

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

**Before Smt. P. Madhavi Devi, Judicial Member
AND**

Shri S.Rifaur Rahman, Accountant Member

ITA Nos.917 & 918/Hyd/2017		
Assessment Years: 2011-12 & 2012-13		
Smt. Aparna Duddukunta Hyderabad PAN:AEGPD3262B	Vs.	Dy. Commissioner of Income Tax, Central Circle 6 (now CC-1(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Y.V.S.T. Sai, CIT-DR	
Date of hearing:	01/08/2019	
Date of pronouncement:	29/10/2019	

ORDER

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

Both are assessee's appeals for the A.Ys 2011-12 & 2012-13 against the common order of the CIT (A)-11, Hyderabad, dated 30.03.2017.

2. Brief facts of the case are that the assessee, individual, is the wife of Sri D. Sreedhar Reddy, MD of Sai Sudhir Infrastructures Ltd, Hyderabad. The assessee filed her return of income for the A.Y 2011-12 on 01.09.2012 declaring an income of Rs.1,73,461/-. For the A.Y 2012-13, she filed her return of income admitting an income of Rs.1,53,85,950/-.

3. There was a search and seizure operation u/s 132 of the I.T. Act in the group cases of M/s. Sai Sudhir Infrastructures Ltd on 30.11.2011 and Smt. D. Aparna Reddy, the assessee herein was also covered u/s 132 on the said date. Consequent to search and seizure operation, a notice u/s 153C, dated 29.11.2012 was issued to the assessee calling for return of income for the A.Ys 2006-07 to 2011-12. In response to the said notice, the assessee filed her return of income u/s 153C for the A.Y 2011-12 on 24.12.2013 admitting an income of Rs.1,73,460/- and also filed the relevant details before the AO. The AO observed that during the relevant financial year, the assessee has sold agricultural land admeasuring 44.15 acres situated at Gramadatla Village, T. Veerapuram Panchayat, Rayadurga Mandal, Anantapur District by entering into a long term lease for 99 years with M/s. Sai Sudhir Energy Ltd and received a consideration of Rs.10,67,53,833/- and that the said amount is claimed as not taxable since the asset sold is an agricultural land.

4. On verifying the material seized and the details submitted, the AO observed that the assessee had purchased these lands, which are claimed to be agricultural in nature, for a consideration of Rs.61,81,000/- and the sources for the same was said to be out of the amount received from her husband. When asked to furnish the conformation, the assessee could not produce the same and therefore, the AO concluded that the investment is unexplainable and he brought the investment of Rs.61,81,000/- to tax u/s 69 of the I.T. Act as unexplained investment.

5. Thereafter, he proceeded to consider the nature of income arising from the alleged agricultural land. He observed that in the computation statement for the A.Y under consideration, the assessee has shown agricultural income of Rs.80,000/-. The assessee was asked to produce the evidence in respect of agricultural income along with the documentary evidence in respect of the ownership of agricultural land. In response to the same, the assessee submitted that her mother-in-law owned 16.31 acres of mango garden as part of HUF property. Out of the income from the mango garden during the year, (the assessee has received a sum of Rs.80,000/-) which has been reflected in her return as agricultural income. Observing that the assessee has not adduced any evidence to prove that the income was received from HUF except stating to be so, the AO treated the agricultural income returned by the assessee as "Income from other sources" and brought it also to tax along with the additional evidence in proof of the loan taken from the assessee's husband of Rs.65.00 lakhs. Aggrieved, the assessee preferred an appeal before the CIT (A). The CIT (A) called for a remand report from the AO, who in the remand report, confirmed that Rs.1.00 crore was transferred from the Bank A/c of M/s. Sai Sudhir Infrastructure Ltd into the a/c of Shri D. Sreedhar Reddy who in turn (by way of RTGS) transferred Rs.65.00 lakhs to the assessee's A/c and that the vendors of the land have been paid through this Bank A/c only. Taking the same into consideration, the CIT (A) has accepted the receipt of money from Shri D. Sreedhar Reddy and therefore, deleted the addition of Rs.61,81,000/-.

6. Thereafter, the CIT (A) observed that during the financial year relevant to the A.Y 2012-13, the AO has brought to

tax a sum of Rs.10,29,90,809/- as an ascertainable business receipts relating to the transfer of 44.15 acres of land to M/s. Sai Sudhir Energy Ltd and that the AO's findings in the matter are contained at S.No.4 of page 2 to page 6 of the assessment order. He observed that the assessee acquired 45.15 acres of land after executing the registered sale deeds dated 17.1.2011 for a total consideration of Rs.61,81,000/-. The assessee then entered into a lease agreement dated 16.3.2011 with M/s. Sai Sudhir Energy Ltd (SSEL in short) for a lease rent of Rs.2000/- per month per acre for a period of 99 years and the terms and conditions of the lease agreement are as under:

"9.1 The assessee acquired 44.15 acres of land at Gramadatla Village, T.Veerapuram Panchayat in Anantapur District from six vendors after executing registered sale deeds dt. 17/01/2011 for a total consideration of Rs.61,81,000/-. This property is the same property that is discussed earlier in this order at para No. 7 above. The assessee then entered into a lease agreement dt.16/03/2011 with SS EL. A copy of this lease deed is available in the paper book from page 263 to 265. In this agreement, where the lessee SSEL is represented by its Chief Operating Officer Sri P. Udaya Sankar, the consideration agreed for the lease is reduced to writing as under:

"a) The Lessee has. agreed to pay Lease Rent of Rs.2,500/- (Rupees Two Thousand Five Hundred Only) per month per acre.

b) The Lessee has agreed to pay the lease rent for 99 years in advance at the time of execution of the Lease Deed, amounting to Rs.13,11,25,500/- (Rupees Thirteen Crores Eleven Lakhs Twenty Five Thousand Five Hundred Only).

c) The Lessee further agreed to allot equity shares of M/s. Sai Sudhir Energy Ltd. to the Lessor or to the family members of the Lessor as recommended by Lessor to the extent of number of equity shares opted by the Lessor and adjust the share subscription amount against Lease Rent payable to Lessor.

d) If any leftover amount over and above the number of equity shares allotted, the Lessee will pay by way of cash to the Lessor.

e) The lessee has agreed to allot 4~0~923 shares at Rs.10/-- each before 31st March, 2011 and the balance 48,03,922/- shares at Rs.10/- each after 1st April, 2011 towards least rent.

f) The possession of the Land will be handed over to the Lessee immediately after execution of the Lease Deed"

7. Subsequently on 17.3.2011, a supplementary lease deed to the original lease deed was entered into on 16.03.2011. In this agreement also, the lessee company was represented by its CEO Shri P. Uday Shankar and the terms and conditions are as under:

"9.1.1 Subsequently, on 17/03/2011 a Supplementary Lease Deed to the original Lease Deed dt.16/03/2011 was entered into. In this agreement also the lessee company is represented by its COO Sri P Udaya Sankar. The lease consideration reduced to writing 1 reads as under:

a) The Lessee has agreed to pay Lease Rent of Rs.24,434/- (Rupees Twenty-Four Thousand Four Hundred and Twenty-Four Only) per annum per acre.

b) The Lessee has agreed to pay the lease rent for 99 years in advance at the time of execution of the Lease Deed, amounting to Rs.10,67,53,833/- (Rupees Ten Crores Sixty I Seven Lakhs Fifty-Three Thousand Eight Hundred and Thirty-Three Only).

c) The Lessee and Lessor further agreed that the consideration mentioned in sub-clause (b) above Rs.10,67,53,833/- shall be discharged by issue of 96,07-845/- no equity shares (Face Value of Rs.10/-each) of M/s. Sai Sudhir Energy Ltd to the Lessor at its fact value after deduction of TDS amount of Rs.1,06, 75,383/-.

d) The lessee has agreed that out of total 96,07-845/- equity shares mentioned in 'sub clause c' above 48,03, 923/- equity shares shall be allotted by 31st March, 2011 and the balance 48,03,922 equity shares after 1st April 2011 towards lease rent on a written application by the Lessor.

e) Income Taxes shall be deducted from the total consideration and will be debited to the lessor at applicable rates.

f) The possession of the Land will be handed over to the Lessee immediately after execution of the Lease Deed i.e. before March 31,2011".

8. In keeping with the above agreements, the lessee company, SSEL allotted 48,03,923 shares with a face value of Rs.10/- valued at Rs.4,80,39,230/- on 28.03.2011 and was allotted the remaining 48,03,923 shares valued at Rs.4,80,39,230/- on 2.4.2011. An amount of Rs.1,06,75,383/- was also retained towards TDS. Thus, the CIT (A) concluded that the assessee has received Rs. 1,06,75,383/- in what was recorded as advance of the rental income attributable to 99 years lease rental receivable in respect of 44.15 acres of land at Gramadatla Village.

9. The CIT (A) also observed that subsequently on 2.7.2011, another lease deed was prepared whereby the assessee agreed to lease 44.15 acres of land to the same lessor, SSEL, and that the lease deed is registered as document No.1800/2011 with the Sub Registrar, Raidurg. He observed that the lessee company was represented by assessee's husband Shri D. Sreedhar Reddy, who is also a Director in the company and as per the lease for 99 years commencing from 1.4.2011 to 31.03.2110, the terms and conditions are as under:

"a) The lessee has agreed to pay lease rent of Rs.24,424/- (Rupees 24,424/- (Rupees Twenty Four Thousand Four Hundred and Twenty Four only) per annum. No advance paid.

b) The lessee has agreed to pay the lease rent for 99 years in advance at the time of execution of the Lease Deed amounting to Rs.24,17,976/- (Rupees Twenty Four Lakhs Seventeen Thousand Nine Hundred and Seventy-six only) and the Lessor hereby acknowledge the receipt of the same.

c) Income Taxes shall be deducted from the total consideration and will be debited to the lessor at applicable rates".

10. Subsequently, on 8.7.2011, the assessee executed a registered sale deed vide document No.1883/2011 in favour of the assessee as lessee company SSEL, and the consideration is mentioned at Rs.24,17,976/- paid by cheque No.527422 dated 8.7.2011. Against this backdrop of facts, the AO had treated the aggregate value of the shares received at Rs.10,67,53,833/- and the sale consideration of Rs.24,17,976 as the consideration received and after reducing the same by way of cost of acquisition of the land at Rs.61,81,000/-, the balance of amount of Rs.10,29,90,809/- as treated as taxable income. The AO also relied upon the statement of the M.D of the company Shri D. Sreedhar Reddy, recorded during the course of search u/s 132(4) on 29.12.2011, wherein he stated that the sale consideration of Rs.10,67,53,833/- for the sale of 44.15 acres of land to M/s. SSEL is in the form of allotment of equity shares and Rs.24,17,976/- was by way of cheque/DD and the assessee did not pay any advance tax till the date of search and that he has admitted the income of Rs.10,29,90,809/- as income for the financial year 2011-12. Since the income admitted during the course of search was not disclosed in the return of income filed by the assessee subsequent to the search, the AO required the assessee to show cause as to why the land should be exempted from capital gain tax and as to why it cannot be taxed as business income. The assessee stated that the land was agricultural in nature since the agricultural operations were carried out at the time of acquisition as well as at the time of sale and since the land is not within the specified distance, the land was not a capital asset in terms of section 2(14) of the I.T. Act. It was also submitted that the assessee was not in the business of purchase and sale of land and therefore, the sale of land should not be

treated as a business activity i.e. the real estate activity and that there was no capital gain that was liable to tax. The AO did not agree with the contention of the assessee and observed that the assessee had purchased the land in January, 2011 and sold the same in July, 2011, i.e. within a short span of six months and therefore, there was a profit motive in the activity of purchase and sale of land. He, therefore, treated it as business income assessable to tax in the financial year 2011-12 relevant to the A.Y 2012-13 being the year in which the sale was registered.

11. Before the CIT (A), the assessee had stated that if the lease deed dated 16.3.2011 were to be considered, then only the lease rental pertaining to the year in consideration has to be brought to tax and if the transaction is to be considered as sale on 8.7.2011, then the sale consideration alone i.e. 24,17,976/- can be considered as sale consideration. It was also submitted that the land was agricultural land which was situated in the remote area and there was no intention of the assessee to carry on any business activity and it was not a capital asset within the meaning of section 2(14) of the I.T. Act. The CIT (A) considered the issue at length and observed that at the time of execution of the lease deeds dated 16.3.2011 and 17.3.2011, the lease rentals were fixed and subsequently the lease were converted into a sale in the subsequent A.Y. He observed that the assessee has been allotted equity shares worth Rs.10,67,50,833/- and also Rs.24,17,976/- towards the sale consideration. He also observed that the assessee had purchased the land at Rs.61,81,000/- and subsequently the land was sold within six months for a consideration of Rs.24,17,976/- and there was no reason given for the sale at a such low price. He therefore, was of the opinion

that the amount received towards the shares within financial year relevant to the A.Y 2011-12 is to be treated as the income of the assessee u/s 56(2)(vii)(c)(i) of the I.T. Act and also the TDS retained but not remitted to the Govt. A/c amounting to Rs.1,06,75,383/- also has to be treated as income of the assessee in the financial year 2011-12 i.e during the A.Y 2012-13. He accordingly issued a notice for enhancement of the income. The assessee filed her written submissions and after considering the same, the CIT (A) held that for the A.Y 2011-12, the sum of Rs.4,80,39,230/- and also a sum of Rs.1,06,75,383/- is to be brought to tax and the balance of the amount i.e. Rs.4,80,39,220/- is assessable as the income from other sources u/s 56(2)(vii)(c)(i) of the I.T. Act for the A.Y 2012-13. Thus, the income for the A.Y 2011-12 was enhanced. While the appeal against the income assessed for the A.Y 2012-13 was partly allowed. Against this decision of the CIT (A), the assessee is in appeal before us for both the A.Ys.

12. The AO in this case, also treated a sum of Rs.80,000/- declared by the assessee as agricultural income as income from other sources as was done in the A.Y 2011-12. In addition to the above, another issue which is involved in the A.Y 2012-13 is the addition of Rs.53,24,455/- on account of unexplained sources for the gold jewellery found at the time of search. The CIT (A) had granted partial relief of Rs.38,71,455/- after allowing the extent on gold jewellery in the hands of the assessee and her family members. Against the addition confirmed by the CIT (A), the assessee is also in appeal before us. Therefore, the grounds of appeal for the A.Y 2011-12 and the ground of appeal for the A.Y 2012-13 are given below:

A.Y 2011-12

“1 The order of the learned CIT (A) is erroneous both on facts and in law.

2) The learned Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to enhance the income for the assessment year 2011-12.

3) The learned Commissioner of Income-tax (Appeals) ought to have provided proper opportunity before passing the order enhancing the income for the year under consideration,

4) The learned Commissioner of Income-tax (Appeals) erred in holding that the company Sai Sudhir Energy Limited allotted 96,07,845/- equity shares of the face value of Rs.10/- each without any consideration when facts show otherwise.

5) The learned Commissioner of Income-tax (Appeals) erred in holding that the provisions of Sec.56(2)(vii)(c)(i) of the I.T.Act are applicable to the facts of the case and further erred in holding that an amount of RsA,80,39,230j- received on 31.03.2011 would form part of the income of the appellant for the assessment year under consideration. The learned Commissioner of Income-tax (Appeals) ought to have seen that the shares were not allotted without any consideration.

6) The learned Commissioner of Income-tax (Appeals) failed to see that the shares were allotted against consideration and the balance in the books of account remained payable by the appellant to Sai Sudhir Energy Limited.

(7) The learned Commissioner of Income-tax (Appeals) erred in holding that the TDS of Rs.1,06,75,383j- provided in the name of the appellant represents the income of the appellant without considering the fact that the said amount does not represent the income of the appellant.

8) The learned Commissioner of Income-tax (Appeals) ought to have provided opportunity to the appellant before the Commissioner of Income-tax (Appeals) enhanced the assessment by a different view that the provisions of Sec.56 (2)(vii)(c)(i) of the I.T.Act. are applicable.

9) Any other ground or grounds that may be urged at the time of hearing”.

A.Y 2012-13

“1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.

2) The learned Commissioner of Income-tax (Appeals) ought to have provided proper opportunity before treating a part of the addition as an addition ix] s 56(2)(vii)(c)(i) of the I.T.Act.

3) The learned Commissioner of Income-tax (Appeals) erred in confirming addition of Rs.14,55,000/- out of Rs.53,26,455/- made by the Assessing Officer disbelieving the explanation submitted with regard to the gold jewellery available at the premises of the appellant.

4) The learned Commissioner of Income-tax (Appeals) erred in holding that the company Sai Sudhir Energy allotted 96,07,845/- equity shares of the face value of Rs.10/- each without any consideration particularly when the facts show otherwise.

5) The learned Commissioner of Income-tax (Appeals) erred in holding that the provisions of Sec.56(2)(vii)(c)(i) of the I.T.Act are applicable to the facts of the case and further erred in holding that an amount of Rs.4,80,39,220/- received on 31.03.2011 would form part of the income of the appellant for the assessment year under consideration particularly when no share was received by the appellant without consideration.

6) The learned Commissioner of Income-tax (Appeals) failed to see that the shares were allotted against consideration and the balance in the books of account remained payable by the appellant to Sai Sudhir Energy Limited.

7) The learned Commissioner of Income-tax (Appeals) ought to have provided opportunity to the appellant before a view is taken that the provisions of Sec.56 (2)(vii)(c)(i) of the I.T.Act. are applicable to the value of shares allotted to the appellant particularly when the appellant received shares against consideration.

8) Any other ground or grounds that may be urged at the time of hearing”.

13. The learned Counsel for the assessee reiterated the submissions made by the assessee before the authorities below extensively while the learned DR supported the orders of the authorities below.

14. Having regard to the rival contentions and the material on record, we find that there are two additions and the assessee has accepted the additions made under the head "income from other sources" of the agricultural income declared by the assessee. The first issue is the addition made on account of unexplained investment in Gold Jewellery. We find that during the course of search, the total gold jewellery found in the premises of the assessee was worth Rs.2,26,26,455/-. In a statement recorded during the course of search, the husband of the assessee offered to admit the additional income of Rs.1,36,47,165/- to tax after excluding the amount of Rs.36,52,835/- which was transferred through RTGS for which evidence was produced. Since the balance of the amount was not offered to tax on the ground that the CBDT notification No.37/C dated 20.05.1978 allowed only certain amount of gold in the hands of each of the assesseees, the AO brought the jewellery which is not explained to tax. Before the CIT (A), the assessee explained that the assessee hails from Rayalseema wherein gifting of gold at the time of marriage and other ceremonies was a common practice. She submitted that the jewellery belonged to her other family members besides her own "Sthridhan". The affidavit of her father, father-in-law and mother-in-law were furnished as additional evidence. The CIT (A), after examining the affidavit and evidence furnished and after calling for a remand report from the AO, accepted the assessee's contention with regard to the gold received at the time of marriage and also in the possession of the

father-in-law of the assessee. However, in respect of the gold allegedly belonging to the mother-in-law of the assessee Smt. E. Padmavathamma is concerned, he did not accepted the contention of the assessee as at the time of search, Smt. Padvavathamma was residing with her son at Kurnool and the gold belonging to her mother-in-law was in the locker at Kurnool. He held that since she was not residing with her son at Hyderabad, entire jewellery could not have been kept in the locker at Hyderabad. He therefore, confirmed the addition to the extent of Rs.14,55,000/-. Though the learned Counsel reiterated the submissions made before the authorities below, we are not convinced with the ownership of the jewellery of Smt. E. Padmavathamma as the jewellery found at the time of search was without any corroborative evidence. Therefore, ground of appeal No.3 against such addition is rejected.

15. As regards Ground relating to the addition u/s 56(2)(vii)(c)(i) of the I.T. Act, we have brought out the relevant facts already in the paragraphs above. The learned Counsel for the assessee submitted that the shares were allotted to the assessee on the execution of the lease deed and therefore, at the time of allotment of shares, it cannot be stated that they were allotted without any or valid consideration. Therefore, addition u/s 56(2)(vii)(c)(i) of the I.T. Act is not warranted. He submitted that the sale deed has been executed in the financial year relevant to the A.Y 2012-13 for a sale consideration and therefore, only such sale consideration can be brought to tax in the A.Y 2012-13 and not the amount received by the assessee by way of allotment of shares. He also submitted that on the execution of the sale deed, the amount received by the assessee by way of allotment of shares

has been converted into a loan and it is still shown as payable by the books of SSEL. He, therefore, submitted that the amount remained payable by the assessee and thus cannot be treated as “business income” of the assessee. The learned DR however, supported the orders of the CIT (A). We find that the first lease agreement was entered on 16.03.2011 and it was subsequently modified on the next day i.e. on 17.3.2011. By virtue of both the lease deeds, the lease rental was fixed for 99 years which was agreed to be paid upfront and the consideration was to be paid by way of allotment of equity shares of SSEL and the balance was to be paid to the lessor. We find that pursuant to such an agreement, 48,03,923 shares were allotted to the assessee by 31.03.2011 and the balance of 48,03,922 shares at Rs.10/- each were allotted after 1.4.2011. Therefore, it is seen that the consideration at the time of allotment of shares, was the lease rental payable to the assessee as per the terms and conditions of the agreement. It is thereafter i.e. on 2.7.2011 falling in the financial year 2011-12 that these terms were modified by modifying the rent payable at Rs.24,425/- per annum for a period of 99 years and this lease deed was converted into the sale deed on 8.7.2011, fixing the sale consideration at Rs.24,17,976. The CIT (A) has treated the value of the shares received in the A.Y 2011-12 and also in the A.Y 2012-13 as the income from other sources u/s 56(2)(vii)(c)(i) of the I.T. Act on the ground that the assessee has received the shares without any consideration. We are unable to agree with this finding of the CIT (A) because the shares were allotted on 28.3.2011 and on 02.04.2011 respectively in terms of the lease deeds. As rightly pointed out by the learned Counsel for the assessee during the course of arguments, under the lease deeds, only the lease rent receivable for the relevant A.Ys

can be brought to tax. Due to the existence of valid lease deeds, the transaction of allotment of the shares towards consideration of lease rent cannot be treated as a transaction without any or adequate consideration. Therefore, the additions u/s 56(2)(vii)(c)(i) of the I.T. Act are not sustainable. Further, the contention of the assessee that the value of the shares received is to be converted into a loan after the sale deed is executed is also appealing to us. On a query by us, it is submitted that the company SSEL has been showing the value of the shares allotted to the assessee and the money receivable as a loan from the assessee to the company and the assessee has also been showing the same as payable to M/s. SSEL in her books of account. Therefore, a loan cannot be considered as a benefit received by the assessee without any consideration. In view of the above, what can be brought to tax is only the lease rental receivable by the assessee for the relevant financial year. The AO is therefore directed to compute the lease rental in the respective relevant A.Ys and bring it to tax.

16. As regards amount of Rs.1,06,75,383/- which was retained towards the TDS brought to tax as “income from other sources”, the addition to that extent is confirmed. Similarly in the A.Y 2012-13, it is only lease rental that is liable to be taxed. As regards the sale consideration of Rs.24,17,976 is concerned, the assessee has claimed it to be sale consideration on sale of agricultural land. The AO is therefore, directed to verify whether the said land was recorded was agricultural land both at the time of the purchase of the property and also at the time of the sale and if it is found to be recorded as agricultural land, then the sale consideration cannot be brought to tax in A.Y 2012-13. Therefore,

the grounds of appeal for the A.Ys 2011-12 and 2012-13 against the additions are partly allowed for statistical purposes.

17. In the result, assessee's appeals for both the A.Ys are partly allowed for statistical purposes.

Order pronounced in the Open Court on 29th October, 2019.

Sd/-

Sd/-

(S. RIFAUR RAHMAN)

(P. MADHAVI DEVI)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Hyderabad, dated 29th October, 2019.

Vinodan/sps

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- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order