

**आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.697/Viz/2019

(निर्धारण वर्ष / Assessment Year : 2004-05)

Smt. Kotyala Sujatha,  
L/R of Kotyala Kumara Swamy,  
Tadepalligudem.

PAN: AKZPK 5552 A

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,  
Ward-1,  
Tadepalligudem.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, AR

Sri Madhukar Aves, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 07/12/2023

घोषणा की तारीख/Date of

: 11/01/2024

Pronouncement

**ORDER**

**PER DUVVURU RL REDDY, Judicial Member :**

This appeal filed by the assessee is against the order of the Ld. CIT(A), Vijayawada in Appeal No.151/CIT(A)/VJA/16-17, dated 30/09/2019 arising out of the order passed U/s 154 r.w.s 254 of the Income Tax Act, 1961 [the Act] for the AY 2004-05.

2. Brief facts of the case are that the assessee is an individual engaged in the retail business of liquor. A survey U/s. 133A of the Act was conducted in the business premises of the assessee on 15/10/2003. During the course of survey, it was noted that the assessee purchased land admeasuring 48,200 sq yds in Visakhapatnam for a consideration of Rs. 98,91,000/- from Sri M. Subba Reddy through 20 sale-cum-GPA agreements, which were registered on 08/07/2003. On being asked to explain the sources for the investment, the assessee stated during the survey operation that no consideration was passed on to the vendor Sri M. Subba Reddy. Subsequently, the assessee filed his return of income for the AY 2004-05 on 24/12/2004 admitting a total income of Rs.81,550/-. In the return of income the assessee admitted a loss of Rs. 37,654/- from the business activity of purchase and sale of sites in respect of the land acquired from Sri M. Subba Reddy for a consideration of Rs. 98,91,000/-. In the return of income it was also stated by the assessee that out of the sites purchased from Sri M. Subba Reddy, two sites were sold during the year 2004-05. During the course of assessment proceedings, in the statement recorded from the assessee, the assessee stated that Rs. 98,91,000/- was paid to the vendor Sri M. Subba Reddy on the date of registration of the sale-cum-GPA

Agreements itself i.e., on 08/07/2003. Regarding the sources for such investment, the assessee explained that he paid the purchase consideration out of the amounts received as advances from 30 persons and produced the confirmation letters from them. Thereafter, it was noticed by the Ld. AO that the 30 persons who stated to have been advanced to the assessee are agriculturists having no other source of income except agricultural income, the Ld. AO caused enquiries with the Income Tax Inspector [ITI] and came to the conclusion that the creditworthiness of the 30 persons worked out to not more than 63,03,790/-. Accordingly, the Ld. AO came to the conclusion that the differential amount of Rs. 35,96,210/- [Rs. 98,91,000 – Rs. 63,03,790] was paid by the assessee out of his unexplained sources of income and the assessee was asked to explain the source for the differential consideration amount of Rs. 35,96,210/-. In reply, the assessee contended that there is no lapse on the part of the assessee as he discharged his onus of establishing the creditworthiness of the 30 persons by submitting their confirmation letters. However, the assessee accepted for the addition of Rs. 35,96,210/- to buy peace with the Department on a condition that there would not be any penal proceedings in this regard. Accordingly, the Ld. AO made addition of Rs.

35,96,210/- U/s. 69 of the Act towards unexplained investment being the differential consideration amount and passed the assessment order U/s. 143(3) of the Act on 29/03/2005. Thereafter, the assessee filed a rectification petition U/s. 154 of the Act on 3/4/2006 wherein the assessee submitted before the Ld. AO that the vendor Sri M. Subba Reddy has unilaterally cancelled all the said GPA-cum-sale agreements (20 as cited supra) on the ground that the vendor had not received any consideration from the assessee and taken back the possession of the property. It was also stated by the assessee that the said cancellation deeds which were executed by Mr. M. Subba Reddy on 12/01/2004 were registered before the Sub-Registrar on 29/11/2005. Therefore, it was contended before the Ld. AO that because of the cancellation deeds the vendor has taken back the possession of the property depriving the assessee's title on the property, there was no transaction in this regard and hence the addition made by the Ld. AO towards unexplained investment was liable to be deleted. The Ld. AO dismissed the rectification petition filed by the assessee U/s. 154 vide order dated 17/4/2006 by holding that there was no mistake apparent from the record. Aggrieved by the rectification order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), Rajahmundry. On

appeal, the Ld. CIT(A), Rajahmundry dismissed the appeal of the assessee vide order dated 02/08/2007 by holding that in the absence of any information or document in the record available with the Department relating to any purported cancellation deeds it cannot be said that there is a mistake apparent from the record attributable to the order passed U/s. 143(3) of the Act, dated 29/03/2005. Aggrieved by the order of the Ld. CIT(A), the assessee preferred an appeal before the Hon'ble ITAT, Visakhapatnam. On appeal, the Tribunal has passed the order in ITA No. 415/Viz/2007, dated 19/07/2010 wherein the Tribunal has remitted the matter back to the file of the Ld. AO with a direction to admit the cancellation deeds and to re-examine the entire issue in the light of these documents. Giving effect to the directions of the Hon'ble Tribunal, the Ld. AO passed a detailed consequential order u/s. 154 r.w.s 254 of the Act on 30/12/2011 wherein the Ld. AO sustained the addition of Rs. 35,96,210/- made in the original assessment order towards unexplained investment. Against the consequential order of the Ld. AO, dated 30/12/2011, the assessee preferred an appeal before the Ld. CIT(A), Vijayawada. On appeal, the Ld. CIT(A) discussed the issues at length and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT (A), the assessee is in

appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) ought to have considered the fact that the sale documents were cancelled by the transferor on the ground that no consideration was paid.*
3. *The Ld. CIT (A) ought to have seen that the cancellation deeds were already in the knowledge of the AO at the time of making assessment and that therefore the AO's order is erroneous as the AO treated a part of the sale consideration paid as the income of the appellant inspite of the fact that the AO was in possession of information that no part of the sale consideration was passed to the vendor.*
4. *The Ld. CIT (A) ought to have found that when from the information available on record no part of the consideration was paid, making addition U/s. 69 of the Act on the ground that consideration paid was not properly explained is a mistake apparent from record.*
5. *The Ld. CIT (A) ought to have found that the Assessing Officer did not follow the direction given by the Hon'ble ITAT, Visakhapatnam and rejected the application U/s. 154 of the Act.*
6. *The Ld. CIT(A) ought to have found that there is a mistake apparent from the record and that there is a mistake inasmuch as the AO erred in treating any part of the consideration as the income U/s. 69 of the Act when the AO was in possession of the date to the effect that no consideration was paid.*
7. *Any other ground that may be urged at the time of hearing.”*

3. The main contention of the assessee is that while passing the consequential order, the Ld. AO has not considered the directions issued by the ITAT.

4. At the outset, the Ld. Authorized Representative submitted that on 08/07/2003, the assessee had entered into a registered sale agreement-cum-GPA with one Mr. M. Subba Reddy for purchase of 2400 sq yds and subsequently, the assessee also entered into a registered sale agreement-cum-GPA for purchase of 48,200 sq yds and paid a sale consideration of Rs. 98,91,000/-. The Ld. Assessing Officer considered the sources for such investment by the assessee only to the extent of Rs. 63,03,790/- and did not consider the differential consideration of Rs. 35,96,310/- and made addition towards unexplained investment U/s. 69 of the Act. The Ld. AR further submitted that the land owner (Vendor) received all the payments directly from various parties and subsequently in the year 2004, the land owner cancelled the agreement of sale-cum-GPA by stating that he has not received any consideration. The Ld. AR further submitted that the assessee, being unaware of this fact, filed a rectification petition U/s. 154 of the Act, which was dismissed by the Ld. AO and on appeal the Ld. CIT(A) also dismissed the appeal and

therefore the assessee filed an appeal before the Tribunal in the first round of proceedings. On appeal of the assessee, the Tribunal remitted the matter to the Ld. AO to examine the cancellation deeds and decide the issue afresh. However, in the consequential order passed giving effect to the directions of the ITAT, the Ld. AO again has made the addition of Rs. 35,96,210/- in the hands of the assessee which was sustained by the Ld. CIT(A). He therefore pleaded that the addition made by the Ld. AO and confirmed by the Ld. CIT(A) is not sustainable in law and therefore the same may be deleted because while passing the consequential order, the Ld. AO has not considered the directions issued by the ITAT.

5. On the other hand, the Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities. The Ld. DR further submitted that the Ld. AO has examined the cancellation deeds and in his order adhering to the directions of the ITAT, the Ld. AO has categorically mentioned that the sale agreements-cum-GPA were examined by him and there was no creditworthiness of the 30 persons who stated to have paid total consideration of Rs. 98,91,000/- to the vendor Mr. M. Subba Reddy and there is no proof to establish that these 30 investors



have paid the amounts directly to the owner of the land. He further submitted that the registered agreement of sale-cum-GPA clearly established that the assessee had paid the amount of Rs. 98,91,000/-. The Ld. DR also further submitted that the cancellation of the registered sale agreement unilaterally by either of the parties of the Agreement has no value in the eye of law. He further submitted that if at all a registered instrument is to be cancelled, it should be done only by way of passing a Decree by the Civil Court. The Ld. DR also submitted that in the instant case, the land owner himself registered one cancellation deed with the SRO by stating that the earlier sale agreements-cum-GPA executed by him in respect of sale of property stand cancelled which does not have any validity in the eye of law. The Ld. DR further argued that the Ld. AO has clearly mentioned in his remand report that he called for the 30 investors and made enquiries through the Income Tax Inspector (ITI) and then only came to the conclusion that creditworthiness of the 30 persons worked out to not more than Rs. 63,03,790/-. Hence, the Ld. AO concluded that the assessee has invested an amount of Rs. 35,96,210/- from his unexplained source of income. He further submitted that when the assessee was asked to explain the source of the said unexplained investment, it was stated by the

assessee that he has accepted for the addition of Rs. 35,96,210/- in order to buy peace with the Department on a condition that no other penal proceedings would be initiated against the assessee. Therefore, the Ld. AO made the addition of Rs. 35,96,210/- U/s. 69 of the Act. On that addition, the assessee has not filed any appeal before the First Appellate Authority but subsequently filed a rectification petition U/s. 154 of the Act before the Ld. AO which was dismissed by the Ld. AO. Therefore considering all the above facts, the Ld. DR pleaded that since there is no error in the orders of the Ld. AO and the Ld. CIT(A), the same may be upheld.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. This is the second round of proceedings before the Tribunal. On perusal of the facts and circumstances of the case in toto, it is an admitted fact that the assessee himself has admitted on disclosure of income of Rs. 35,95,210/- by stating that to buy peace he is accepting to make the addition and subsequently the assessee retracted the same by filing the rectification petition U/s. 154 of the Act before the Ld. AO by relying on the registered cancellation deed dated 29/11/2005 executed by the owner of the land Mr. M. Subba Reddy. On this

aspect, the contention of the assessee is that the land owner cancelled the initially registered sale agreement-cum-GPA (dated 08/07/2003) by executing a registered cancellation deed dated 29/11/2005 before the SRO on the ground that he has not received any sale consideration under the original sale agreement-cum-GPA. Therefore, the question of passing of any sale consideration by the assessee does not arise. *Per contra*, the contention of the Revenue is that any registered instrument can be cancelled only by way of a Decree of the Civil Court and it cannot be cancelled arbitrarily by either of the parties of the registered agreement and cannot get registered with the SRO unless there is a direction by way of Decree from the Civil Court.

**Now, to the question before me is whether the land owner can himself execute and cancel the agreement of sale-cum-GPA and register the cancellation deed arbitrarily with the SRO?**

The Specific Relief Act, 1963 vide Chapter-V, sections 31, 32 & 33 has laid down certain procedure with respect to cancellation of Instruments. For the sake of reference, the relevant sections of 31, 32 and 33 of the Specific Relief Act, 1963 are extracted herein below for reference:

CHAPTER V  
CANCELLATION OF INSTRUMENTS

31. *When cancellation may be ordered.—*

- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.**
- (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.**

32. *What instruments may be partially cancelled.—*

*Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.*

33. *Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.—*

- (1) *On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.*
- (2) *Where a defendant successfully resists any suit on the ground—*
  - (a) *that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;*
  - (b) *that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.*

7. From the plain reading of section 31, 32 & 33 of THE SPECIFIC RELIEF ACT, 1963, it is clearly mentioned that ***any instrument which has been registered under the Indian Registration Act, 1908 (16 of 1908) has to be cancelled by the Civil Court by way of Decree only and then only the SRO can implement the cancellation of the earlier instrument so registered with them.*** In the present case on hand, there is no Decree obtained from the Civil Court by the Land Owner with regard to cancellation of the earlier agreement and therefore, the registered cancellation of the sale deed with the SRO is not valid in the eye of law. Further, on perusal of the material available on record, it is clear that there is no cogent material before me to evidence and suggest that without passing the consideration, the land owner registered an agreement of sale-cum-GPA in favour of the assessee. But, the recitals are very clear that the vendor has received the sale consideration and executed the document. Therefore simply cancelling the registered agreement of sale-cum-GPA by way of a registered deed of cancellation is not enough to come to a conclusion that the assessee has not paid the consideration to the land owner. Moreover, the assessee himself admitted before the Ld. AO for making an addition of Rs. 35,96,210/-, whatsoever the reason, and therefore the assessee

is precluded to say that he has not paid any amount to the land owner and hence there is no any unexplained investment made by the assessee. Moreover, the Ld. AO has considered the creditworthiness of the 30 investors and the assessee got relief to the extent of Rs. 63,03,790/-. Apart from this, the assessee has also failed to establish the creditworthiness of the 30 investors. In these circumstances, I do not find any merit in the argument of the Ld. AR and at the same time the arguments of the Ld. DR holds good. Therefore, as per the discussion in the foregoing paragraphs of this order, I am of the considered opinion that there is no infirmity in the order of the Ld. AO as well as the Ld. CIT(A) and hence no interference is required in their orders. Thus, all the grounds raised by the assessee are dismissed.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on 11<sup>th</sup> January, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 11/01/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee – Smt. Kotyala Sujatha L/R of Kotyala Kumara Swamy, D.No. 4-48/2B, Opp. Vasavi Park, P & T Colony, Tadepalligudem, West Godavari District, Andhra Pradesh – 534 101.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Income Tax Office, Opp. Punjab National Bank, KN Road, Tadepalligudem, Andhra Pradesh-534101.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam