

**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. 82/Hyd/2018  
Assessment Year: 2009-10**

Rajaiah Krishna Murthy,  
Hyderabad.

vs. Income-tax Officer,  
Ward – 5(2), Hyderabad.

PAN – AAUPN 7745 H

(Appellant)

(Respondent)

Assessee by : None  
Revenue by : Smt. M. Narmada

Date of hearing : 23-10-2018  
Date of pronouncement : 31-10-2018

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal of the assessee is directed against the order of CIT(A) – 4, Hyderabad, dated 21/09/2017 for AY 2009-10.

2. Initially, this appeal was fixed for hearing on 09/03/2018 and at the request of the Id. AR of the assessee, the case was adjourned to 20/06/2018. Since none appeared on behalf of the assessee on 20/06/2018, the case was adjourned to 23/10/2018. On 23/10/2018, none appeared on behalf of the assessee nor there is a request for adjournment of the case. In these circumstances, we are of the view that the assessee is not interested in prosecuting its appeal. It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattachargee & Anr., 118 ITR 461 that appeal does not mean only filing of memo of appeal but also pursuing it effectively. In cases where the assessee does not want to pursue the appeal, Court/Tribunal have inherent power to dismiss the appeal for non-prosecution as held by Hon'ble High court of Mumbai in the case of M/s Chemipol Vs. Union of India in Excise appeal No. 62 of 2009.

Therefore, respectfully following the decision of the Tribunal in the case of Multiplan (India) Ltd., (38 ITD 320) and Madhya Pradesh High Court in Late Tukoji Rao Holkar (223 ITR 480), we dismiss this appeal of the assessee for want of prosecution.

3. Even on merits, it is observed that the assessee filed the return of income for the AY 2009-10 on 31/07/2009 declaring total income of Rs. 2,57,230/-, which was accepted by the AO and completed the assessment u/s 143(3).

3.1 The CIT-4, Hyderabad had noticed that the order passed u/s 143(3) is erroneous and prejudicial to the interests of revenue and invoked proceedings u/s 263 of the Act. In the order u/s 263, the CIT noted that the assessee is not the owner of the property under consideration but has received Rs. 1 crore from M/s Team One Builders as per the receipt issued by the assessee to M/s Team One Builders along with his three brothers. Thus, 1 crore received by the assessee from the developer cannot be assessed under capital gain and no deduction u/s 54F and 54EC are allowable. The amount of Rs. 1 crore received is to be assessed under the head 'income from other sources.'

3.2 Accordingly, the AO completed the assessment u/s 143(3) rws 263 by treating Rs. 1 crore received from M/s Team one Builders as 'income from other sources'

3.3 Aggrieved, the assessee preferred an appeal before the CIT(A), who upheld the asst. order. Against this order, the assessee filed an appeal before the Tribunal and the Tribunal dismissed the appeal of the assessee.

3.4 Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) of the Act on the ground that the assessee has concealed the particulars of his income/furnished inaccurate particulars of income and levied a minimum penalty, on the amount sought to be evaded,

worked out to Rs. 33,78,564/- u/s 271(1)(c). When the assessee appealed before the CIT(A) against the said penalty order, the CIT(A) confirmed the same.

4. Since, there is no Representation from the assessee and the findings of the CIT(A) are uncontroverted, we uphold the order of CIT(A) and dismiss the appeal of the assessee.

5. In the result, the appeal filed by the assessee is dismissed.

**Pronounced in the open court on 31<sup>st</sup> October, 2018.**

**Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Hyderabad, Dated: 31<sup>st</sup> October, 2018.

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Copy to:-

- 1) *Shri Rajaiah Krishna Murthy, 5-2-1028, M.J. Market, Hyderabad.*
- 2) *ITO, Ward – 5(2), Hyd.*
- 3) *CIT(A) – 4, Hyderabad.*
- 4) *Pr. CIT – 4, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*