plot No.112, P&T Colony, Visakhapatnam
2. प्रत्यार्थी / The Respondent – The ITO, Ward-3(2), Visakhapatnam
3. आयकर आयुक्त / The CIT, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A), Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम **/** DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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वरिष्ट निजी सचिव (Sr.Private Secretary)
आय कर अपीलीय अधिकरण, विशाखापटणम **/**
ITAT, VISAKHAPATNAM