THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION Nos.17822 & 36496 of 2016

Between:

Smt. Uppada Sarvani, W/o. Sri Uppada Balaji Mohan Rao
D.No.39-18-67/3, Seethanna Gardens, Madhavadara,
Visakhapatnam, Visakhapatnam District.

PETITIONER

And

1. Income Tax Officer, Ward 4(2), Visakhapatnam.
2. The Station House Officer, Air Port Zone, Kancharlapalem, Visakhapatnam.

RESPONSENTS

Counsel for the Petitioner: Mr. P. Vasudeva Reddy
(in W.P.No.17822/2016)

Counsel for the Petitioner: Mr. Shaik Jeelani Basha
(in W.P.No.36496/2016)

Counsel for the respondent: Mr. K. Raji Reddy
(Senior Standing Counsel for Department)

Court made the following order:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Some times truth is stranger than fiction and the case on hand falls under that category. The petitioner in both these writ petitions has come up with a challenge to an order passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 in the first writ petition and against the penalty proceedings under Section 271 (1) (c) in the second writ petition.

2. Heard Mr. P. Vasudeva Reddy and Mr. Shaik Jeelani Basha learned counsel for the petitioner in the respective writ petitions and Mr. K. Raji Reddy, learned Senior Standing Counsel for the Department.

3. Sans unnecessary details, the case of the petitioner is that she was not the owner of the property bearing Plot No.1 in Old S.No.2/1B situated at Madhavadhara Village within the limits of the Greater Visakhapatnam Municipal Corporation, measuring an extent of about 551 Sq. yards, which became the subject matter of sale under a registered sale deed dated 26.12.2007. But since the sale deed was executed in the name of the petitioner herein, the assessing officer initiated proceedings on the ground that she had sold an immovable property whose market value was Rs.59,51,000/-, for a stated sale consideration of Rs.30,00,000/- and that therefore the petitioner was liable to pay Capital Gains tax.

4. The case of the petitioner is one of total denial. In simple words, the petitioner's case is that she was not the owner of the property

covered under the sale deed dated 26.12.2007; that she never signed such a sale deed and that therefore upon coming to know of the same she has already lodged a police complaint.

5. But the case of the respondent-department is that the name of the petitioner, her father's name and other particulars tally with those mentioned in the sale deed and that the petitioner had inherited the property from her father under a gift settlement deed dated 30.09.1982.

6. It is true that the personal particulars of the petitioner found in the disputed document tallies with the real particulars. But at least insofar as the second contention of the Department is concerned the description of the properties do not tally. For the purpose of easy appreciation, we present in a tabular column, the description of the property found in gift settlement deed dated 30.09.1982 executed by the petitioner's father in her favour and the description of property found in the disputed sale deed dated 26.12.2007 as follows:

Description of property in the admitted document, viz., Gift Settlement Deed, dt.30.09.1982	Description of property found in the disputed document, viz., sale deed dated 26.12.2007.
Visakhapatnam Sub Registry, Visakhapatnam Municipal Area, Madhavadhara village covered by Survey No.33/1 admeasuring 240 sq. yds. Or 200-668 sq. mts. Of site together with thatched house thereon bearing Door No.39-6-6 Municipal Assessment No.35437 and bounded by: East: 15 feet wide road South: House belongs to Sanapala Mutyam West: House belongs to Duppala Aruna North: 30 feet wide road.	All the site measuring 551 sq. yds or 460.63 sq. mts., bearing Plot No.1 Covered by Old S.No.2/1B situated at Madhavadhara with in the limits of Greater Visakhapatnam Municipal Corporation of in the Registration Sub-District of Dwarakanagar, in the Registration District of Visakhapantam and bounded by East: 30 feet wide road. South: Plot No.2 of B. Veeraswamy Naidu. West: Plot No.18 of B. Bhagyalakshmi North: Site in S.No.275

Measurements:	Measurements:
East wing: 60 feet or 18.29 mts. South wing: 36 feet or 10.97 mts. West wing: 60 feet or 18.29 mts. North wing: 36 feet or 10.97 mts. The above bounden measured property is the Gift Settlement property and handed over the today itself by free of consideration. This is not an assigned land. The Market value of the property is Rs.13,000/- the House Tax Receipt relating to this property is herewith-filed.	East wing: 41.25 feet or 12.57 mts. South wing: 94 feet or 28.65 mts., West Wing:57.63 feet or 17.56 mts. North wing: 106.05 feet or 32.46 mts. This is not assigned property.

7. A person, who got land of an extent of 240 sq. yds., under a gift settlement deed dated 30.09.1982, could not have sold the land of an extent of 551 sq. yds., under the disputed sale deed of the year 2007. Therefore, on the basis of the gift settlement deed it is not possible to link the petitioner with the sale deed in question.

8. Admittedly, the petitioner has lodged a police complaint that her name has been misused in a document in respect of a property of which she is not the owner. Therefore, the matter requires further detail prob.

9. Assuming that the petitioner has played fraud upon the Income Tax Department after having sold the property, the best way of exposing such a fraud would be to bring the property disowned by her to sale. It is true that the property has now passed on to several hands. But once notices are issued to all the purchasers including the one under the disputed document, the truth will come out. Till then, it is not possible to tax the petitioner. Therefore the writ petitions are allowed and the impugned orders are set aside. It is open to the department to initiate proceedings against the property after serving notices on all the persons through whom title to the property has passed on.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

6th April, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION Nos.17822 & 36496 of 2016

Date: 06-04-2017

Js.