

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.543/Hyd/2016
(Block Period 1991-92 to 2000-01)

Shri A. Aravind LR of Sri A. Ramulu Hyderabad PAN: ABQPA 4168 K (Appellant)	Vs	Dy. Commissioner of Income Tax, Circle 9(1) Hyderabad (Respondent)
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For Assessee :	Shri K.A. Sai Prasad
For Revenue :	Shri B. Raja Ram, DR

Date of Hearing:	05.07.2017
Date of Pronouncement:	04.10.2017

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the block period 1991-92 to 2000-01. In this appeal, the assessee is aggrieved by the order of the learned CIT (A)-7, Hyderabad, dated 18.12.2015. The assessee has raised the following grounds of appeal:

"1. The order of the learned First Appellate Authority is not correct either on facts or in law and in both.

2. The learned First Appellate Authority failed to appreciate the fact that the Assessing Officer has not carried out any further enquiries as directed by the Hon'ble Income Tax Appellate Tribunal.

3. The learned First Appellate Authority failed to appreciate the fact that there is no valid transfer of land to attract capital gain tax in the hands of the appellant.

4. The learned First Appellate Authority failed to adjudicate the grounds on validity of the assessment order in the absence of notices to all the legal heirs.

5. The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer in bringing to tax the entire long term capital gain in the hands of the appellant alone ignoring the other legal heirs.

6. The learned First Appellate Authority is not justified in confirming the indexed cost of acquisition as worked out by the Assessing Officer.

7. The learned First Appellate Authority failed to appreciate the fact that the late A. Ramulu the father of the appellant received Rs.11.74.000 only from the vendor.

8. The appellant craves leave to add amend or alter any of the grounds”.

2. Brief facts of the case are that the assessee is a legal representative of Late Shri A. Ramulu who, along with two other groups was the co-owner of the land admeasuring 10164 square yards situated at Survey No.102/1, 102/2, Nampally, Hyderabad. The owners of the land were,

- i) Smt. N. Andalamma and her relatives having 31.50% share in this property to the extent of 3202 sq. yards.

- ii) Shri A. Ramulu and his brothers Sri A. Anjaiah, Sri A. Kesavulu holding joint property of 38.50% of the total area of the land i.e. 10164 sq. yards.
- iii) Shri N. Srinivas, Sri N. Ganesh and Shri N. Raju having 30% of the joint share in the total of the land of 10164 sq. yards.

3. The entire property of 10164 sq. yards was Service Inamdari land which was originally allotted to one Shri Nalkari Ananthaiah and Shri A. Chennaiah and the three groups of persons stated above happened to be the descendants of the original owners. Two companies by name M/s. Sai Sree Financial and M/s. Sai Sree Projects Private Ltd, owned by one Shri M. Sambasiva Rao had engaged Shri Ambati Satyanarayana as a middleman/broker on their behalf for initiating a purchase deal for the entire land of 10164 sq. yards from the above three groups of persons. In September, 1999, the Enforcement Directorate, Govt. of India, had conducted certain inquiries/investigations into the alleged violation of Foreign Exchange Regulation Act, by Shri Sambasiva Rao, the promoter of the two companies mentioned above, and it was found that he had received certain secret commission from a supplier of urea from Turkey without the

authority from the RBI and that such secret commission was used by him to purchase the 10164 sq. yards of land located at Nampally, Hyderabad from the above three groups of persons sometime in the year 1995-96.

4. On the basis of the above Departmental information, a search and seizure operation u/s 132 of the Act was conducted in the office of Shri Ambati Satyanarayana in June, 2000 and several incriminating material was found and seized. From the said seized material, it was found that the above three groups of persons, who were the owners of the land at Nampally have received certain sale consideration. On the basis of such material, the AO came to the conclusion that the transactions relating to the transfer of land by the assessee and other co-owners in the financial year 1995-96, were not disclosed in their regular returns of income filed. He, therefore, issued a notice u/s 158BD of the Act to the assessee and completed the assessment thereafter bringing capital gains arising from such transfer of land to tax. The assessee challenged the said assessment before the CIT (A), who confirmed the order of the AO and the assessee came in further appeal to the ITAT.

5. Meanwhile, the CIT u/s 263 of the Act, had revised the assessment order which was also challenged by the assessee before the ITAT . The Income Tax Appellate Tribunal in IT(SS) No.20/Hyd/2007 and 46/Hyd/2009 observed that the ITAT in the case of another co-owner Smt. N. Andalamma had set aside the assessment for re-consideration on the basis of the fact that the assessment of the purchaser, M/s. Sai Sree Projects, has also been set aside to the AO.

6. As regards 263 order, the Tribunal in IT(SS)A No. 3/Hyd/09 had set aside the same to the CIT on the ground that no proper opportunity of hearing was offered or extended to the assessee. The CIT, consequent to the order of the Tribunal, observed that there was no assessment order to be revised as the Income Tax Appellate Tribunal had set aside the assessment order, yet he directed the AO to do the assessment afresh after considering his directions to consider the facts relating to quantum of assessee's share in the land i.e., 1/3rd of the land, and to adopt exact sale consideration instead of approximate value as adopted in the original assessment, after providing sufficient opportunity to the assessee as per law. The assessee filed appeal before the Tribunal against this order of the CIT and

the Tribunal has set aside the same holding that the order passed by the ITAT in M.A. No.133/Hyd/2014, dated 15.10.2014 should be read in conjunction with the order passed by the Tribunal in IT(SS)A No.3/Hyd/2009 in which the Tribunal had modified its earlier order stating that the assessment has been set aside and the CIT may wait for the assessment order to be passed by the AO in pursuance of the directions of the Tribunal and only if warranted may consider initiating proceedings u/s 263 of the Act again.

7. Consequent to the order of the ITAT, the AO completed the assessment afresh. During such assessment proceedings, the learned Counsel for the assessee filed an application that the assessee, Mr. Ramulu, had died and is survived by three sons (i) Aravind Arya, (ii) A. Veer Raghuv eeraya and (iii) A. Jayaveeraya and prayed that all the three persons be brought on record as his legal heirs. The AO however, did not accept this contention of the assessee stating that the assessee did not submit any legal heir certificate. The assessee had also submitted that Late A. Ramulu's share should be apportioned into four portions as the assessee's mother, Smt. Y. Yashodamma had willed her share of the land to one Shri N. Narsimha, who had also offered the capital gain to tax

in his hands. The AO did not accept this contention of the assessee also, on the ground that the copy of the will was not produced before her.

8. As regards the actual sale consideration received by Sri A. Ramulu and his two brothers to be only Rs.54.00 lakhs, the AO did not accept the same. She relied upon the notings in the seized material to come to the conclusion that the total value of the property is Rs.10.00 crores which worked out to be Rs. 9,838.65 per sq. yard. Therefore, she treated the share of the land of Sri Ramulu to be 1/3rd i.e., 1304.33 sq. yards and worked out the Long Term Capital Gain at Rs.1,28,32,846 and computed the tax accordingly.

9. Aggrieved, the assessee preferred an appeal before the CIT (A) objecting to the assessment and also bringing to his notice that the Tribunal had directed the issue to be examined afresh in the light of the assessments completed in the case of the co-owner Smt. N. Andamma and also in the case of M/s Sai Sree Projects (P) Ltd. The CIT (A) however, confirmed the order of the AO but directed that the share of the assessee, Sri Ramulu, is to be considered as 978.275 sq. yards only. For coming to this

conclusion, he accepted that the assessee, Mr. A. Ramulu's mother had willed her share of the property in favour of one Shri N. Narasimha, who has also been assessed to tax for the capital gain. Aggrieved by this order of the CIT (A), the assessee is in second appeal before us.

10. The learned Counsel for the assessee Shri K.A. Sai Prasad reiterated the submissions made before the authorities below and submitted that the three groups of persons, who were the owners of the land, allegedly entered into an agreement with Mr. Sambasiva Rao for the sale of their land at Nampally but due to the inquiry by the Enforcement Directorate, the transaction could not be finalized and the possession was never handed over to the vendees. Further, it was also submitted that the assessment in the case of Smt. N. Andalamma had been set aside by the Tribunal for re-consideration, in view of the fact that the assessment case of the vendee, Sri Sai Projects (P) Ltd, had also been set aside. He submitted that in the earlier round of litigation before the ITAT, all these facts were brought to the notice of the Tribunal and the Tribunal had set aside the assessment of the assessee to the file of the AO by directing the AO to re-do the assessment after considering the assessment in the case of Smt.

N. Andalamma. He also drew our attention to the fact that as per the Enforcement Directorate order, the assessee's father and his group had received only Rs.54.00 lakhs as sale consideration but this fact has not been considered by the AO. He drew our attention to the various variations in the notings of the seized material as to the actual consideration received by the assessee and also with regard to the registration charges incurred for the purchase of the property by Mr. Sambasiva Rao. He drew our attention to the fact that at one place, registration charges are mentioned as Rs. 1.4 crores, whereas at another place, Rs. 2 crores is mentioned whereas the actual registration charges incurred was Rs.16.00 lakhs (approximately) only. Therefore, according to him, the seized material is not reliable and cannot be the basis for making any addition. He also submitted that the possession of the property was never handed over to the vendees and therefore, there was no transfer warranting, bringing of capital gain to tax.

11. The learned Counsel also drew our attention to the application made before the AO and also before the Income Tax Appellate Tribunal, informing that Shri A. Ramulu had expired and is survived by three sons, who are to be brought on record as

the legal heirs. He submitted that the assessee being one of the sons of Shri A. Ramulu, only has been brought on record as a legal heir and the entire capital gain is brought to tax in his hands, which is not correct. Thus, the learned Counsel for the assessee prayed that the assessment be set aside to the file of the AO with a specific direction to redo the assessment after bringing all the LR's on record and after considering the assessments made in the case of the co-owner, Smt. N. Andalamma as well as the vendee M/s Sri Sai Sree Projects (P) Ltd as directed by the Tribunal in the earlier proceedings.

12. The learned DR, on the other hand, supported the orders of the authorities below.

13. Having regard to the rival contentions and the material on record, we find that the ITAT in the earlier proceedings, had clearly considered the issue and had set aside the assessment to the file of the AO observing that the cases of the vendee Shri Sai Sree Projects and the co-owner, Smt. N. Andalamma have been set aside to the file of the AO. Consequent to this direction, the AO is required to consider the assessments in the hands of the vendee as well as the co-owner before completing the assessment

in the hands of the assessee to adopt a uniform and rational approach. Further, we also find that the assessment was initially completed in the hands of Shri A. Ramulu, who has died thereafter, and all his legal heirs have to be brought on record to bring to tax his income. Though the learned Counsel for the assessee has brought to the notice of the AO that Shri A. Ramulu is survived by three sons, the AO has refused to bring them on record stating that the assessee has not filed the legal heir certificate. We cannot find fault with this approach of the AO, since the assessee has not filed the legal heir certificate even before us at this stage. But, the assessee can file such certificate even at this stage. Further, we are also of the opinion that neither the AO nor the CIT (A) have correctly followed the earlier directions of the Income Tax Appellate Tribunal. In view of the same, we deem it fit and proper to remand the issue to the file of the AO with a direction to consider the assessee's application for bringing all the legal heirs of Shri A. Ramulu on record and to complete the assessments in the hands of the assessee and the other legal heirs *de novo* after making due inquiries with regard to the assessments in the hands of Smt. N. Andalamma and also vendee M/s. Sri Sai Sree Projects (P) Ltd and also after making due inquiries with regard to assessee's contentions that

possession of the property was never handed over to the vendees and that the construction permission has been given to the other co-owners of the property, to come to a conclusion on the question as to whether there is a transfer of the property. The AO is therefore, directed to complete all the inquiries before completing the assessment in the hands of the assessee. Since the Revenue is not in appeal against the findings of the CIT (A) that the extent of land of 978.285 sq. yards only is to be brought to tax in the hands of the assessee, Sri A. Ramulu, and the capital gain is to be computed accordingly, we do not disturb this finding of the CIT(A) and direct the AO to follow the same while bringing the capital gain, if any, to tax.

14. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 4th October, 2017.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 4th October, 2017.
Vinodan/sps

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- 6 Guard File

By Order