

**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.1485/Hyd/2016		
	Assessment Year: 2010-11		
Income Tax Officer, Ward-14(1), Hyderabad.	Vs.	Amjad Khan, Hyderabad. PAN: ATGPK 7821 C	
(Appellant)		(Respondent)	
	Assessee by:	Shri K.A. Sai Prasad	
	Revenue by:	Shri Phani Raju, DR	
	Date of hearing:	04/02/2019	
	Date of pronouncement:	13/02/2019	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This appeal is filed by the Revenue against the order of CIT(A)-8, Hyderabad dated 17/08/2016 for the assessment year 2010-11.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y. 2010-11 on 11/10/2010 admitting an income of Rs. 3,33,490/-. The Assessing Officer received AIR data, according to which, the assessee has entered into a transaction in respect of an immovable property of the value of Rs. 1,68,60,000/- on 12/01/2010. He perused the assessee's computation of total income

and observed that the assessee has not offered capital gains on sale of the above property. Therefore, the assessee was required to furnish the details of property transactions and in compliance thereto, the assessee furnished the copies of the sale deeds of the property. The A.O. observed that the assessee sold a property at Shivam Road, Bagh Amberpet, Hyderabad for a sale consideration of Rs. 51,00,000/- vide sale deed No. 103/2010 dated 11/01/2010 and as per the SRO guideline, value of the property is Rs. 1,68,60,000/-.

3. The A.O observed that the assessee along with Sri Imran Khan acquired the property vide registered AGPA No.3406/2007 dated 17/09/2007 for an amount of Rs. 46,66,666/- and since the property was held for a period of less than three years, the gains arising from the sale is short term capital gains. He therefore, applied the provisions of section 50C deeming the sale consideration at Rs. 1,26,00,000/- and computed the short term capital gains at Rs. 79,33,334/- and brought it to tax.

4. Aggrieved, the assessee has preferred appeal before the CIT(A), stating that the assessee had no title over the property and the registration was done in favour of the assessee's sister as per the family arrangement and the assessee has not received any money from such transaction and that the property in question was under acquisition by the Government and is the possession of the Government and the

matter was pending before the Hon'ble High Court in W.P.No.23999 of 2006. The CIT(A) called for a remand report from the Assessing Officer who accepted that the assessee has no title over the said piece of land or scheduled property. Taking the same into consideration, the CIT(A) deleted the addition against which, now the Revenue is in appeal before the Tribunal by raising the grounds of appeal, that the CIT(A) is not correct in not appreciating the fact that the assessee has received a sale consideration of Rs. 51 lakhs on sale of the property as mentioned in the sale deed dated 11/01/2010 and therefore, assessee is liable for capital gains irrespective of the fact that the assessee has title over the property or not.

5. Learned Departmental Representative submitted that the assessee has executed a registered sale deed in favour of his sister and in the sale deed itself, it is mentioned that he has received a sum of Rs. 51 lakhs and therefore, according to him, the CIT(A) should have at least sustained the addition to the extent of Rs. 51 lakhs.

6. Learned Counsel for the Assessee, on the other hand, submitted that the assessee has all along been stating that the property was not in his possession and that the sale deed was executed by him and his brother in favour of their sister as per the wishes of their father. He submitted that the CIT(A) had called for a remand report from the Assessing Officer, who in the remand report agreed that the assessee

had no title over the property. Therefore, according to him, when the assessee is not the owner of the property, the gains therefrom cannot be treated as capital gains. He further submitted that even if it is presumed that the assessee has received a sum of Rs. 51 lakhs, it is received by both the vendors in the sale deed and therefore, assessee's share would be Rs. 25,50,000/- only and the tax effect on such sum would be less than Rs. 20 lakhs and therefore, as per the CBDT Circular 03/2018, the Revenue's appeal is not maintainable.

7. Having regard to the rival contentions and the material on record, we find that the A.O. has clearly accepted that the land was acquired by the Government and the possession was not with the assessee and it was the subject matter of dispute before the High Court and the litigation between the Government and the assessee is pending before the Hon'ble High Court. Therefore, it is clear that the assessee did not have the title nor in the possession of the property to transfer the same to any other person. The contention of the assessee that there was no consideration passed on to the assessee that and the persons mentioned in the sale deed are two and therefore, the capital gains, if any, has to be brought to tax in the hands of both the persons has not been controverted by the Learned Departmental Representative. Taking the same into consideration, we do not see any reason to interfere with the order of the CIT(A).

8. In the result, Revenue's appeal is dismissed.

Pronounced in the open Court on 13th February, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated:13th February, 2019

OKK

Copy to:-

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- 2) ITO, Ward-14(1), 6th Floor, C-Block, IT Towers, A.C. Guards, Hyderabad.
- 3) The CIT(A)-8, Hyderabad
- 4) The Pr. CIT-8, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File