

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

I.T.A. No. 2225/HYD/2018

Assessment Year: 2012-13

Sama Om Reddy, HYDERABAD [PAN: AITPS2701B]	Vs	The Income Tax Officer, Ward-8(2), HYDERABAD
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(Appellant)	(Respondent)
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For Assessee	:	Shri K.C.Devdas, AR
For Revenue	:	Shri Nilanjan Dey, DR

Date of Hearing	:	09-03-2020
Date of Pronouncement	:	29-04-2020

ORDER

This is assessee's appeal for the AY.2012-13, directed against the order of the Commissioner of Income Tax (Appeals)-2, Hyderabad, dated 29-10-2018.

2. Brief facts of the case are that the assessee, an individual, did not file any return of income for the relevant assessment year. The Assessing Officer (AO) received information that the assessee has sold a property vide Sale Deed Document No.1610/2012 registered at SRO, Rajendranagar during the Financial Year 2011-12 for an amount of Rs.9,90,000/-. The assessee had not offered to tax any capital gains from the said transaction. Therefore, the AO initiated proceedings u/s.147 of the Income Tax Act [Act], after issuance of notice u/s.148 of the Act, dt.28-04-2015.

In response to the said notice, the assessee appeared through his representative and submitted the information

called-for. The assessee, vide letters dt.29-02-2016 & 16-05-2016, submitted that the assessee had entered into an Agreement of Sale cum GPA, vide Regd. Document No.16792/2006, dt.29-11-2006 in respect of property at H.No.2-3-190, situated at Upparpally, Rajendranagar Mandal, R.R.District and the sale consideration as mentioned therein at Rs.5,94,000/- was received in entirety and the possession of the same was also handedover to the transferee of the property, Shri A.Manikyam. It was mentioned that by virtue of the above document, the Vendee became the absolute owner of the property and thereafter, Shri A.Manikyam transferred the said property by way of a registered Sale Deed, vide Document No.1610/2012, dt.14-03-2012 to Shri P.Ilaiah, Upperpally and therefore the Vendor was the AGPA-holder and not the assessee herein. Therefore, according to him, there was no transfer of property by the assessee vide Document dt.14-03-2012 and there was no capital gain which had accrued to the assessee in the light of the said sale transaction.

2.1. The AO, however, did not accept the contentions of assessee and observed that vide the Agreement of Sale cum GPA, the assessee has only appointed his attorney on his behalf to deal with property with the prospective buyers and therefore there is no transfer of property vide AGPA. He held that the transaction vide Sale Deed No.1610/2012, dt.14-03-2012 is the transaction resulting in transfer of property by the assessee through his attorney, Shri A.Manikyam. Therefore, he held that the assessee is liable to pay tax on the Long Term Capital Gain. Without giving any credit for cost of acquisition,

the AO treated the entire sum of Rs.9,90,000/- as capital gain and brought the same to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of AO and the assessee is in second appeal before the Tribunal, raising the following Grounds:

“1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have noted that the assessee transferred the said property vide registered document i.e. Sale cum GPA dated 29.11.2006 after accepting consideration and therefore ceased to be the owner of the property.

3. The Hon'ble CIT(A) ought to have noted that the assessee was not a party (signatory) for the document dated 14.03.2012 and therefore there was no capital gain in the hands of the assessee liable for tax as alleged by the assessing officer and confirmed by the Hon'ble CIT(A).

4. The Hon'ble CIT (A) ought to have noted that the assessee received the consideration with regard to Sale cum GPA dated 29.11.2006 at the time of execution of the document and therefore he was not entitled for any further consideration with regard to the document dated 14.03.2012.

5. The Hon'ble CIT(A) ought to have noted that the conclusion arrived at by the assessing officer in the assessment order was against provisions of the Act as well as various judicial decisions with regard to taxation of gain resulted in the light of Sale cum GPA and therefore the addition is liable to be deleted.

6. The observation of the Hon'ble CIT(A) that the assessee did not declare the capital gain for the asst. year 2007-08 cannot be the basis for taxing capital gain in the asst. year 2012-13 in the light of facts and circumstances of the case.

7. Without prejudice to the above, the Hon'ble CIT(A) ought to have observed that the assessing officer erred in assessing entire consideration as gain without allowing deduction as per provisions of the Act.

8. Any other ground will be raised at the time of hearing”.

4. Both the parties were heard. Ld.Counsel for the assessee had reiterated the submissions made by the assessee before the AO and has submitted that by virtue of the Agreement of Sale cum GPA and handing over of the possession, the assessee had transferred the property in favour of the Vendee/GPA-holder, Shri A.Manikyam. It is submitted that the assessee had received the entire sale consideration of Rs.5,94,000/- and had also handedover the vacant possession of the property to the Vendee. Therefore, according to him, the transfer was complete in 2006 itself. It is submitted that it was in the year 2012 that the AGPA-holder had sold the property to another person and the assessee's name has only been included as the Vendor, but the document neither contained the signature of the assessee nor the assessee has received any sale consideration. Therefore, according to him, the Long Term Capital Gain cannot be brought to tax in the hands of assessee in the relevant assessment year.

4.1. Without prejudice to the above argument on merits and in the alternative, the Ld.Counsel for the assessee also submitted that if it were to be held that there is a transfer of property by the assessee in favour of a third person in the relevant financial year, then the assessee should have been allowed the cost of acquisition, which the AO failed to give while computing the Long Term Capital Gain.

5. The Ld.DR, on the other hand, supported the orders of the authorities below and relied upon the recitals in the AGPA to argue that the assessee is still the owner of the property and he had only executed the Agreement of Sale cum GPA in favour of Shri A.Manikyam and therefore on the execution of the Sale Deed in 2012, there is a transfer of property and assessee is liable to pay Long Term Capital Gain thereon.

6. Having regard to the rival contentions and material on record, I find that by virtue of the AGPA dt.29-11-2006, the assessee has parted with his right in the property because he had received the entire sale consideration of Rs.5,94,000/- as agreed to between both the parties and has also handedover the vacant possession of the property to the Vendee therein. It is also stated therein that the GPA is given to the Vendee for the convenience of the purchaser for doing the necessary acts and things on behalf of the Vendor and the Vendee therein. Since the Vendee has paid the entire sale consideration and has taken possession of the property, the Vendee becomes the owner of the property u/s.53A of the TP Act and u/s.2(47) of the IT Act, it is a transfer of the property. The Vendee has executed the Sale Deed by virtue of the said AGPA, as he has sold the property to another party for Rs.9,90,000/-. The sale of the property by the Vendee cum AGPA-holder cannot be considered as sale of property by the assessee. Further, it is worth noting that except being described as the Vendor, the assessee is neither a signatory to the subsequent Sale Deed nor is he the recipient of any of the sale consideration. In view of the same, it is held that the assessee is not liable for tax on

any capital gain arising out of transfer of property vide Document No.1610/2012, dt.14-03-2012. Accordingly, the appeal of assessee is allowed.

Order pronounced in the open court on 29th April, 2020

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 29-04-2020

TNMM

Copy to :

- 1. Shri Sama Om Reddy, No.2-4-125, Upparpally, Rajendra Nagar, Hyderabad.*
- 2. The Income Tax Officer, Ward-8(2), Hyderabad.*
- 3. CIT(Appeals)-2, Hyderabad.*
- 4. Pr.CIT-2, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*