

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1027/Hyd/2017
Assessment Year: 2009-10**

Palaparthi Sundaram PAN – ACUPP 7381F (Appellant)	vs.	Income-tax Officer, Ward – 6(4), Hyderabad. (Respondent)
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Assessee by : Shri N. Venkataram
Revenue by : Smt. N. Swapna

Date of hearing : 05/03/2018
Date of pronouncement : 28/03/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order dated 3rd February, 2017 of CIT(A) – 9, Hyderabad for AY 2009-10.

2. Briefly the facts of the case are, assessee filed his return of income for the AY 2009-10 on 20/07/2009 declaring total income of Rs. 2,51,925/-. The case was taken up for scrutiny by issue of notice u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') on 24/08/2010 and the same was served on the assessee on 16/09/2010. A notice u/s 142(1) of the Act was issued on 12/07/2011 calling for information and posting the case for hearing on 22/07/2011. In response, the AR of the assessee filed the information as called for.

2.1 During the assessment proceedings, the AO observed that the assessee sold property situated in Anantapur for a consideration of

Rs. 25,94,000/- and declared long term capital loss of Rs. 1,67,590/-. He further observed that assessee adopted market value of land as on 01.04.1981 at Rs. 330/- per sq. yard and that of construction at Rs. 91 per sq. feet based on valuation report. According to the AO, as per the enquiries conducted from SRO, the market value of land was found out to be 120 per sq.yd. and construction cost at Rs. 21 per sq.ft. When asked as to why the SRO rates be not adopted for FMV as on 01.04.1981, assessee replied that Ramnagar area where the property sold is situated, which is part of Kakkallapalli village, which was already considered as developed area surrounded by Police Academy, Stadium etc., and hence the rate adopted by the valuer is correct. AO after considering the objections of the assessee stated that the valuation report is only based on estimate and opinion of the valuer whereas the SRO rates are representative of the existing market value as on 01/04/1981 based on sale transactions of the relevant period. He opined that the assessee's contention that the plot area is surrounded by various amenities is held to be the current day position and not that of 1981. AO observed that the valuer did not give any comparable instances but has simply given his opinion. AO observed that cost of construction as on 01/04/1981 even in Hyderabad in Banjara Hills area was Rs. 34 per sq.ft. and hence, construction cost of Rs. 91 in Anantapur is on very high side. In view of the above observations, AO dismissed the contentions of the assessee and adopted FMV as on 01/04/1981 at Rs. 120 per sq.yd. and Rs. 21 per sq.ft. respectively and arrived at capital gains accordingly.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and reiterated the submissions as made before the AO. The CIT(A) after considering the submissions of the assessee, upheld the action of the AO by observing as under:

"4I have considered the arguments of the assessee and the valuers report. The surprising fact or the case is that the assessee sold the property at Rs. 25,94,000/- whereas the indexed cost based on 01.04.1981 value is claimed to be Rs. 27,61,590/-. The FMV as on 01.04.1981 was taken by valuer at Rs. 7,34,045/- (Rs. 2,59,545 for land and Rs. 4,74,500 for construction). The value of the real estate generally increases more than indexation cost and hence it is unnatural that the assessee incurred loss by selling a long term capital asset situated in a fully developed area. It can be observed that the loss occurred because of higher estimation of land/ construction value as on 01.04.1981 by registered valuer. The basis for such estimation is not any comparable cases but the opinion of the registered valuer. The reasons given by the valuer that the plot is situated in a well developed-area may be correct as on today but not applicable to the date of valuation i.e. 01.04.1981. The decision of valuer seems to be dependent on ITAT decisions as against the valuers decision based on comparable cases. Valuer quoting extensively from judicial decisions stated that SRO value is only guideline value. This contention of the valuer is correct if the value is not based on real instances of sale. However, in the present case SRO gave the value on the basis of instances of sale in the same locality and the same survey number. Therefore valuer's contention in this regard is baseless and without any merits, as pointed out by the Assessing Officer the cost of construction adopted by the valuer is 3 times greater than the cost of construction as on 01.04.1981 in Hyderabad. Further, the rate given by SRO is based on the sale of a property vide document No. 8551/1981, located in the same survey number. Therefore, it cannot be said that the SRO rate is based on base line value but on the contrary the same is based on a comparable case of sale in the same survey number. In view of the above, the assessee's argument that the rate given by the SRO is for property in a village and not in a developed area of Ramnagar is without any basis.

5. In the light of the above discussion, it is held that the value of land/construction adopted by the registered valuer is based purely on estimate without any comparable instances and is highly inflated estimate, which is given only with an intention to hike up the value of the property as on 01/04/1981. On the contrary the value adopted by the AO is based on comparable case of sale in the same survey number in 1981 and hence is more reliable and accurate. Therefore, I uphold the value of land and construction as adopted by the AO based on the SRO report. The determination of long term capital gains by the AO is therefore upheld and the assessee's grounds are dismissed."

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

1. The Order of the learned CIT(A) is erroneous and not based on the facts of the Case.

2. The CIT(A) ought not to have ignored the Valuers Report and only gave vague reasons for not adopting the values provided in the Report.

3. The CIT(A) ignored the fact that the SRO had provided rates/values at a place which is different from the one owned and disposed off by the Assessee.

4. Any other ground that may be urged at the time of hearing.”

5. Ld. AR made similar submissions which were made before tax authorities.

6. Ld. DR relied on the order of CIT(A).

7. Considered the rival submissions and perused the material on record. The assessee has sold a residential house during this AY. In order to calculate capital gains, he relied on the valuation report from registered valuer to estimate the value of the property as on 01/04/1981. Based on the valuation report, he arrived at the long term capital loss by estimating the value of cost of acquisition and construction. The AO did not agree with the above valuation report and adopted the SRO value as on 01/04/1981 for the nearest possible place i.e. Kakkalapalli, whereas the property is situated in Ramnagar, Ananthapur. Aggrieved with the order, assessee is in appeal before us. On verification of records placed before us, we observe that the registered valuer adopted the SRO value as existed during that period and factored about 1.5 times to arrive at the FMV. Whereas the AO has collected information from SRO for the nearest possible place to arrive at the rate adopted for assessment. The larger question before us is, whether the SRO value to be adopted or the FMV based on

estimate. In our view, in case, FMV is sought for the current valuation, one can depend upon the reasonable estimate and SRO values are mere guideline values, since there is no comparative data available, the reasonable estimate can be adopted overlooking the SRO values. This is what the various courts have held. But in this case, we are going back against time to estimate the value as at 1981. We agree that the AO has collected information from SRO for the nearest place instead of value for the actual location of the property. The SRO values will vary depending upon the area. In case, there are more number of registrations happening in few areas, the value in these areas are comparatively high compared to adjacent areas. This cannot be a proper value of the property. Hence, the method adopted by the AO is not proper.

7.1 Further, we notice that the valuer (G.S. Mittal) has valued the property again relying on the SRO value (refer his report at page 5 of paper book) of Rs. 219 per sq.yd. in 1981. By considering the above rate, he further factored it to 1.5 times for FMV. We find it difficult to understand further factoring to arrive the FMV. Since, we are estimating the value as on 01/04/1981, the best value that can be relied upon is SRO value, not estimation, when available. Since, the valuer has collected the information from SRO, Anathapur and arrived at the SRO value as on 1981 at Rs. 219/-, in our view, the SRO value should be adopted and not the estimated FMV as arrived by the valuer. Hence, the value to be adopted for the land is Rs. 219/- per sq.yd. We direct the AO to calculate the capital gains based on the above rate.

7.2 Coming to the valuation of building, we find that the valuer has no doubt adopted the method approved by CBDT & CPWD. But the cost of Index for 1981 is adopted 190% over PAR of 01/10/76. In our view, it is too arbitrary. There is a gap of 4 years, there cannot be fluctuation of indexation to the extent of 190%. In our view, it should

be between 140-150%. We direct the AO to adopt 150% of the cost of indexation in the value arrived by valuer instead of 190% and accordingly, arrive the value of building and complete the assessment. Therefore, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open Court on 28th March, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th March, 2018

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Copy to:-

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- 2) *ITO, Ward – 6(4), IT Towers, Hyd.*
- 3) *CIT(A) – 9, Hyd.*
- 4) *Pr. CIT – 6, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) Guard file

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1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
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9	Date of Dispatch of order			