

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

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA No. 1815/HYD/2017
(Asst. Year : 2009-10)**

Smt. Konda Radhika Reddy, vs. ITO, Ward-4(3),
2-2-18/31/C, Flat No.103, Hyderabad.
2nd Floor, D.D. Colony,
Bagh Amberpet, Hyderabad.

PAN No. AHYPK 3250 F
(Appellant)

(Respondent)

Assessee by : Shri A.V. Raghav Ram, Adv.
Department By : Mr. Nilanjan Dey – DR

Date of hearing : 14/05/2019.
Date of pronouncement : 17/05/2019.

ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 12/07/2017 for the Assessment Year 2009-10.

2. Facts of the case in brief are that the assessee is an individual entered into development agreement with M/s. ARK Builders on 31/07/2008 for the A.Y. 2009-10 for development of the immovable property to the extent of 500 sq.yrds in plot No. 57, survey No. 96/10/Ru in PART No.7, Padmasri Hills, Bandlaguda village, Rajendranagar Mandal, R.R. District on 21.6% share (6694 sft.)

basis from total built up area of 30500 sft. The assessee has not admitted any capital gains in the return of income filed for the A.Y. 2009-10. The case of the assessee was reopened u/s. 147 on the ground that there is an escapement of income. In the assessment order, the Assessing Officer has noted that as per the information received in his office, assessee along with Smt. G. Narmada has entered into a development agreement with M/s. ARK Builders during the previous year relevant to the A.Y. 2009-10 for development of immovable property admeasuring 500 sq.yrds in plot No. 57, survey No. 96/10/Ru in PART No.7, Padmasri Hills, Bandlaguda village, Rajendranagar Mandal, R.R. District. In view of the above development agreement, the assessee was to receive the following built up area of flats including common area towards her share along with proportionate undivided share in land:-

| | | |
|--------------|---|------------------|
| Flat No. 201 | - | 1635 sft. |
| Flat No. 204 | - | 1505 sft. |
| Flat No. 205 | - | 2049 sft. |
| Flat No. 304 | - | <u>1505 sft.</u> |
| Total | - | <u>6694 sft.</u> |

The Assessing Officer has noted that the assessee is liable for capital gains in lieu of the development agreement as assessee is entitled to 04 flats along with undivided share of land in lieu of land

forgone as per development agreement and the capital gain arises from the date of execution of development agreement. The Assessing Officer has issued notice to the assessee to explain why the capital gains cannot be taxed in the hands of the assessee. In response to the notice issued, the assessee has submitted that she has received a land admeasuring 500 sq.yrds. from her husband without payment of any consideration. The builder has not completed the development of the building as agreed and left the project in the middle without completing in all respects. The assessee along with another co-owner and other flat buyers got the building completed and took the possession of the same in March, 2014. The assessee has not filed any details in respect of non-completion of the project and also to substantiate that the assessee along with others completed the project, therefore, the Assessing Officer by considering the decision of the Hon'ble Jurisdictional High Court in the case of *Potla Nageswara Rao vs. DCIT* in ITTA No. 245/2014, dated 09/04/2014 and also considering the date of agreement as per section 2(47)(v) of the Act calculated the Short Term Capital Gain.

3. On appeal before the Id.CIT(A), the assessee has reiterated the submissions whatever made before the Assessing Officer, therefore the Id.CIT(A) confirmed the order of the Assessing Officer.

4. Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before this Tribunal.

5. Ground No.1 is general in nature, no adjudication is required, therefore same is dismissed. Ground Nos. 2 to 4 relate to transfer of property in accordance with the provisions of section 2(47)(v) of the Act. So far as ground No.3 raised by the assessee is concerned, in this case, the assessee has entered along with co-owner for development of the land on 31/07/2008. Project was completed and the assessee sold her share of property. When the Assessing Officer asked, assessee submitted that the builder left without completing the project. The assessee has not filed any evidence to substantiate her argument, therefore, the Assessing Officer by following the judgment of the Hon'ble Jurisdictional High Court in the case of *Potla Nageswara Rao* (supra) has calculated the capital gains by considering the date of agreement i.e. 31/07/2008 is the date of transfer of property as per the provisions of section 2(47)(v) of the Act and calculated the Short Term Capital Gains. I find that no reason to interfere with the order passed by the Assessing Officer and confirmed by the Id.CIT(A). Accordingly, ground Nos. 2 to 4 raised by the assessee are dismissed.

6. So far as ground No. 5 raised by the assessee with regard to deduction u/s. 54 of the Act is concerned, the assessee has not filed

any details to show that how the assessee is eligible for deduction u/s. 54 of the Act neither before the Assessing Officer not before the Id.CIT(A) even before me, therefore same is dismissed.

7. Ld. counsel for the assessee has submitted before the Bench that as per sub-section (5A) to section 45, date of handover of the possession is the criteria to consider for the purpose of calculation of capital gains and not the date of agreement. Though, the proviso was inserted by the Finance (No.2) Act, 2014 dated 01/04/2015 which is beneficiary in nature, the same has to be applied to the assessee's case and submitted that the date of handover of the possession of the property has to be considered for calculating the capital gains and not the date of agreement. This ground is not raised neither before the Assessing Officer nor before the Id.CIT(A). The same is not raised before me and only orally submitted. Therefore, same cannot be considered though it is a legal ground. The assessee has not given any reason by filing a petition for admission of additional ground why the same was not raised before the lower authorities. However, this issue has been considered by the coordinate Bench of this Tribunal in the case of *Smt. G. Sailaja vs ITO* in ITA No. 51 & 579/Hyd/2016, dated 30/11/2017 wherein the Tribunal has held that the amendment made by the Legislature by inserting sub-section (5A) to section 45, is only prospective in

nature and not in retrospective. In view of the above, the argument of the assessee is rejected.

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

Order Pronounced in open Court on this 17th day of May, 2019.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 17th May, 2019.

vr/-

Copy to:

1. *The Assessee - Smt. Konda Radhika Reddy, 2-2-18/31/C, Flat No.103, 2nd Floor, D.D. Colony, Bagh Amberpet, Hyderabad.*
2. *The Revenue-ITO, Ward-4(3), Hyderabad.*
3. *The Pr.CIT-1, Hyderabad.*
4. *The CIT(A), Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Hyderabad.