

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.988/Hyd/2018
(Assessment Year: 2008-09)

Shri Veerannagiri Gopal Vs Income Tax Officer
Reddy Ward 11(4)
Medak Hyderabad
PAN:ASOPG7077K
(Appellant) (Respondent)

For Assessee : Shri K.A. Sai Prasad
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing: 20.03.2019
Date of Pronouncement: 24.05.2019

ORDER

This is assessee's appeal for the A.Y 2008-09 against the order of the CIT (A)-5, Hyderabad, dated 22.02.2018.

2. Brief facts of the case are that the assessee, an individual, did not file any return of income for the A.Y 2008-09. The AO received information that the assessee is holding GPA for Sri M Sheetal Singh, Sri M Shanker Singh, Sri M Manohar Singh, Sri M Vijay Singh, Sri M Arvind Singh and Sri M Baldev Singh and that he sold the immovable property bearing No.1-2-212/B/16 admeasuring 189 sq. yards. Domalguda Sy.No.190 & 191, Gagan Mahal Village, Musheerabad Mandal, Hyderabad belonging to them vide document No.3513/2007, dated 22.09.2007, SRO Chikadapally, during the financial year 2007-08 relevant to the A.Y 2008-09 for a consideration of Rs.8,40,000/-

as against the market value of Rs.38,08,000/- as per the Registration Authority. Observing that the assessee has not offered the capital gains to tax, the assessment was reopened u/s 148 of the Act.

3. The assessee did not file any return of income in response to the notice u/s 148. Therefore, the AO issued a notice u/s 142(1) along with a questionnaire, requiring the assessee to furnish the details in connection with the assessment proceedings. In response to the same, the assessee filed a reply dated 15.06.2015 along with a copy of the sale deed stating that he has executed the sale deed as a GPA holder only and that he has not received any amount from the transaction. The AO observed that the assessee has not filed any evidence in support of his contention but has filed a reply on 29.02.2016 in which he had justified the sale of the plot for a sum of Rs.8,40,000/- as against the market value of Rs.38,08,000/-. Therefore, the AO held that the assessee has sold the plot to his daughter Smt. V. Rajini Reddy not only as a GPA holder, but also as a owner of the property and has earned the capital gain therefrom. He accordingly brought the capital gains to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before this Tribunal.

4. The learned Counsel for the assessee submitted that the addition cannot be made in the hands of the assessee for two reasons; (i) assessee is not the owner of the property and

therefore, no capital gain has arisen to him; and (ii) that the vendee had paid a sum of Rs.8,40,000/- in the year 1994 and the possession was also given in the year 1994, and in the relevant financial year, only transaction was execution of sale deed and therefore, if at all there was a transfer, it was in the year 1994 and not in the relevant financial year and hence capital gain cannot be brought to tax in this year. The learned Counsel for the assessee has drawn our attention to the registered irrevocable GPA executed in 1994, wherein the vendors have clearly stated that they are executing the GPA only to execute the sale deed on their behalf but there is no sale of the property by virtue of the GPA. He submitted that it was not an agreement of sale cum GPA and therefore, the assessee was only a GPA holder. He also drew our attention to the contents in the registered sale deed; wherein it was clearly mentioned that the sum of Rs.8,40,000/- was received from the vendee in the year 1994 itself and that the possession of the same was also handed over to the vendee Smt. V. Rajini Reddy in the year 1994 itself and that the assessee has only concluded the execution of the registration of the sale deed in the financial year 2006-07. Therefore, according to him, the transaction had concluded in the year 1994, except for execution of the registered sale deed and hence there is no transfer in the relevant A.Y and no capital gain has arisen either to the assessee or to the vendors during the relevant financial year.

5. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee had paid the sale consideration of Rs.8,40,000/- in the year 1994 itself due, to which he obtained the irrevocable GPA and in the

relevant A.Y, the assessee has executed the sale deed in favour of his daughter Smt. V. Rajini Reddy and therefore, there is a transfer of property from the assessee to his daughter and hence capital gain has arisen to the assessee during the relevant A.Y. He submitted that the registered sale deed is between the assessee and his daughter i.e. related parties and therefore, the contents of the sale deed cannot be relied upon without any corroborative evidence that the vendors have received the sale consideration from Smt. V. Rajini Reddy in the year 1994 except for the recitals in the sale deed, which is a self-serving document.

6. Having regard to the rival contentions and the material on record, I find that vide registered document No.1334 of 1994, the assessee was given an irrevocable GPA by the owners of the land and it is stated therein that the possession was also given to the assessee to enable him to hand over the possession to the purchaser. There is no mention about the receipt of any sale consideration from whomsoever. After nearly 13 years, the assessee has executed the sale deed in favour of his daughter and in the sale deed, it is mentioned that a sum of Rs.8,40,000/- has been received by the vendors from the vendee in the year 1994 and that the possession was also handed over to the vendee therein on the said date. As rightly pointed out by the Revenue authorities, it is not understandable as to why the GPA was executed in favour of the assessee and not the sale deed itself in favour of the assessee's daughter if the vendors had received the entire sale consideration from the vendee at that point of time. The recitals in the GPA show that the assessee is not the owner of the property but has only been granted authority to convey the

property to third party. Therefore, it cannot be considered that the assessee became the owner of the property by virtue of the irrevocable GPA. In the relevant previous year, the assessee has executed the sale deed in favour of his daughter and in the sale deed it has been mentioned that the total of the sale consideration of Rs.8,40,000/- was paid in the year 1994. This fact also cannot be accepted, because if the entire sale consideration was paid in the year 1994, then the vendors/parties or even the GPA holder could have executed the sale deed in favour of the vendee in that year itself. Therefore, the sale is only in the year 2007 but capital gain would arise in the hands of the owners of the property and not the GPA holder. The Hon'ble Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd vs. State of Haryana reported in (2012) 340 ITR 2 has held that GPA is not a deed of conveyance and hence cannot be construed as an instrument of transfer in regard to any right, title or interest in the immovable property. The Hon'ble Karnataka High Court in the case of Wipro Ltd. Vs. DCIT reported in 382 ITR 179 has considered the above judgment as well as the judgment in the case of State of Rajasthan vs. Basant Nahata (2005) 12 SCC 77, to hold as under:

“142. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the principal. A power of attorney is a document of convenience. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. It is revocable or terminable at any time unless it is made irrevocable in a manner known to law.

143. Therefore even if Section 2(47) is held to be applicable to a stock-in-trade, unless the transaction in question has the effect of transferring or enabling the enjoyment of any immovable property, it would not amount to a transfer”.

Respectfully following the above judgments and since the assessee is not the owner of the property, the capital gain cannot be brought to tax in his hands.

7. In the result, the assessee's appeal is allowed.

Order pronounced in the Open Court on 24th May, 2019.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 24th May, 2019.

Vinodan/sps

Copy to:

- 1 Shri Veerannagari Gopal Reddy, C/o Ch. Parthasarathy & Co. 1-1-298/2/B/3 1st Floor, Sowbhagya Avenue St.No.1 Ashoknagar, Hyderabad 500020
- 2 Income Tax Officer, Ward 11(4), 5th Floor, D Block, IT Towers, Masab Tank, Hyderabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order