

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 116/VIZ/2020
(Asst. Year : 2014-15)**

Smt. Atluri Padma,
D.No. 27-37-133/1,
MG Road, Vijayawada.

Vs. ITO, Ward-2(3)
Vijayawada.

PAN No. ABLPA 3941 N
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA
Department by : Smt.Suman Malik, Sr.DR

Date of hearing : 22/06/2021.
Date of pronouncement : 25/06/2021.

ORDER

PER N.K. CHOUDHRY, JUDICIAL MEMBER

This appeal has been preferred by the Assessee against the order dated 20/12/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Vijayawada u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2014-15.

2. In this case, the Assessee had claimed deduction of Rs.90 lakhs u/sec. 54 of the Act. The AO after examining the claim of the Assessee held that the Assessee has sold one property on 29/11/2013 for a consideration of Rs.1,34,03,175/- and subsequently entered into an agreement with Shri Veerapanenu Subba Rao for purchase of property vide agreement dated 19/05/2014 and paid Rs. 90 lakhs (out of total sale consideration of Rs. 1.5 Crore) through RTGS as advance to the seller.

The AO examined the seller u/sec. 131 of the Act and noticed that the seller is a close relative of the Assessee and from the bank account statements of the seller it appears that there were withdrawals of Rs. 90 lakhs immediately after receipt of the advance amount. Further, there were withdrawals to the tune of Rs.27 lakhs by the Assessee herself on 21/05/2014.

The AO also observed that the Assessee did not get register the property even after lapse of 2½ years from the date of agreement. No prudent person will wait for such a long time after giving such huge advance and the advance given by the Assessee to her relative is an arranged transaction and colourable devise to avoid capital gains tax. Ultimately, the AO denied the claim of deduction u/sec. 54 of the Act and added the same to the income of the Assessee.

3. On appeal before the Id. Commissioner, the Assessee furnished the additional evidence as mentioned in para 12 of the impugned order which were forwarded to the AO for examination and furnishing the remand report, against which, the AO filed remand report.

Therefore, on the basis of additional evidence and remand report, the Id. Commissioner held that the delay in initiating legal action cannot be inferred to be part of a colourable device by the Assessee for avoiding payment of capital gains tax as inferred by the AO. The Ld. Commissioner though held the transaction/ agreement for sale under controversy as genuine, however partly sustained the disallowance/ addition of Rs. 27 lakhs (which was withdrawn by the Assessee from the bank account of seller) on the ground that *it was claimed by the Assessee that she had withdrawn the said amount on behalf of the seller at his request. **However, no evidence was furnished by the Assessee in support of the said explanation.***

4. The Assessee is in appeal before us for the amount of Rs.27.00 lakhs which has been disallowed u/sec. 54 of the Act.

It is not in controversy that civil suit for specific performance of the agreement of sale for registration of the sale deed in favour of the Assessee has been filed before the 2nd Additional District Judge, Vijayawada on 14/11/2019 by paying Court fee of Rs.1,52,426/- and the revenue department not doubted the same.

On the basis of documents the Ld. Commissioner clearly held that the sale agreement dated 19/05/2014 by which the property was purchased by the Assessee and advance of Rs. 90 lakhs was paid, is a genuine transaction and not an arranged transaction and colourable device to avoid payment of capital gains tax as alleged by the AO in the assessment order and the remand report.

4.1 What can be seen that in pursuance to the agreement referred above, the Assessee has paid Rs. 90 lakhs through RTGS to the seller which is not in dispute. The only controversy relates to the amount of Rs. 27 lakhs which was withdrawn by the Assessee from the account of the seller who is undisputedly relative of the Assessee. In this regard, the Ld. Commissioner in para 21 of the impugned order observed that it was claimed by *the Assessee that she had withdrawn the said amount on behalf of the seller at his request. However, no evidence was furnished by the Assessee in support of the said explanation.* In view of the same, it is required to be considered that though the Assessee made investment of Rs. 90 lakhs towards purchase of residential house by making payment of advance of Rs. 90 lakhs as per agreement of sale, the Assessee received back advance to the extent of Rs. 27 lakhs from the seller.

Nothing appears from the Assessment Order wherein the statement of seller has been depicted, qua refund of Rs 27 Lakhs to the Assessee. Even we are unable to find out any material from the record in support of the conclusion of the Id. Commissioner to the effect that the Assessee had received back advance to the extent of Rs. 27 lakhs from the seller. May be the Assessee has withdrawn Rs.27 lakhs from the seller's account but without any evidence that cannot be construed that the Assessee has received back advance to the extent of Rs. 27 lakhs from the seller, specifically in view of the fact that the litigations are pending qua registration of the sale deed and in the litigations documents submitted by the Seller also, the amount of Rs. 90 lakhs is in controversy.

From the certification of paper book filed by the Assessee it appears that legal notice sent by the Assessee to the seller and reply of the Seller's advocate were produced before the Ld. Commissioner. From the said documents it is clear that the Assessee had issued a legal notice through her lawyer on dated 28-01-2019 to the Seller wherein alleged to have been paid Rs. 90 Lakhs to the seller and called upon the seller to execute and register the sale deed. The Seller vide reply dated 12-02-2019 through his lawyer did not refute the acceptance of Rs 90 lakhs and offered no objection to perform his part of agreement subject to payment of remaining sale consideration of Rs. 60 Lakhs with interest @ 24% after the grace time i.e. after 110 days of time but noting said about refund of Rs. 27 Lakhs.

It is the case of the Assessee that total sale consideration was fixed @ 1.5 Crores and out of which Rs. 90 Lakhs was paid as advance amount and remaining balance to be payable was Rs. 60 Lakhs only. From the reply of the seller to the notice sent by the Assessee, it is clear that the seller was asking remaining amount of Rs. 60 Lakhs only and has not disputed the receiving of Rs. 90 Lakhs, which goes to show that question for refund of Rs. 27 Lakhs to the Assessee by the seller as observed by the Ld. Commissioner, at all does not arise and if that would have been there that certainly the seller would have raised objection qua payment of Rs. 90 Lakhs.

On the basis of aforesaid considerations and analyzations, we are inclined to allow deduction of Rs. 27 Lakhs as well u/s 54 of the Act.

5. In the result, appeal filed by the Assessee stands allowed.

Order Pronounced in open Court on this 25th day of June, 2021.

sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 25th June, 2021.

vr/-

Copy to:

1. *The Assessee - Smt. Atluri Padma, D.No. 27-37-133/1, MG Road, Vijayawada.*
2. *The Revenue – ITO, Ward-2(3), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.