

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No.546 of 2017

Date : 08-11-2017

Between:

The Pr. Commissioner of Income Tax,
Guntur

.. Appellant

And

Viswanadhapalli Venkateswara Rao

.. Respondent

Counsel for appellant : Ms. M. Kiranmayee, Senior Standing
Counsel for Income Tax Department
Counsel for respondent : --



The Court made the following :

ORDER: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This appeal by Revenue is filed against order dated 23-12-2016 on the file of the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam.

The respondent-assessee filed his return of income for the Assessment Year 2009-10 declaring a total income of Rs.1,96,340/- besides agricultural income of Rs.1,50,000/-. The Assessing Officer (for short "the A.O.") completed the assessment under Section 143(3) of the Income Tax Act 1961 (for short "the Act") on 27-12-2011 determining the total income at Rs.59,31,808/-, which include additions towards Long Term Capital Gains derived from the transfer of certain lands by the respondent-assessee to M/s. Vanpic Projects Pvt. Ltd. Aggrieved thereby, the respondent-assessee has filed an appeal before the Commissioner of Income Tax (Appeals) (for short "the CIT (Appeals)" who, by his order dated 12-6-2012 deleted the additions made by the A.O. towards Long Term Capital Gains by holding that the lands transferred by the assessee are not 'capital assets' within the meaning of Section 2(14) of the Act. Challenging the said order, the Revenue filed an appeal before the Tribunal vide I.T.A.No.296/VIZ/2012. By its order dated 11-12-2015, the Tribunal has dismissed the appeal taking the view that as the lands transferred by the assessee are agricultural lands used for agricultural purposes, they cannot be

treated as 'capital assets' within the meaning of Section 2(14) of the Act and therefore the income from the sale of the said lands is not exigible to tax under 'capital gains'.

Post disposal of the appeal by the CIT (Appeals), the Commissioner of Income Tax (CIT) issued show cause notice dated 31-1-2014 under Section 263 of the Act calling upon the assessee to show cause as to why the assessment order passed by the A.O. shall not be revised. The assessee did not respond to the said show cause notice. After addressing another letter dated 10-3-2014, to which also there was no response from the assessee, the CIT finalised the proceedings initiated under Section 263 of the Act, exparte, on 18-3-2014. In his order, the CIT observed that the assessee has transferred certain lands the ownership of which vested with the Government, that the assessee has transferred only possessory rights but not the active ownership rights in the lands and therefore the resultant consideration is taxable under the head 'Income from other sources' but not under the head 'Income from capital gains'. On the above view of the matter, the CIT has set aside the order of the A.O. and directed the latter to tax the sale consideration received by the assessee under the head 'Income from other sources'. Assailing this order, the assessee has carried the matter in appeal before the Tribunal, registered as I.T.A.No.414/Vizag/2014. The Tribunal has set-aside the order of

the CIT holding that the issue was already considered in its order dated 11-12-2015 in I.T.A.No.296/Vizag/2012. The said order of the Tribunal is called in question in this appeal by the Revenue.

The following substantial questions of law have been raised in the appeal:

1. Whether on the facts and in the circumstances of the case, the order of the Tribunal is not perverse in holding that the assessing officer has taken one of the possible views while making the addition under the head 'long term capital gains'?
2. Whether on the facts and circumstances of the case, the Tribunal is correct in law in setting aside the order of the Commissioner passed under Section 263 of the Act ?

As narrated hereinbefore, the appeal filed by the assessee against the order of the A.O. making the additions towards Long Term Capital Gains was allowed by the CIT (Appeals) by taking the view that the lands transferred by the assessee are not 'capital assets' within the meaning of Section 2(14) of the Act. This order was confirmed in appeal by the Tribunal. Once the amount received by the assessee was treated not as Long Term Capital Gains and the same was deleted from the income of the assessee, the CIT ought not to have exercised his revisional powers by recomputing the said amount terming the same as 'Income from other sources'.

Under clause (c) of Explanation (1) to Section 263(1) of the Act, where an order referred to in sub-section (1) and passed by the

A.O. has been the subject matter in appeal, the revisional powers of the Commissioner shall extend to such matters as had not been considered and decided in such appeal. On the facts of the case as narrated above, it cannot be said that the matter as to how the monies received by the assessee must be treated has not been considered and decided in appeal. Therefore, the CIT was denuded of his power to revise the assessment under Section 263 of the Act.

This apart, while dismissing the appeal, the Tribunal has held that where the view taken by the A.O. was a plausible view, the Commissioner ought not to have exercised the revisional powers under Section 263 of the Act merely because another view was possible to be taken. We commend the correctness of this reasoning also while dismissing the appeal.

For the afore stated reasons, the appeal is dismissed.

Justice C.V. Nagarjuna Reddy

Justice Challa Kodanda Ram

Date : 08-11-2017

AM