

**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.404/Viz/2019  
(निर्धारण वर्ष/Assessment Year : 2009-10)**

Natta Suryarao  
S/o Late Manganna  
D.No.2-20-5  
Ambati Vari Street  
Old Town, Tanuku  
**[PAN :AHRPN 9648M]**

Vs. Income Tax Officer  
Ward-1  
Tanuku

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri.Y.Ratnakar, AR  
: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 05.09.2019

घोषणा की तारीख/Date of Pronouncement

: 04.10.2019

**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)], Rajamahendravaram in ITA.No.10194/2016-17/CIT(A)/RJY dated 20.03.2019 for the Assessment Year (A.Y.) 2009-10.

2. All the grounds of appeal are related to the deduction claimed u/s 54F of the Income Tax Act, 1961 (in short 'Act'). The assessee is an individual and filed the return of income in response to the notice issued u/s 148, declaring total income of Rs.11,530/-. During the year under consideration, the Assessing Officer (AO) noticed that the assessee has sold certain properties in nine documents for a consideration of Rs.36,26,500/-, with a market value of Rs.40,01,000/- and claimed the deduction u/s 54F of the Act. The AO issued show cause notice asking the assessee, as to why the sale consideration should not be treated as income under the head 'business' as per provisions of section 45(2) of the Act and as to why the exemption claimed u/s 54F should not be disallowed? Since, the assessee did not satisfy the conditions for allowing the deduction u/s 54F of the Act. In response there to, the assessee filed a letter stating that he is an agriculturist and not having any residential house, sold the agricultural lands and with the advances/sale proceeds received from the vendees, constructed the residential house at Tanuku for a sum of Rs.36,14,170/- and maintained the books of accounts for the construction. The assessee further submitted that he has not carried on any business, therefore, requested to accept the income returned. The AO did not accept the contention of the assessee that he is not engaged in the real estate business

and did not carry on any business. As the assessee has converted the agricultural land into plots and sold in bits and pieces, such conversion of plots and sales was considered business activity.

3. With regard to second contention of the assessee that he did not own any residential house and constructed the house with the advances received from the vendees, the AO observed that the assessee had already constructed the house before transfer took place and he has only constructed the upstairs and hence, viewed that the assessee is not eligible for exemption u/s 54F of the Act. Accordingly, the AO taxed the entire receipt under the head 'long term capital gains' and allowed the cost of acquisition and cost of improvement and the balance amount of Rs.31,64,190/- was brought to tax.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee.

5. Against the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee owns agricultural land in Tanuku admeasuring 82.5 cents in Survey No.330, 335/1 of Tanuku and he had applied for conversion of

agricultural land into non-agricultural purposes which was approved by Revenue Divisional Officer, Kovvuru by his order dated 22.12.2007 in R.C.C.No.1323/2007(K). The above agricultural land was remained as agricultural land till 31.03.2008. The proposals of lay out was made by the municipal committee, Tanuku by its letter dated 09.04.2008 in ROC No.545/2008/G1 and by its letter dated 06.08.2008 in ROC No.545/2008/G1 which were approved by the Regional Deputy Director of Town and Country Planning, Rajahmundry by his letter dated 14.08.2008 in Lr.D.Dis No.504/2008/R2. It is submitted that proposal for lay out as well as approval by concerned authorities were made subsequent to 31.03.2008 and the assessee cultivated the land till 31.03.2008 as agricultural land and the said agricultural land was divided into plots after the receipt of approval from the Town Planning Authority subsequent to 31.03.2008. The assessee stated to have incurred about Rs.2,81,250/- towards conversion charges, fees, travellings of land, cost of soil, transport charges and labour charges etc., in the month of September 2008 and the assessee has sold the converted plots during the year under consideration in nine documents for a sum of Rs.36,26,502/- as per the details given below :

**I.T.A. No.404/Viz/2019, A.Y.2009-10**  
**Natta Surya Rao, Tanuku**

Sl.No.	Date of Sale	Date of Registration	Extent	To whom sold	Sale Consideration
		Document No.			
1.	01.09.2008	10.09.2008/3460/2008	141-11	K.Subbi Reddy S/o Sureddy Arjunudupalem	2,79,500
2.	11.09.2008	01.09.2008/3603/2008	140-00	V.Sivarama Krishna Sai Vara Prasad S/o Naga Krishna Murthy Tanuku	50,000
3.	01.09.2008	01.09.2008/3459/2008	140.00	S.V.S.Satyanarayana Alias Venkayya S/o Rattayya Tanuku	2,77,500
4.	01.09.2008	01.09.2008/3462/2008	134-44	Mrs K.L.Naramadaa W/o Rama Krishna Reddy, Moyyuru	2,66,500
5.	11.09.2008	11.09.2008/3604/2008	225.75	Ch.Nagaraju and Ch.Sastri, Tanuku	2,00,000
6.	22.09.2008	22.09.2008/3759/2008	394.20	K.Rama Mohan S/o Krishna Murthy Peravali	7,81,000
7.	21.09.2008	22.09.2008/3757/2008	402.35	Akkina Bapineedu S/o Venkata Rao, Tanuku	4,00,000
8.	22.09.2008	22.09.2008/3758/2008	464.77	B.Venkateswara Rao S/o Appa Rao, Tanuku	9,20,500
9.	01.09.2008	01.09.2008/3461/2008	177.45	N.Srinivas S/o Krishna, Tanuku	3,51,502

5.1. Out of the sale consideration of Rs.36,26,502/-, the assessee has spent for construction of residential building at Tanuku for Rs.36,14,170/- in the financial year 2007-08 to 2008-09. Thus, the assessee argued that the assessee has commenced the construction on 03.12.2007 and completed the same by 31.03.2009. The assessee further submitted that the assessee has converted the land into plots and sold them as house sites, since, it is easy to make the sales and fetch better price from the buyers. No

development expenditure was incurred by the assessee, no business was carried on by the assessee. Therefore, argued that the assessee being an agriculturist, mere conversion of agricultural land into non agricultural land, plotting and developing of the land before sale would not be trading activity. Therefore, argued that the activity carried on by the assessee cannot be regarded as business activity. The assessee relied on the following decisions supporting his arguments.

- (i) CIT Vs. Suresh Chand Goyal reported in 298 ITR 277 (MP)
- (ii) CIT Vs. A.Mohammed Mohideen (1988) 74 CTR (Mad) 129
- (iii) B.Narasimha Reddy Vs. ITO (1994) 49 ttj (Hyd.) 329
- (iv) DCIT, Circle-15(1) i/c, Hyd, Vs. Shri B.Venu Madhav, Hyderabad in I.T.A. No.82/Hyd/2015 dt.24.04.2015-I.T.A.T. B Bench, Hyderabad
- (v) CIT Vs. Kasturi Estates (P) Ltd. 621 ITR 578 (Mad)

6. The second contention of the assessee is that the assessee commenced the sale of plots and received the consideration from the vendees and the same was used for construction of the house. Though the assessee has commenced the construction of the building before transfer of the land, the assessee has completed the construction within the period of 3 years, therefore satisfied the condition for claiming the deduction u/s 54F

of the Act. Thus argued that merely because investment in construction of house was before the transfer of the asset, benefit given to the assessee should not be denied. The Ld.AR relied on the decision of Hon'ble High Court of Allahabad in the case of CIT Vs. H.K.Kapoor reported in 234 ITR 753, Hon'ble High Court of Delhi in the case of CIT Vs. Bharati Mishra [2014] 41 taxmann.com 50 and the decision of Hon'ble Madras High Court in the case of C.Aryama Sundaram Vs. CIT [2018] 407 ITR 1 (Mad.) and various other decisions.

7. Per contra, the Ld.DR vehemently supported the orders of the lower authorities.

8. We have heard both the parties and perused the material placed on record. In the instant case, the short questions involved are

- (i) whether the sale of plots by the assessee is business income or 'capital gains'
- (ii) (ii) whether the assessee would be entitled for deduction u/s 54F if construction of house is commenced prior to the transfer of the asset.

With regard to the first issue, whether the assessee's income required to be taxed as business income or capital gains. In the instant

case, the assessee carried on the agricultural activity till 31.03.2008 and subsequently sold the land in plots. Though the assessee has taken permission for conversion of land for plotting into various units, no evidence was brought on record by the AO that the assessee has carried on any developmental activity. The assessee has not incurred any other expenditure except for payment of conversion fees, transport charges, labour charges etc. From the assessment order, we observe that the AO did not make out a case that the assessee has carried on the business activity. Therefore, the assessee being the agriculturist, not carried on any business activity except conversion of land into plots and disposing them without being developed there is no business activity involved and the income required to be taxed as capital gains, but not business income. The assessee relied on the various decision as under:

(i) CIT Vs. Suresh Chand Goyal reported in 298 ITR 277 (MP)

*“In the case of CIT Vs. A.Mohammed Mohideen (1988) 74 CTR (Mad) 129, the Division Bench of the Madras High Court has held that plotting and developing of land before sale by itself would not establish that the person concerned was indulging in a trading activity. Revenue has to establish by positive evidence that the purchase and sale of property was with the view to earn profits through trading transaction. In the present case, circumstances relied on by Revenue only throws suspicion on the assessee’s act of purchasing a property which did not immediately yield income, but there are no materials to further prove that assessee intended to indulge in a trading activity. Transaction of assessee in purchasing and selling the property did not, therefore, amount to an adventure in the nature of trade.”*



*In the aforesaid decision, the Hon'ble Supreme Court has held that in each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction. A cumulative consideration of the facts of the present case unmistakably points to the transaction of sale being a realization of the investment in land and consequently the gains are chargeable only to capital gains tax and not be considered as gains of an adventure in the nature of trade.*

(ii) **B.Narasimha Reddy Vs. ITO (1994) 49 TTJ (Hyd.) 329**

*In this case, the Division Bench of I.T.A.T.Hyd "A" Bench held that "Assessee plotting out his ancestral agricultural land and selling them at the rate of per square yard after getting approval for the lay out from Gram Panchayat. Land was capital asset within the meaning of Section 2(14) read with section 2(1-A) being situated within 8 kms. of municipal limits. Transaction was therefore, to realize the maximum from out of the capital asset. Profits, therefore, not income from adventure in the nature of trade but capital gain."*

*"Considering the aforesaid facts and circumstances of the case, we are also of the view that the selling of own land after plotting it out in order to secure better price, is not an adventure in the nature of trade or business."*

(iii) **DCIT, Circle-15(1) i/c, Hyd, Vs. Shri B.Venu Madhav**

*In this case ITAT Hyderabad in I.T.A. No.82/Hyd/2015 dt.24.04.2015 the assessee explained that the land was inherited by him after the demise of his late mother and that agricultural operations were carried out on the said land since its purchase in 1979 and therefore, the income from the sale of the land is to be considered as capital gains and not as business income as sought to be held by the AO.*

*By taking note of the following facts, ITAT, Hyderabad held that the CIT(A) erred in holding that the sale proceeds should be assessed as business income after recording certain factual findings.*

- a) In the present case, assessee is an agriculturist and did not carry on any business*
- b) The land was purchased as agricultural land way back in 1979;*
- c) Agricultural operations were carried on for more than 20 years and the land was inherited by assessee which is in the process of development;*

*d) Necessary permission for conversion of land into residential plots was sought by assessee's mother and just because assessee stepped into his mother's shoes, it cannot be considered that assessee is in the business of purchasing and selling of plots, whereas, assessee has only sold inherited land, therefore, intention to purchase for business was absent, and ITA No.82of 2015 B.Venu Madhav, Hyderabad."*

7. *"The Tribunal also relied on the circumstances that, neither in the past, nor subsequently, the assessee had ventured in such transactions and, as such, the single and sporadic instance of sale of plots could not give any inference that the assessee's activity could be classified as-an adventure in the nature of trade. In support of its conclusion, the Tribunal also placed reliance on the decision of this court in CIT v. Kasturi Estates (P) Ltd. (1966) 62 ITR 578. In the result, the Tribunal allowed the appeal holding that the excess realization was assessable only a capital gains and directed the ITO to compute the gains for two years as the sale Of plots had taken place over a period of two years."*

8 *"This court in CTT v.Kasturi Estates (P) Ltd. (1966) 62 ITR 578 explained the test to be applied to such cases thus (at page 600)*

*"A sale of immovable property may possibly be a trading or commercial transaction, but need not necessarily be so.. If a land —owner developed his land, expended money on it laid roads, converted the land into house sites and with a view to get a better price for the land, eventually sold the plots for a consideration yielding a surplus , it could hardly be said that the transaction is anything more than a realization of a capital investment or - conversion of one form of asset into another. Obviously, the surplus in such a case will not be trading or business profits because the transaction is one of realization of assets in investment rather than one in the course of trade carried on by the assessee or an adventure in the nature of trade."*

*"We are of the view that even in this case, the same position held good as there is no material to indicate that the assessee ever intended to indulge in any trading activity."*

(iv) CIT Vs. Kasturi Estates (P) Ltd. 621 ITR 578 (Mad)

*9. "If a land owner developed his land, expended money on it, laid roads, converted the land into house sites and with a view to get a better price for the land, eventually sold the plots for a consideration yielding a surplus; it could hardly be said that the transaction is anything more than a realisation of a capital investment - or conversion of one form of asset into another. Obviously, the surplus in such a case - will not be trading or business profit because the transaction is one of realization of asset in investment rather than one in the course of trade carried on by the assessee or an adventure in the nature of trade. The case of the assessee can stand on no different footing, - as we think, only because it is a company which has among its objects power to trade or traffic in land. There is here no evidence of a venture or venture. The transaction involved no risk or speculation, nor can it be truly said that it is a "plunge in the waters of trade" It is a transaction which any prudent owner of land will engage in and which is, therefore, no more than realization of capital investment, conversion of land into money, not a venture in the nature of trade."*

8.1. We have gone through the decisions relied upon by the Ld.AR and we are of the opinion that the case laws relied upon by the Ld.AR supports the assessee's case. Therefore, we hold that the assessee has not carried on any business and the income received on sale of plots required to be taxed as capital gains, but not business income. Incidentally, the AO also has taxed the sale consideration under the head long term capital gains, but not under the head 'business income'. Therefore, it is established that the department also has accepted the assessee's contention that the sale consideration on account of sale of plots to be brought to tax under the head long term capital gains. Accordingly, first question is answered in favour of the assessee and against the revenue.

9. The second question is whether the assessee is eligible for deduction u/s 54F of the Act, if the asset is transferred prior to the transfer of the land. In the instant case, as submitted by the assessee before the AO, it is found that the assessee has constructed the house comprising of ground floor and first floor and commenced the construction on 03.12.2007 and spent Rs. 9,25,170/- during the period 03.07.2007 to 31.03.2008 and subsequently spent a sum of Rs.26,89,195/- during the period from 01.04.2008 to 22.03.2009 that is subsequent to the sale of the plots and the construction was completed by 31.03.2009. Thus, it is submitted that though the construction of house was commenced prior to the transfer of the asset, the construction was completed within 3 years from the sale of the land, therefore, argued that the assessee is eligible for deduction u/s 54F and the facts were not disputed by the department. The issue whether the assessee would be entitled for deduction u/s 54F or not if the construction is commenced before transfer of asset was considered by this Tribunal in the case of Bollina Sri Hari Rao in I.T.A. No.548/Viz/2014 dated 28.03.2017 and in the case of Chamarthi Mounica in I.T.A. No.308 & 309/Viz/2018 dated 14.08.2019. This Tribunal has considered the decision of Bollina Sri Hari Rao while deciding the appeal of Chamarthi Mounica and

held that the assessee is entitled for deduction u/s 54F of the Act even if the construction was commenced prior to transfer of the land. For the sake of clarity and convenience, we extract relevant part of the order in the case of Chamarthi Mounica which reads as under :

*“15. The alternate proposition made by the Ld.AR is even if it is presumed that construction was commenced prior to the transfer of the capital asset, the assessee is eligible for deduction u/s 54F of the Act. The assessee relied on the order of this Tribunal in the case of Sri Bollina Srihari Rao (supra). In the cited case, the Tribunal held that the assessee would be entitled for deduction u/s 54F even though the amount is invested in construction prior to the transfer of original asset. For the sake of clarity, we extract relevant part of the order of this Tribunal in para No.11 which reads as under :*

*“11. Having heard both the sides, we find that the Coordinate Bench of this Tribunal, under similar circumstances has held that the Act does not prescribed any condition as to the date of commencement of construction of new house property and only condition is that construction of house property should be completed within three years from the date of transfer of original asset. The date of commencement of construction is irrelevant and the construction may be commenced even before the date of transfer of original asset. A similar view has been expressed by the Hon'ble Delhi High Court, in the case of Bharathi Mishra (supra), wherein the Hon'ble High Court observed that sub-section (4) of section 54F prescribes appropriation of sale consideration of original asset towards purchase of new asset made within one year before the date of transfer of original asset, two years from the date of transfer or construction of new house property, within three years from the date of transfer of original asset. The Act does not prescribe any condition as to the date of commencement of construction of house property which may even commenced before the date of transfer of original asset. The Hon'ble Karnataka High Court in the case of J.R. Subrahmanya Bhat (supra), has also expressed similar view and held that the investment made towards construction of house property prior to the date of transfer should also be allowable as deduction for the purpose of section 54F of the Act.”*

*15.1. Respectfully following the view taken by the Tribunal, we hold that even if the construction was commenced prior to the date of transfer of capital asset, the assessee would be eligible for deduction u/s 54F. However, in the instant case, as per the detailed observations made by us, it is established that the residential unit was constructed after the transfer of capital asset, hence*

*the case law relied upon by the assessee is only of academic interest and has no relevance to the assessee's case. Accordingly, the appeal of the assessee is allowed."*

9.1. This view is supported by the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bharati Mishra (supra) and the decision of C.Aryama Sundaram and H.K.Kapoor(Decd) (supra). Respectfully following the view taken by this Tribunal and Hon'ble High courts, we hold that the assessee is eligible for deduction u/s 54F even if the construction is commenced before transfer of the capital asset and completed the construction within the period provided in 54F of the Act. Therefore, we set aside the orders of the lower authorities and allow the appeal of the assessee.

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

Order pronounced in the open court on 4<sup>th</sup> October, 2019

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 04.10.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

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

1. निर्धारिती/ The Assessee - Natta Suryarao, S/o Late Manganna, D.No.2-20-5 Ambati Vari Street, Old Town, Tanuku
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Tanuku
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam