

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A.Nos.216 & 217/VIZ/2020
(Asst. Years : 2013-14 & 2015-16)**

Smt. Swarajya Lakshmi
Musunuru, Flat No. 602,
Balaji Dolphin Heights,
N.E. Seethammadhara,
Visakhapatnam.

vs.

The ACIT, Circle-3(1),
Visakhapatnam.

PAN No. ALRPM 9927 E
(Appellant)

(Respondent)

Assessee by : Shri I. Kama Sastry, FCA.

Department By : Shri B.Rama Krishna, Sr.DR

Date of hearing : 27/11/2020.

Date of pronouncement : 06/01/2021.

ORDER

PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-1, Visakhapatnam, dated 18/09/2020 & 21/09/2020 for the Assessment Years 2013-14 & 2015-16.

ITA No. 216/VIZ/2020 A.Y.2013-14

2. All the grounds of appeal are related to the assessment of capital gains and the deduction of indexed cost of construction of

the building and the rejection of assessee's claim with regard to demolition charges.

3. Brief facts of the case are that the assessee during the previous year relevant to the A.Y. 2013-14 filed her return of income admitting total income of Rs. 5,99,350/-. Subsequently, the AO has issued the notice u/sec. 147 and in response to which the assessee filed her return of income on 16/04/2018 admitting the same income which was admitted originally i.e. Rs. 5,99,350/- The case was taken up for scrutiny and the information was called for from the assessee. During the course of assessment proceedings, the AO had observed that assessee offered long term capital gain on sale of land of 212 sq.yds. at Rs. 3,53,271/- as under: -

Schedule-1 (Asset – Building)		Schedule-2 (Site 212 sq. yds)	
Date of transfer	04/04/2012	Date of transfer	04/04/2012
Sale of scrap	Rs. 3,00,000	Sale of consideration	Rs.76,32,000/-
Less: Demolition charges	Rs. 3,00,000		
Net consideration received	Rs. NIL		
Less: Indexed Cost of construction (1994-95) Rs. 22,00,000 * 852/259	Rs. 72,37,066	Less: Indexed cost of acquisition (1981-82) Rs. 4890 * 852/100	Rs. 41,663
Taxable capital gain	(-)Rs.72,37,066	Taxable capital gain	Rs. 75,90,337
Total capital gain offered to tax : Rs. 3,53,271/- [Rs. 75,90,337 – 72,37,066]			

3.1 The AO disbelieved the demolition charges stated to have been incurred by the assessee and disallowed the expenditure incurred on demolition. However, the AO taxed the sale of scrap

generated out of demolition of the said building. Similarly, the assessee declared sale consideration of the land at Rs. 76,32,000/- and claimed the indexed cost of land at Rs. 41,663/- as above. From the sale consideration of land the assessee claimed cost of construction of building (1994-95) at Rs.22.00 lakhs and the indexed cost of construction of Rs. 72,37,066/-. However, the assessee could not furnish any evidence for construction. Hence, the AO in the absence of any evidence disallowed the entire indexed cost of construction of the building and taxed the capital gain of Rs.78,90,337/-.

4. Against the order of the AO, the assessee went on appeal before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee and confirmed the addition made by the AO. Against which the assessee is in appeal before this Tribunal.

5. During appeal hearing, Id.AR submitted that assessee Mrs.Swarajya Lakshmi has purchased a site admeasuring 1300.5 sq.yds. being plot No.HIG-25, Seethammadhara North Extension Layout, Visakhapatnam under a registered sale deed dated 26/09/1980 bearing document No. 6235/1980. Out of the said land of 1300.5 sq.yds. the assessee has given the gift of 287 sq.yds. vide gift deed dated 28/04/2011 to her daughter and thus, owning 1013.5 sq.yds of land. The assessee also constructed a

house in the said site during the year 1994-95 and in the year under consideration the assessee has demolished the said building and sold 212 sq.yds. of the vacant land and claimed the cost of construction of Rs. 22.00 lakhs which was incurred in 1994-95 and the indexed cost of acquisition at Rs. 72,37,066/- from the sale consideration of Rs. 76,32,000/- and accordingly admitted the capital gains. The AO though taxed receipt of sale of scrap relating to the demolished building, disallowed the expenditure incurred for demolition of the building and also the indexed cost of acquisition of the said building. The assessee in support of existence of the building submitted the house tax paid receipts in page No.31 of the paper book and submitted that she had constructed the building in 1994-95 and was enjoying the property and paying the property taxes therefore requested to allow the indexed cost of construction. The Id.AR further submitted that the building was constructed in 1994-95 and it is not possible to keep the records for such a long time. He further argued that under no provision of the act the assessee is obliged to keep construction accounts for such a long time. The Id.AR further submitted that the AO having taxed the sale of scrap of the building ought not to have disallowed the demolition charges and the indexed cost of construction of the same building. Accordingly, Id.AR requested to

allow the expenses claimed for demolition of the building as well as the indexed cost of acquisition from the computation of capital gains.

6. On the other hand, Id.DR vehemently supported the orders of the lower authorities.

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has demolished building which was existing prior to the sale of the land. The assessee entered into an agreement of sale coupled with GPA dated 04/04/2012 with M/s. Balaji Construction Company Ltd. along with 4 others. The assessee has received the sum of Rs.76,32,000/- towards the sale proceeds of her share of 212 sq.yds of site and therefrom claimed the indexed cost of acquisition of land and building which was constructed in the F.Y. 1994-95. Similarly, she also has admitted the sale proceeds of scrap of Rs.3.00 lakhs and also claimed demolition charges of Rs.3.00 lakhs which the AO has disallowed. It is accepted fact that when the assessee has admitted the sale of scrap naturally assessee has to demolish the building and has to incur certain expenditure. We find from the order of the AO that he has not given any reason for disallowing the demolition charges. The scrap would generate only when the existing building was demolished.

Having taxed the sale of scrap of demolished building, the AO also ought to have allowed the expenditure incurred on demolition, hence, we set aside the order of the Id. CIT(A) and allow the appeal of the assessee on this issue.

8. The next issue is with regard to cost of construction and indexed cost of acquisition for construction of the building. The assessee has constructed the building in the F.Y. 1994-95 and filed details of municipal taxes paid from 2003-04 to 2011-12 in page No. 31 of the paper book, thus, there is no dispute that the assessee had constructed the building and paid the municipal taxes thereon. The payments of municipal taxes support the existence of the building in the said site of 212 sq.yds. claimed by the assessee. The assessee also admitted the sale of scrap from demolition of the building for Rs. 3.00 lakhs which was also taxed by the AO. Thus, both the AO as well as assessee have agreed that there was a house which was in existence prior to sale of the site. The AO disallowed the indexed cost of construction merely because the assessee could not furnish the evidences. Since the construction of the building was completed in 1994-95 and sold in 2013-14, naturally assessee would not be in a position to furnish the evidences, because of longevity of time and therefore the issue needs to be considered on the basis of

evidence available. In the instant case, for existence of building the assessee has furnished the municipal tax receipts and also admitted the sale of scrap of building which was taxed by the AO in the assessment. Thus, we do not find any justification for rejecting the claim of the assessee with regard to indexed cost of construction, hence, we set aside the orders of the lower authorities and allow the indexed cost of acquisition of the building. Accordingly, appeal of the assessee is allowed on this issue.

ITA No.217/VIZ/2020 A.Y. 2015-16

9. All the grounds in this appeal for the A.Y. 215-16 are related to taxing the sale of land and flats. The assessee claimed the entire sale consideration under the long term capital gain and thus the AO taxed the sale of land under long term capital gain and the flats under short term capital gain. The issue in dispute is apportionment of sale consideration towards the long term capital gain and short term capital gain. The assessee is an individual receiving interest income and capital gains. In the A.Y. 2015-16, the assessee filed her return of income admitting total income of Rs.2,66,33,460/-. Subsequently, the return was processed u/sec. 143(1) and the case was selected for scrutiny and the assessment was completed u/sec. 143(3) by an order dated 14/12/2018.

During the year under consideration, the assessee along with other persons entered into construction agreement on 12/02/2013 with M/s. Balaji Construction Company Ltd. to construct apartment in the larger extent of 2137 sq.yds.in plot Nos. HIG-24 &25 situated in Survey No.6 of Resapuvanipalem village, Seethammadhara North Extension Layout, Visakhapatnam. Out of the total site of 2137 sq.yds., **the assessee's share** of land was 801.5sq.yds. which was in possession of her as per the registered document No.6235/1980, dated 26/09/1980. The builder has agreed to construct 9 flats with built up area of 2850 sq.ft. each and 18 car parking spaces and the total construction cost payable by the assessee to the builder was agreed to be at Rs.3,25,80,000/-. During the year under consideration the assessee sold 7 flats for a total consideration of Rs. 6,70,00,000/- and offered long term capital gain of Rs.2,54,15,115/- after claiming the indexed cost of acquisition, indexed cost of improvement and exemption u/sec. 54EC and 54 of the Act. During the course of assessment proceedings the AO viewed that the sale of land constitutes long term capital gain and the sale of flats constitutes short term capital gain. In respect of sale of land, the AO adopted SRO value of Rs. 35,000/- per sq.yard of 623 sq.yds of land for 7 flats and arrived at estimated sale

consideration of Rs. 2,18,05,000/-. Accordingly, the AO allowed the indexed cost of acquisition at Rs.1,46,729/- and thereafter allowed the deductions u/s 54EC and 54 of the Act and taxed the long term capital gain at Rs.93,82,743/-. In respect of short term capital gain the AO has taken the balance amount of Rs. 4,51,95,000/- as sale consideration. (i.e. reducing the SRO value of land cost @ Rs. 35,000/-per sq.ft.) and accordingly computed the short term capital gain. The computation of long term/short term capital gain by the AO is given in page No.4 as under: -

Revised Computation of Long Term Capital Gain

	Amount	Amount.
Sale consideration towards land of Rs. 623 sq.yds. of 7 flats @ 35,000/- per sq.yds.		2,18,05,00
Less: Indexed cost of acquisition of land (14329 x 1024)/100		1,46,729
Net LTCG		2,16,58,271
Less: Exemption u/sec. 54		
(i) u/s. 54EC bonds	50,00,000	
(ii) u/s. 54 construction of residential house (Investment of Rs. 73,24,818)	72,75,528	1,22,75,528
Taxable Long Term Capital Gain		93,82,743

Computation of STCG (Towards sale of build-up area of 19950 sft.

	Amount.	Amount
Sale consideration towards sale of 7 flats consisting of 2850 sq.ft. each flat (Rs.6,70,00,000 – Rs.2,18,05,000 (land)		4,51,95,000
Less: Cost of construction for 7 flats (3,25,80,000/9) x 7		2,53,40,000
Taxable Short Term Capital Gain		1,98,55,000

10. Against the order of the AO, the assessee went on appeal before the Id. CIT(A) and challenged the order of the AO stating that the entire sale consideration to be taxed as long term capital

gain and also the land cost required to be taken at fair market value but not as per the SRO value. The Ld.AR argued that the AO erred in taxing the sale consideration at Rs. 4,51,95,000/- for 7 flats under short term capital gains and the same is unjustified.

11. Ld. CIT(A) after considering the objections of the assessee confirmed the order of the AO and held that AO rightly taxed the sale of land as long term capital gain and the sale of flats as short term capital gain. With regard to application of SRO value as sale consideration of land, the Id. CIT(A) did not find favour with the argument of the assessee and accordingly confirmed the order of the AO and dismissed the appeal of the assessee.

12. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before this Tribunal.

13. During appeal hearing, Id.AR argued that the assessee has constructed the flats during the year 2012-13 & 2013-14 for consideration of Rs.3,25,80,000/- for total 9 flats. The AO adopted the sale consideration of flats at Rs. 4,51,95,000/- which worked out to Rs. 2,265/- per sq. ft. and the land cost at Rs.35,000/- per sq.yrd. which is unjustified. The Id.AR of the assessee submitted that the area of Seethammadhara is well developed and located in posh area, thus during the financial year 2012-13 and 2014-15 the land cost was more than Rs.60,000/-

per sq.yrd, and hence, argued that adoption of SRO value as sale consideration of the land is unfair. Though, the assessee has objected for adopting SRO value the AO did not consider the objections of the assessee and proceeded to assess the land value at Rs. 35,000/- per sq.ft which is unjustified. The assessee also submitted the valuation report wherein the registered valuer has estimated the land value at Rs. 60,000/- per sq.ft. and building value at Rs. 1,284/- per sq.ft. hence requested to adopt the value of the land at Rs.60,000/- per sq.ft. and building value at Rs.1,284/- per sq.ft. as estimated by the Registered valuer and compute the short term capital gain and long term capital gain accordingly.

14. On the other hand, the Ld.DR supported the orders of the authorities below.

15. We have heard both the parties and perused the material placed on record. There is no dispute that sale of land constitutes long term capital gain and sale of flats constitute short term capital gain. Since the flats were in possession of the assessee for less than 36 months, as the assessee constructed the building in the A.Y. 2014-15, for which agreement was entered on 12/02/2013. There was not much time gap between the construction of the building and sale of flats. Hence the AO rightly

assessed the sale of flats under short term capital gains and the land under Long term capital gains.

15.1 The next issue is with regard to apportionment of sale consideration towards the land and flats. The cost of construction was Rs.3,25,80,000/- for 9 flats consisting of 2850 sq.ft. each flat. Thus, total construction area of 25650 sq.ft and works out to Rs.1,270/- per sq.ft. The assessee has sold 7 flats for a consideration of Rs.6,70,00,000/-. The AO has adopted the sale consideration of land as per the SRO value at the rate of Rs.35000/-per sqyd. The SRO value is the guideline value but not actual sale consideration. Thus, there will be lot of difference between the guideline value and the sale consideration, therefore, what is to be taken for the purpose of long term capital gain is sale consideration but not the guideline value. Since the cost of construction of the building works out to Rs.1270/- per sq.ft., estimation of sale price @ Rs.2,265/- appears to be highly excessive. In this case assessee has objected for adoption of SRO value as sale consideration. Once the assessee has objected the adoption of SRO value as sale consideration of the land, the AO need to refer the issue to the Departmental valuer for expert opinion. In the instant case, no such exercise was made by the AO. The registered valuer of the Income tax has valued the land

at Rs.60,000/- per sq.yard. and the department did not bring any evidence to controvert the valuation made by the registered valuer. The department also did not find any defect in the report of Registered Valuer. Registered Valuer is qualified engineer and approved by the Income Tax Department for valuing the properties and giving expert opinion. Since the department did not bring any material to show that the Registered Valuer's report is defective, we do not find any reason to not to accept the valuation made by the Registered Valuer. Therefore, we direct the AO to consider the land cost as determined by the registered valuer for sale of land and recompute the long term capital gain. The balance would be taken as short term capital gain for sale of flats. Accordingly, the appeal of the assessee is partly allowed.

16. In the result, appeal filed by the assessee in ITA No. 216/VIZ/2020 is allowed and ITA No.217/VIZ/2020 is partly allowed.

Order Pronounced in open Court on this 06th day of Jan., 2021.

Sd/-
(V. DURGA RAO)
Judicial Member

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

Dated: 06th January, 2020.

vr/-

Copy to:

1. *The Assessee – Smt. Swarajya Lakshmi Musunuru, Flat No. 602, Balaji Dolphin Heights, N.E. Seethammadhara, Visakhapatnam.*
2. *The Revenue –The ACIT, Circle-3(1), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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