

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.No.742 of 2017

Date: 29.11.2017

Between:

Principal Commissioner of Income Tax-1,
Visakhapatnam ... Appellant

And

A.V.V.Varaprasad,
PAN: ABDPA3411B
D.No.10-50-19/1, Soudamini,
Siripuram,
Visakhapatnam ... Respondent

Counsel for the Appellant : Mr. K.Raji Reddy,
Senior Standing Counsel
for Income Tax Department

Counsel for the Respondents : -----

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The respondent assessee filed his return as an individual, for the assessment year 2010-11 on 30.07.2010, admitting total income of Rs.49,69,760/-, showing the same as income from salary. He has shown income from other sources as Nil and claimed exemption from capital gains under Sections 54EC and 54F of the Income Tax Act, 1961,(for short 'the Act'). The case was selected for scrutiny under CASS. A notice under Section 143 (2), was accordingly issued. Upon considering the details furnished by the authorised representative of the assessee, the Assessing Officer (AO) has completed the assessment under Section 143 (3) on 16.01.2013, determining the total income as shown in the returns by the assessee.

2. The Commissioner of Income Tax-1, Visakhapatnam, (C.I.T.), has issued show cause notice under Section 263 of the Act, on 19.06.2014, calling upon the explanation from the assessee, as to why the assessment order dated 16.01.2013, shall not be reviewed. It was stated thereunder, that the Commissioner of Income Tax, proposed to review the assessment order by denying exemption granted by the AO under Sections 54EC and 54F towards investments in capital gains by way of purchasing bonds and residential property, as those investments were made beyond the time limit specified under the aforementioned provisions.

3. The assessee has submitted his response to the show cause notice, wherein he has claimed that the transaction of sale of shares has got completed only on 24.11.2009 and that, therefore, the investment on purchase of bonds and house, was made within the period of six months and two years, of the sale of the shares, as prescribed under Sections 54EC and 54F respectively of the Act. The Commissioner has however, disagreed with the stand of the assessee and, accordingly, set aside the order of the AO, with a direction to him to disallow the claim of exemption under Sections 54EC and 54F, after giving opportunity of being heard to the assessee. This order was appealed by the assessee by filing I.T.A.No.178/Vizag/2015. On similar facts, another assessee by name Y.V.Ramana, also filed an appeal in I.T.A.No.177/Vizag/2015. Both were heard together and disposed of by a common order, which is assailed in this appeal by assessee in I.T.A.No.178/Vizag/2015.

4. The issue on which the C.I.T. has exercised its revisional power under Section 263 was, as to whether the A.O. was correct in granting exemption from capital gains, by taking the sale transaction of the assessee as 24.11.2009 instead of as 12.08.2009, the date on which investment agreement was entered between the purchaser company and Vijay Nirman Company Private Limited and its shareholders, who include the respondent assessee. The AO has taken into consideration the date on which form No.7B is duly

stamped and signed by both the parties and presented to the Company, which has in turn endorsed the same as the date of sale of shares. The Commissioner, however, took a different view and held that as the investment agreement was entered on 12.08.2009, the shares are deemed to have been sold on that day and that, if the periods stipulated under Sections 54EC and 54F of the Act, are computed from the said date, the investments of the sale proceeds by the assessee fall beyond the periods of 6 months and 2 years respectively and that, therefore, he is not entitled to claim exemption from the capital gains.

5. The Tribunal on reconsideration of the facts in their entirety, concurred with the view of the AO that as form No.7B was signed by both parties on 24.11.2009, the effective transfer as defined under Section 2 (47) of the Act has taken place on the said date. In that process, the Tribunal also took into consideration a letter addressed by the transferee company, stating that share transfer form was lodged with it on 24.07.2009 and that the actual transfer has taken place on 24.11.2009. The Tribunal further held that in order to invoke the provisions of Section 263 of the Act, twin conditions have to be satisfied namely; (1) that the order of AO must be erroneous and (2) that such order must be prejudicial to the interests of the revenue. Applying these two conditions, the Tribunal held that the facts of the case do not attract Section 263 of the Act.

6. The scope and jurisdiction under Section 263 of the Act, has been well articulated by a catena of decisions. It has been held that not only those aforementioned two conditions have to be satisfied, but also that while exercising the powers under Section 263, the Commissioner must not sit as an appellate authority and that where two views are possible and if the AO has taken one plausible view, the Commissioner cannot interfere with such view, merely because he has taken a different view. (See **Malabar Industrial Co. Ltd. v. Commissioner of Income Tax**¹, **Commissioner of Income Tax v. Max India Ltd.**² and **Commissioner of Income Tax v. Vikas Polymers**³)

7. Section 2(47) of the Act reads as under:

“ ‘transfer’ in relation to a capital asset includes –

(i). the sale, exchange or relinquishment of the asset; or

(ii). the extinguishment of any rights therein; or

(iii). The compulsory acquisition thereof under any law; or

(iv). In a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or

(iva). The maturity or redemption of a zero-coupon bond.

(v). any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882); or

¹ (2000) 243 ITR 83 (SC)

² (2000) 295 ITR 282 (SC)

³ (2012) 341 ITR 537 (Delhi)

(vi). Any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of, any immovable property”.

8. In the light of Section 2(47), it cannot be said that the view taken by the AO, was not a plausible one. In the absence of any specific provision which determines the actual date of transfer, the view taken by the AO that the date on which form No.7B was signed by both parties and presented to the purchaser company, is the date of effective transfer, can be a plausible view. On these facts of the case, the Commissioner ought not to have exercised his revisional jurisdiction under Section 263 of the Act.

9. In this view of the matter, we find that all the substantial questions of law claimed by the revenue, are against it and in favour of the respondent-assessee. Appeal is accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 29th November, 2017

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