

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM****श्री वी. दुर्गराव, 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.108/Vizag/2013****(निर्धारण वर्ष / Assessment Year: 2009-10)**ITO, Ward-2(3),
Vijayawada**(अपीलार्थी / Appellant)**

Late Sri Pedarla Venkata Ramaiah

L/R Smt. Pedarla Sunanda

Vijayawada

[PAN No.AIAPP1033G]

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri T.S.N. Murthy, DR

प्रत्यार्थी की ओर से / Respondent by

: Shri C. Subrahmanyam, AR

सुनवाई की तारीख / Date of hearing

: 14.02.2017

घोषणा की तारीख / Date of Pronouncement

: 28.03.2017

आदेश / ORDER**PER Shri Manjunatha, Accountant Member:**

This appeal filed by the revenue is directed against order of the CIT(A), Vijayawada dated 11.12.2012 and it pertains to the assessment year 2009-10.

2. The brief facts of the case are that the assessee is legal representative of her diseased husband Late Shri Pedarla Venkata Ramaiah. Late Shri Pedarla Venkata Ramaiah filed return of income for the assessment year 2009-10 on 31.3.2011 declaring total income of ₹ 2,71,92,150/- besides agricultural income of ₹ 1,60,000/-. The case has been selected for scrutiny through CASS, mainly for the reason to examine the sources of cash deposits in savings bank account. Notices u/s 143(2) & 142(2) of the Act were issued. In response to notices, the authorized representative of the assessee appeared from time to time and furnished information as called for. During the course of assessment proceedings, the assessee was asked to furnish the sources for cash deposits in the savings bank account with ING Vysya Bank Limited. The assessee has furnished a statement explaining sources for all the deposits in the bank account. It was explained that the sources for cash deposits were made out of sale proceeds of agricultural land measuring 5.11 acres received on various dates.

3. The A.O. further observed that the assessee has computed long term capital gain from sale of agricultural land measuring 5.11 acres. To ascertain the correctness of long term capital gain computed by the assessee, the A.O. issued a show cause notice and asked to explain the nature of transaction, mode of computation of long term capital gain

and also to furnish the copies of documents executed for conveyance of title deeds of land. In response to show cause notice, the assessee submitted that her husband late Shri P.V. Ramaiah had entered into an un-possessionary, un-registered sale agreement dated 3.12.2007 for sale of 5.11 acres of agricultural land with one Shri P.Venkata Prasad for a consideration of ₹ 2,65,72,000/-. The assessee further submitted that he had entered into agreement for sale of agricultural land and received sale consideration on various dates. It was further submitted that agreement holder Shri P.V. Prasad converted land into flats and sold to various buyers for which her husband has executed registered sale deeds on behalf of agreement holder. In support of her arguments, furnished necessary copies of un-registered, un-possessionary sale agreement executed in favour of Shri P.V. Prasad and also furnished necessary proof for having received consideration in cash and cheques on various dates as per the notings recorded in the back side of the sale agreement, which was endorsed by the agreement holder and witnessed by one Shri K. Sambi Reddy, a document writer and also father-in-law of the agreement holder.

4. The A.O. after considering the submissions of the assessee, observed that the assessee has furnished copy of un-registered, un-possessionary sale agreement dated 3.12.2007 stated to be entered into

with Shri P.V. Prasad, however, the agreement holder denied having entered into any agreement with the assessee for purchase of agricultural lands. The A.O. further observed that the agreement holder Shri P.V. Prasad has appeared and given a statement on oath, wherein he was stated that he never entered into any agreement with the assessee Shri P.V. Ramaiah for purchase of agricultural lands and the copy of agreement furnished by the assessee stated to be entered with me is fabricated one and signature affixed on the agreement is forged. The A.O. further observed that since the agreement holder categorically disowned having entered into any agreement with the assessee, the assessee failed to prove the transaction with any other corroborative evidences to prove his case that he had entered into agreement for sale of agricultural land. The A.O. has listed out number of reasons to reject the purported sale agreement stated to be entered by the assessee. According to the A.O., the assessee himself has converted agricultural land into flats and sold to various buyers on different dates, but for the purpose of computation of capital gain, the assessee has created a fabricated agreement. The A.O. rejected all the claims made by the assessee to substantiate the agreement. According to the A.O., the agreement is unregistered and also un-possessionary and the total consideration is paid by way of cash on various dates. Though the

assessee stated to have received part of sale consideration by cheques, on verification of the details filed by the assessee, it is noticed that the two cheques claimed to have received from the assessee are actually received from the buyers of the flats, but not from the agreement holder, therefore, rejected claim of the assessee and computed long term capital gain based on the sale deeds executed by the assessee to various flat buyers. The A.O. further observed that there is a difference between consideration shown in the sale deed and consideration as per the sub-registrar value, therefore, adopted market value of the property as deemed consideration for the purpose of computation of long term capital gain.

5. In so far as cost of acquisition of the property, the assessee has taken cost of acquisition of the property at ₹ 4,95,465/- as on 1.4.1981. After indexation, the indexed cost of acquisition was arrived at ₹ 28,83,306/-. During the course of assessment proceedings, the A.O. asked the assessee to justify the basis for adoption of cost of acquisition of ₹ 4,95,465/-. In response, the assessee submitted a copy of certificate issued by the Joint Sub-Registrar-1, Vijayawada dated 22.6.2009, wherein the market value of the land as per sub-registrar value as on 1.1.1982 was certified at ₹ 150/- p.sq.yd. Since the sub-registrar has issued value of the property as on 1.1.1982 and also fact

that the rate applicable is for vacant plot of land, the A.O. issued a letter to the sub-registrar, Gandhinagar, Vijayawada, requesting them to provide market value of the agricultural land in S.No.19/1 of Gunadala as on 1.4.1981. In reply, the SRO, Vijayawada vide letter dated 26.12.2011 stated that the market value of the property from 1981 to 1985 is not available in their office, since the records were burnt in connection with V.M. Ranga agitation and submitted the details of the market value for 4 years starting from 1.5.1986 to 16.8.1990. The A.O. after considering the market value certified by the SRO and also cost of acquisition claimed by the assessee, observed that as per the SRO records, the market value of the property as on 1.4.1986 was at ₹ 28,500/- per acre, whereas the assessee has claimed ₹ 96,800/- per acre which appears to be abnormal. Therefore, re-worked cost of acquisition of the property by adopting ₹ 25,000/- per acre as against the assessee's claim of ₹ 96,800/-.

6. In so far as alternative plea of the assessee, that the provisions of section 45(2) of the Act, is applicable as the assessee has converted his investment into stock in trade, formed flats and sold. The assessee further submitted that he has shown the agricultural land in the previous financial year as its investment and converted investment into stock in trade, therefore, the provisions of section 45(2) of the Act is applicable.

The A.O. observed that the property transferred by the assessee is a capital asset which was held by him as investment in its books of accounts, therefore, the provisions of section 45(2) of the Act has no application. The A.O. further observed that though the assessee has divided the land into flats and sold to different persons, the activity of the assessee does not come under adventure in the nature of trade or commerce to compute capital gain as well as business income on conversion of investment into stock in trade or vice-versa. With these observations, re-worked capital gain from sale of land by adopting value as per section 50C of the Act, by adopting guidance value of the SRO for the purpose of payment of stamp duty and computed long term capital gain of ₹ 4,39,59,996/-.

7. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated the submissions made before the A.O. The assessee further submitted that the A.O. was erred in rejecting the evidences filed by the assessee in toto based on the denial of agreement holder without going into the evidences filed by the assessee. The assessee further submitted that the agreement holder himself has accepted before the A.O. that they have entered agreement with the assessee but the same has been cancelled. But the facts remains that, the assessee has entered into

agreement with Shri P.V. Prasad and they have formed lay out and sold to various individuals. The assessee has furnished necessary evidences in the form of agreement, supporting evidences such as affidavits from the parties who acted as witnesses for the agreement and also affidavit from Shri K. Sambhi Reddy who is document writer and also father-in-law of Shri P.V. Prasad, the agreement holder.

8. The CIT(A) after considering the submissions of the assessee, deleted additions made by the A.O. by holding that it transpires from the records that the assessee has entered into an agreement for sale of property to Shri P.V. Prasad on 3.12.2007 for a consideration of ₹ 2,65,72,000/- and the consideration has been received through cash and cheques. The CIT(A) further held that it may be noted from the records that Shri P.V. Prasad defaulted in payment of sale consideration for which he has paid interest of ₹ 2,48,320/-, which was shown as income from other sources in the assessee's return of income filed for the relevant assessment year. The noting made in the back side of the agreement for acknowledging the payment was in agreement with the payments made by the purchaser of the property. The CIT(A) further observed that the assessee has explained with necessary evidences and also proved sale of land by way of un-possessory sale agreement. With

these observations, he directed the A.O. to compute long term capital gain by considering un-possessory sale agreement.

9. In so far as cost of acquisition is concerned, the CIT(A) directed the A.O. to adopt cost of acquisition of ₹ 25,000/- per acre as against the cost of acquisition adopted by the assessee of ₹ 96,800/- per acre. The CIT(A) further observed that, in so far as alternative plea of the assessee that when conversion of investment into stock in trade took place it given rise to capital gains as well as business income or business loss as the case may be, which has not been considered. The procedure adopted by the A.O. lacks rhymes, reason, legitimacy and the same has to be deleted as the same is not in tune with the procedure laid down for this purpose. As per the material on record, it has to be held that the assessee has made outright sale of the impugned agricultural land of 5.11 acres to Shri P.V. Prasad for a consideration of ₹ 2,65,72,000/- on which long term capital gain accrues to the assessee for the year ending 31.3.2009. With these observations, directed the A.O. to re-compute long term capital gain based on the sale consideration received from sale agreement after reducing cost of acquisition of the property. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

10. The Ld. D.R. submitted that the Ld. CIT(A) erred in holding that the assessee has made outright sale of agricultural land of 5.11 acres to

Shri P.V. Prasad for a consideration of ₹ 2,65,72,000/- without appreciating the fact that the A.O. has brought out clear evidences in the form of statements from Shri P.V. Prasad, wherein he has categorically denied having entered into agreement dated 3.12.2007 with the assessee. The D.R. further submitted that during the course of cross examination of Shri P.V. Prasad, the A.R. of the assessee could not produce any evidences to prove that the copy of un-registered agreement stated to have been entered with Shri P.V. Prasad is genuine. The D.R. further submitted that the agreement itself is unregistered and also un-possessory and the consideration is fully paid in cash. Though the assessee claims to have received part of the sale consideration by cheques, the A.O. has brought out a clear fact that those cheques are received from the buyers of the flat but, not from the agreement holder. The A.O. after considering the relevant facts has rightly computed long term capital gain based on the SRO value of the flat sold and his order should be upheld.

11. On the other hand, the Ld. A.R. for the assessee strongly supported order of the CIT(A), The A.R. further submitted that the assessee has made outright sale of 5.11 acres of agricultural land to Shri P.V. Prasad for a consideration of ₹ 2,65,72,000/- and the same has been received on various dates as evidenced from the notings in the

back side of the sale agreement. The A.R. further submitted that the assessee has filed necessary evidences in the form of sale agreement and also affidavit from the persons who acted as witnesses in the transactions, wherein they have confirmed that the assessee has entered into sale agreement with Shri P.V. Prasad. The A.R. referring to the return of income filed by the assessee, submitted that Shri P.V. Prasad has defaulted in making payment for which he has paid interest of ₹ 2,48,320/- which was offered for tax under "income from other sources". The A.O., in total denied all the evidences furnished by the assessee to reject the sale agreement. It is further submitted that the agreement holder has converted land into flats and sold to various individuals, which is evident from the fact that he has signed as witnesses in many of the sale deeds.

12. In so far as alternative plea of application of section 45(2) of the Act, the A.R. submitted that in case the sale agreement is not accepted as genuine, the A.O. ought to have applied the provisions of section 45(2) of the Act, as the assessee has converted his investment into stock in trade formed flats and sold to buyers which comes under the definition of adventure in the nature of trade or commerce and the income from said transaction should be assessed under the head "income from business as well as capital gains" as and when the flats

are sold. The A.R. referring to the provisions of section 45(2) of the Act, submitted that when a capital asset is converted into stock in trade or vice-versa, it gives rise to capital gain as well as business income. Since, the assessee has converted his land into stock in trade, the provisions of section 45(2) of the Act has to be applied for the purpose of determination of income. The A.O. without assigning any reason rejected the claim of the assessee, simply stating that the assessee himself has computed long term capital gain from sale of lands.

13. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The factual matrix of the case which leads to the dispute is that the assessee has sold agricultural land measuring 5.11 acres and computed long term capital gain. The assessee claims that he had entered into unpossessory sale agreement with Shri P.V. Prasad for a consideration of ₹ 2,65,72,000/- and received sale consideration by way of cash and cheque on various dates. The assessee further contended that the agreement holder has converted land into sites and sold to various buyers, whereas he has facilitated transactions by executing sale deeds in favour of the buyers on behalf of the agreement holder. According to the A.O., the assessee has divided land into flats and sold to buyers on his own, however computed long term capital gain based on the

purported un-possessory sale agreement. The A.O. further observed that the sale agreement entered with Shri P.V. Prasad is fabricated one and the party to the agreement Shri P.V. Prasad categorically denied having entered into any agreement with the assessee. The A.O. further observed that the consideration shown in the sale agreement has been fully paid in cash. Though, the assessee claims to have received part of the sale consideration by way of cheques, on verification of the bank statement filed by the assessee, it is noticed that the cheques claimed to have received from the party has been actually received from the buyers of the site. Therefore, opined that the purported sale agreement stated to be entered with Shri P.V. Prasad is fabricated and cannot be relied upon.

14. Having heard both the sides and considered materials on record, we find that the assessee has furnished an unregistered, un-possessory sale agreement dated 3.12.2007 stated to be entered with Shri Shri P.V. Prasad. On perusal of the agreement copy filed by the assessee, we find that the agreement is unregistered. The consideration agreed for sale of property has been paid in cash on various dates. Though, the assessee claims to have received part of sale consideration by way of cheques, the assessee fails to prove the payment of sale consideration by cheque with necessary evidences. We further observed that the

agreement holder Shri P.V. Prasad has categorically disowned agreement and also stated that signature affixed in the agreement is forged. Though, the assessee tried to substantiate the sale agreement, he failed to prove the genuineness of sale agreement with necessary evidences. All the evidences filed by the assessee in the form of affidavit from the parties who acted as witnesses to the transactions has been negated by the A.O. by bringing a clear fact to the effect that the party to the agreement Shri P.V. Prasad has given a statement, wherein he has categorically disowned the agreement. Therefore, we are of the view that the assessee failed to prove the unregistered sale agreement with necessary evidences to accept his claim that he has made outright sale of agricultural land to Shri P.V. Prasad.

15. Coming to sale consideration stated to be received from sale of land. The assessee claims to have received sale consideration of ₹ 2,65,72,000/- by cash as well as cheques on various dates. The A.O. has brought out a clear fact to the effect that the assessee himself has executed individual sale deeds in favour of the buyers of the flats and consideration has been directly paid to the assessee. The A.O. further observed that the consideration shown in the sale deed is lesser than the guidance value of the property as per the sub-registrar value for the purpose of payment of stamp duty. Accordingly, the A.O. has worked

out a sale consideration of ₹ 4,46,99,501/- and applied the provisions of section 50C of the Act for the purpose of computation of long term capital gain. We find that as per the provisions of section 50C of the Act, when the sale consideration shown in the sale deed is less than the guidance value of the property for the purpose of payment of stamp duty, the SRO value has to be considered as deemed consideration for the purpose of transfer of property. In this case, the assessee has executed sale deeds and the consideration agreed in the sale deed is less than the guidance value of the property. Therefore, we are of the view that the A.O. was right in computing the long term capital gain based on the guidance value of the property as per the SRO value.

16. In so far as cost of acquisition of the property, the assessee has taken cost of ₹ 98,600/- per acre and applied indexation from 1.4.1981. There is no dispute with regard to the date of holding of the property. The only dispute is with regard to the cost of acquisition adopted by the assessee which is based on the certificate issued by the SRO, wherein the sub registrar has certified the value of the property at ₹ 150/- per sq.yd. as on 1.1.1982. On the other hand, the A.O. has obtained a letter from the sub registrar Gandhinagar, Vijayawada on 26.12.2011, wherein the market value of the property from 1986 to 1990 has been furnished, as per which, the value of the property varies from ₹ 28,500/-

to 1,00,000/- per acre. Though, the assessee furnished a copy of registered document vide document no.2201 dated 25.3.1980, the A.O. observed that the document furnished by the assessee relates to sale of vacant residential flat, which cannot be applied to sale of agricultural lands. We find force in the findings of the A.O., for the reason that the lands sold by the assessee are agricultural lands and market value of the property as on 1.4.1981 has to be taken as per the SRO value, which is applicable to the agricultural lands, but not for the vacant residential flats. The A.O. has obtained a certificate from the SRO, which indicates the market value of the agricultural land as on the date of sale. Therefore, we are of the view that the A.O. was right in re-computing cost of acquisition by adopting value of ₹ 25,000/- per acre.

17. Coming to the alternative plea of the assessee. The assessee has made an alternative plea for application of the provisions of section 45(2) of the Act. The assessee claims that he had converted his investment into stock in trade, formed flats and sold to individuals, therefore, the provisions of section 45(2) of the Act has to be applied for the purpose of computation of capital gain as well as business income. The Ld. A.R. referring to the provisions of section 45(2) of the Act, submitted that section 45(2) of the Act, was enacted for computing capital gains in respect of transfer of asset that was converted into stock

in trade of business. As per the provisions of section 45(2) of the Act, profit arising from the transfer, by way of conversion of investment into stock in trade shall be chargeable to income tax as income of the previous year in which such stock in trade is sold or otherwise transferred. Since, the assessee has converted his investment into stock in trade and formed flats, the provisions of section 45(2) of the Act, shall apply and accordingly, the A.O. ought to have re-computed the income from sale of agricultural land by applying the provisions of section 45(2) of the Act.

18. Having heard both the sides and considered material on record, we find that the A.O. never disputed the fact that the assessee has converted his investment into stock in trade. The A.O. denied alternative claim of the assessee, merely on the ground that the assessee himself has computed long term capital gain on sale of land under normal provisions of the Act. It is the claim of the assessee that the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into or its treatment by him as stock in trade of a business carried on by him, shall be chargeable to income tax as it is income of the previous year in which such stock in trade is sold or otherwise transferred by him and for the purpose of section 48 of the Act, the fair market value of the asset on the date of such conversion

shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. We find force in the arguments of the assessee, for the reason that when a capital asset is converted into stock in trade or vice-versa, the income from transfer of property has to be computed under the provisions of section 45(2) of the Act. The provisions of section 45(2) of the Act, mandates the assessing officer to compute the income from business as well as income from capital gain by applying the said provisions, the moment the assessee converted his investment into stock in trade.

19. In this case, the A.O. has not disputed the fact that the assessee has converted his investment into stock in trade. The A.O. denied the claim of the assessee merely on the ground that the assessee has admitted long term capital gain under normal provisions of the Act. Therefore, we are of the view that the A.O. was erred in not considering the alternative plea of the assessee for computation of income from sale of land by applying the provisions of section 45(2) of the Act. We further opined that, it is for the A.O. to compute the income by applying appropriate provisions of the Act, even though the assessee has made an incorrect claim to compute the income. In this case, although the assessee made alternative plea for computation of income by applying the provisions of section 45(2) of the Act, the A.O. has rejected the plea

without assigning any reasons. Therefore, we are of the view that the A.O. was erred in not considering the plea of the assessee, with reference to the provisions of section 45(2) of the Act. The CIT(A) after considering the relevant provision has rightly observed that, the case of the assessee squarely fall within the provision of section 45(2) of the Act and the A.O. was erred in not considering the assessee's plea for application of Section 45(2) of the Act. The revenue did not challenge the finding of the CIT(A) because he finally went on to delete additions on the ground that sale agreement is genuine and the assessee has made outright sale of land and hence, liable to pay capital gain on the basis of sale agreement. The assessee has filed necessary computation of business income and capital gain as per the provisions of section 45(2) of the Act and claims that the same is furnished before the A.O. Therefore, we deem it appropriate to remit the issue back to the file of the A.O. for the limited purpose of verification of computation filed by the assessee and direct the A.O. to consider the alternative plea of the assessee with reference to the relevant materials and direct him to re-compute the income by applying the provisions of section 45(2) of the Act.

20. In the result, the appeal filed by the revenue is allowed for statistical purposes.

The above order was pronounced in the open court on 28th Mar'17.

Sd/-
(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.03.2017

VG/SPS

Sd/-

(जी. मंजुनाथा)

(G. MANJUNATHA)

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

1. अपीलार्थी / The Appellant – The ITO, Ward-2(3), Vijayawada.
2. प्रत्यर्थी / The Respondent – Shri Pedarla Venkata Ramaiah, L/R Smt. Pedarla Sunanda, 32-16-5/2, Nr Ravi Chettu Centre, Pedarla Vari Street, Moghalrajpuram, Vijayawada.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
ITAT, VISAKHAPATNAM