

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 266/HYD/2016

Assessment Year: 2010-2011

Shri Bellamkonda Surendra Chowdary, Hyderabad. [PAN: AEDPB 1557 L] (Appellant)	Vs	ACIT, Circle-13(1), Hyderabad. (Respondent)
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I.T.A. No. 267/HYD/2016

Assessment Year: 2010-2011

Smt. Bellamkonda Padmavathi, Hyderabad. [PAN: AHYPB 9219 M] (Appellant)	Vs	ACIT, Circle-13(1), Hyderabad. (Respondent)
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For Assessee : Shri A. Srinivas
For Revenue : Smt. Suman Malik, DR

Date of Hearing : 24.01.2018
Date of Pronouncement : 24.01.2018

ORDER

PER B. RAMAKOTAIAH, AM

These are two appeals by the assesseees against the orders of Ld. CIT(A)-6, Hyderabad for the Assessment Year 2010-2011.

2. The assesseees herein were issued notices u/s 153C of the Act and the assessments have been completed u/s 143(3) read with section 153C of the Act wherein assessee (Mr. B. Surendra Chowdary) and his wife, declared certain capital gains which were recomputed by invoking the provisions of section 50C of the Act. Assessee contended before the

Ld. CIT(A) that issuance of notice u/s 153C itself is bad in law and further invoking the provisions of section 50C does not arise as already the assessments were completed u/s 143(3) before the search itself. Ld. CIT(A) upheld the contention that reopening of the assessment u/s 153C is bad in law. The findings of the Ld. CIT(A) in para 6.8 of her order is as under:-

“6.8. In view of the foregoing discussion, it is held that the primary requirement of invoking the provision of section 153C of the IT Act was absent in this case. The requirement of recording the satisfaction that the impugned documents belonged to a person other than the person searched was not met in form and in substance. Consequently, the proceeding initiated by the A.O. u/s 153C in this case was void ab initio and the assessment made by him in pursuance of the same was also invalid. The appropriate course of action in the given facts and circumstances of the case was for him to treat the copy of the impugned documents as a source of information and initiate proceeding u/s 147 of the I.T. Act on the basis of the same. The assessment under appeal is annulled.”

2.1. Revenue accepted the above decision and has not made any appeal.

3. However, Ld. CIT(A) went on deciding the merits of additions u/s 50C also. Finally vide para 7.2, Ld. CIT(A) held as under:-

“I. The provision of sub-sections to section 50C(1) is mandatory whereby there was no option to the Assessing Officer but to adopt the valuation done by the SRO in place of consideration shown by the assessee, as the valuation done by the SRO was more than the consideration shown by the assessee. The action of the Assessing Officer is upheld.

II. Since the amount of capital gains computed is liable to tax and the assessment u/s 153C is held to be invalid, the Assessing Officer may consider initiating proceeding u/s 147 of the I.T. Act.”

4. It is the assessee's contention that Ld. CIT(A) should not have given any findings on merits when proceedings u/s 153C are bad in law.

5. After considering the rival contentions, we are of the opinion that there is no need to consider the merits of the additions when the proceedings itself is held to be bad in law. The question of considering the merits of addition u/s 50C arises only when the proceedings are validly initiated. Therefore, we are of the opinion that the findings of

the Ld. CIT(A) from para 7 onwards are not warranted. Not only that, Ld. CIT(A) has also considered that Assessing Officer may consider initiating proceedings u/s 147 of the Act. If those questions are considered, then the rights of the assessee and options available to the Assessing Officer are certainly restrained or constrained by the order of the Ld. CIT(A). Therefore, we are of the opinion that the findings in para 7.0 onwards of the Ld. CIT(A) are to be vacated. Since the reopening of the assessments u/s 153C itself is bad in law, the order should have been annulled without considering the merits. Accordingly, the assessee's grounds of these appeals are allowed.

6. We are informed that proceedings u/s 147 of the Act are initiated and those are pending before the Authorities. Assessing Officer is free to consider the same as per the provisions of law without being guided by the order of the Ld. CIT(A). With these observations, the grounds raised by the assessee are considered.

7. In the result, both the appeals are allowed.

Order pronounced in the open court on 24th January, 2018.

Sd/-

(Smt. P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-

(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 24th January, 2018

OKK, Sr.PS

Copy to

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2.	<i>Asst. Commissioner of Income Tax, Circle-13(1), Hyderabad.</i>
3.	<i>CIT (A)-6, Hyderabad.</i>
4.	<i>Pr. CIT-6, Hyderabad.</i>
5.	<i>D.R. ITAT, Hyderabad.</i>
6.	<i>Guard File</i>