

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1417/Hyd/16	2006-07	Smt. Shobha Sharma, HYDERABAD [PAN: AZMPS3447A]	Deputy Director of Income Tax, International Taxes-II, HYDERABAD
1418/Hyd/16			

For Assessee : Shri M.V.Anil Kumar, AR
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 02-03-2020

Date of Pronouncement : 11-03-2020

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

Both are assessee's appeals for the AY.2006-07, directed against the order of the Commissioner of Income Tax (Appeals)-V, Hyderabad, dated 11-06-2014. ITA No.1417/Hyd/2016 is against the assessment completed u/s.144 of the Income Tax Act [Act] while the ITA No. No.1418/Hyd/2016 is against the assessment completed u/s.143(3) r.w.s.147 of the Act.

2. Brief facts of the case are that, assessee is a non-resident Indian. She filed her return of income for the AY.2006-07 on 12-10-2006, declaring Long Term Capital Gain of Rs.27,02,077/-. The return was initially processed u/s.143(1) of the Act and subsequently the same was taken up for

scrutiny. Since none appeared before the Assessing Officer (AO), the assessment was completed u/s.144 of the Act.

3. During the course of assessment proceedings, the AO observed that the assessee is the owner of two properties from which it has offered Long Term Capital Gain and she is the 100% owner of the (i) Plot No.12-13-367/A, admeasuring 1140.21 Sq. Yds., and (ii) 50% owner of Plot No.12-13-367/1, admeasuring 570.10 Sq. Yds., situated in Survey Nos.165 & 166 of Tarnaka, Secunderabad. The AO applied the provisions of Section 50C of the Act to the above transaction and thus arrived at Long Term Capital Gain for both the properties, put together at Rs.1,03,22,419/-.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), but since the assessee did not appear before the CIT(A) as well, he confirmed the order of AO. Aggrieved, the assessee is in second appeal before us, raising the following Grounds in ITA No.1417/Hyd/2016:

“1. Your Appellant submits that the CIT(A) ought to have annulled the assessment in absence of proper service of notice by the Assessing Officer.

2. Your Appellant submits that the CIT(A) before proceeding to decide the appeal on merits, ought to have seen whether the notice was properly served or not on principals of natural justice, in absence of any finding on proper service of notice the assessment is bad in law.

3. Your Appellant submit that the CIT(A) as well as the Assessing Officer ought to have appreciated the fact that fair market value as on 1-4-1981 as per the certificate of Sub Registrar which is not correct.

4. The CIT(A) as well as the Assessing Officer ought to have adopted the value of land as on 1-4-1981 at Rs. 1000 Per Sq yrd and not the value as per the SRO Register at Rs. 75/- per Sq Yrd. Your appellant

submits that value as per SRO Register is not the fair market value as on 1-4-1981.

5. The CIT(A) ought to have fairly estimated the value of land per Sq yrd based on various judicial pronouncement of ITAT as well High Courts including the jurisdictional ITAT and High Court instead of upholding the order of the Assessing Officer, which is bad in law.

6. Your Appellant submits that, it was brought to the notice of the CIT(A) that as per sale deeds the actual undivided share of land falling to the share of your appellant transferred is 1476.89 Sq. Yrds as against 1010.31 Sq. Yrds as claimed in the return and the actual built up area transferred is 300 Sq. ft. as against 200 Sq. ft. as claimed in the return, which should have been considered by the CIT(A) in his order and directed the Assessing Officer to compute the capital gains accordingly.

7. The CIT(A) as well as the Assessing Officer are well aware of the fact that your Appellant is a non-resident and had incurred the travelling expenses for the purpose of disposing the property ought to have allowed the amount of Rs. 65,000/- being expenditure incurred wholly and exclusively in connection with such transfer.

8. The CIT (A) as well as the Assessing Officer ought to have allowed the amount of Rs.2,50,000/- being brokerage/commission paid, being expenditure incurred wholly and exclusively in connection with such transfer”.

5. Since both the assessment order as well as the order of CIT(A) are *ex-parte* the assessee, we deem it fit and proper to remand issue to the file of AO with a direction to reconsider the issue in accordance with law, after giving a fair opportunity of hearing to the assessee.

6. In the result, ITA No.1417/Hyd/2016 is treated as allowed for statistical purposes.

ITA No.1418/Hyd/2016:

7. Facts pertaining to the present appeal are that - after completion of assessment u/s.144 of the Act, the AO issued a

notice u/s.148 of the Act on 09-11-2010, in response to which, the assessee filed a letter, stating that *the original return of income filed may be treated as return filed in response to the notice u/s.148 of the Act.* The AO observed that the assessee has sold a property, M/s.Vivimed Labs Limited for which the assessee has received payments in four instalments. The AO also observed that during the course of re-assessment proceedings, the assessee could explain the details of first three payments, amounting to Rs.2,10,00,000/- but could not explain the fourth payment of Rs.10 Lakhs. Since the assessee failed to submit the details, the AO treated the sum of Rs.10 Lakhs as 'un-explained' and added the same to the sale consideration for the purpose of computing the capital gains.

7.1. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the addition as the assessee could not file any substantial evidence and the assessee's representative had withdrawn his Vakalat. Hence, the assessee is in second appeal before us, raising the following Grounds in ITA No.1418/Hyd/2016:

“1.Your Appellant submits that the issue notice under section 148 is bad in law.

2. Your Appellant submit that the CIT(A) as well as the Assessing Officer ought to have appreciated the fact that on issue of notice under section 148 the assessment under section 144 has been effaced, consequently the Assessing Officer cannot assess the income as per order under section 144 without there being a speaking order on the additions envisaged, failing which the assessment under section 143(3) r.w.s.147 is bad in law and the return of income has to be accepted in toto.

3. Your Appellant submits that the notice under section 148 may have been issued on audit objection or difference of opinion, there is no

income escaped assessment, all the details were available on record at the time of original assessment itself.

4. Without prejudice to the above, Your Appellant takes the following grounds on merits with regard to the deemed disallowances/adjustments the Assessing Officer envisaged so as to commence the assessment with "income as per the order under section 143(3) r.w.s.144":

a. Your Appellant submit that the CIT(A) as well as the Assessing Officer ought to have appreciated the fact that fair market value as on 1-4-1981 as per the certificate of Sub-Registrar which is not correct.

b. The CIT(A) as well as the Assessing Officer ought to have adopted the value of land as on 1-4-1981 at Rs. 1000 Per Sq yrd and not the value as per the SRO Register at Rs. 75/- per Sq Yrd. Your appellant submits that value as per SRO Register is not the fair market value as on 1-4-1981.

c. The CIT(A) ought to have fairly estimated the value of land per Sq yrd based on various judicial pronouncement of ITAT as well High Courts including the jurisdictional ITAT and High Court instead of upholding the order of the Assessing Officer, which is bad in law.

d. Your Appellant submits that, it was brought to the notice of the CIT(A) that as per sale deeds the actual undivided share of land falling to the share of your appellant transferred is 1476.89 Sq. Yrds as against 1010.31 Sq. Yrds as claimed in the return and the actual built up area transferred is 300 Sq. ft. as against 200 Sq. ft. as claimed in the return, which should have been considered by the CIT(A) in his order and directed the Assessing Officer to compute the capital gains accordingly .

e. The CIT(A) as well as the Assessing Officer are well aware of the fact that Your Appellant is a non-resident and had incurred the travelling expenses for the purpose of disposing the property ought to have allowed the amount of Rs. 65,000/- being expenditure incurred wholly and exclusively in connection with such transfer.

f. The CIT(A) as well as the Assessing Officer ought to have allowed the amount of Rs. 2,50,000/- being brokerage/commission paid, being expenditure incurred wholly and exclusively in connection with such transfer.

5. *The Assessing Officer erred in law and facts of the case by adding a further amount of Rs. 10,00,000/- to the capital gains assessed as per section 144, ignoring the fact that full value of the consideration received has been considered at Rs. 1,09,07,265 as per SRO value as against the actual sale consideration of Rs.95,00,00/- or Rs. 1,05,00,000/- (inclusive of Rs. 10,00,000), the addition is bad in law.*

6. *Your Appellant submits that while computing the capital gains the SRO value of Rs.1,09,07,625 has been considered, the addition of Rs. 10,00,000/- would amount to double tax of this amount, which is already included in the full value of consideration received of Rs. 1,09,07,625/-, as per section 50C of the Income Tax Act, 1961, which is not disputed. The addition of Rs.10,00,000/- may be deleted.”*

8. We find that since the assessee did not file the details before the AO and CIT(A), the addition of Rs.10 Lakhs has been confirmed. In the interest of justice, we are inclined to set aside the assessment u/s.143(3) r.w.s.147 of the Act and direct the AO to re-do the assessment, after giving a fair opportunity of hearing to the assessee. In the result, ITA No.1418/Hyd/2016 is also treated as allowed for statistical purposes.

9. To sum-up, both the appeals of assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 11th March, 2020

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 11-03-2020

Copy to :

1. Smt.Shobha Sharma, C/o.M.Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P.Road, Secunderabad.

2. Deputy Director of Income Tax, International Taxes-II, Hyderabad.

3. CIT(Appeals)-V, Hyderabad.

4. The Addl.DIT(IT)-Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.