

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

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

ITA No. 1566/Hyd/2018
Assessment Year: 2010-11

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

PAN – ADDPM 2961 Q

Appellant

Respondent

Assessee by: Shri G. Kalyan Das
Revenue by: Shri Y.V.S.T. Sai

Date of hearing: 28/03/2019
Date of pronouncement: 05/04/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 5, Hyderabad, dated, 30/05/2018 for AY 2010-11.

2. Brief facts of the case are, the assessee filed her return of income for AY 2010-11 admitting total income of Rs. 1,55,250/-. As per CIB Data, the assessee sold property for a consideration of Rs. 30 lakhs whereas the SRO value was at Rs. 42,44,800/-. Hence, a notice u/s 148 was issued and the assessment was completed u/s 143(3) rws 147 on 16/10/2017 by assessing the total income at Rs. 35,87,640/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). However, later, the assessee filed a letter dated 23/05/2018 before the CIT(A) withdrawing her

appeal. Accordingly, the CIT(A) dismissed the appeal of the assessee as withdrawn.

4. Against the said order of CIT(A), the assessee is in appeal before us contending that the CIT(A) has no power to allow the assessee to withdraw her appeal, though the assessee has specifically submitted a letter to withdraw her appeal on the advice of auditors.

5. Before us, the Id. AR of the assessee submitted that on the advice of senior counsels, the assessee filed this appeal before the ITAT to revive the appeal and adjudicate the same on merits.

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

7. Considered the rival submissions and perused the material on record. We noticed that assessee filed a letter requesting to withdraw the appeal filed before Id. CIT(A). Ld. CIT(A) has dismissed the appeal as withdrawn. Now assessee is in appeal before us with the plea that Id. CIT(A) has no power to dismiss the appeal due to withdrawal as he do not have power within the meaning of section 251(1)(a) of the Act. As pe section 251(1)(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment. Since the CIT(A) has dismissed the appeal as withdrawn, he confirms the assessment passed by the AO. Therefore, in our view, CIT(A) has applied his right within the meaning of section 251(1)(a) of the Act. Hence, the contention of the assessee is rejected and the grounds raised by the assessee are dismissed.

7.1 However, in our view, assessee has withdrawn the appeal due to age and health factor as per the letter submitted before the CIT(A). The remedy for this is available only with CIT(A) office. Assessee may go back to CIT(A) and request for retrieval of the appeal or file a fresh appeal with condonation. Assessee has to pursue the case at CIT(A) level.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open court on 5th April, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 5th April, 2019.

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Copy forwarded to:

1. *Smt. Muthyam Suman, C/o M/s Kalyandas & Co., Cas.,
15, Venkateshwara Colony, Naayanagunda, Hyderabad – 29.*
2. *ITO, Ward – 5(2), Hyderabad.*
3. *CIT(A) - 5, Hyderabad*
4. *Pr. CIT – 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*