

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC” BENCH: HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA. No.2281/Hyd/2018
Assessment Year: 2010-11

Syed Safiuddin, Hyderabad. PAN:CFJPS 8098 Q (Appellant)	vs.	ITO, Ward-14(4), Hyderabad. (Respondent)
--	-----	---

For Assessee:	Sri S. Rama Rao
For Revenue :	Shri Nilanjan Dey, DR

Date of Hearing :	15/5/2019
Date of Pronouncement :	24/5/2019

ORDER

PER V. DURGA RAO, JM.

This appeal is filed by the assessee against the order of the CIT(A)-6, Hyderabad dated 25/09/2018 for the assessment year 2010-

11. In this appeal, assessee raised the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.
2. The Ld. CIT(A) erred in confirming the action of the A.O in initiating proceedings u/s 147 of the IT Act.
3. The Ld. CIT(A) erred in confirming the action of the A.O in treating the income derived on sale of property under the head capital gains instead of under the head income from business.
4. The Ld. CIT(A) ought to have held that the appellant carried on the business in construction and the sale and that, therefore, the income has to be treated as income assessable under the head "income from business or profession".
5. The Ld. CIT(A) erred in confirming the disallowance of expenditure debited to the profit and loss account on the ground that the income is assessable under the head capital gains. “

2. Brief facts of the case are that the assessee is an individual and worked in Saudi Arabia till 2005 and then returned to India and purchased a plot of land with an intent to construct a building and sell the same. Land purchased was registered as AGPA and not as a sale deed. Subsequently, construction work was undertaken in 2007. After the building was completed in 2009, it was sold on 18/05/2009 vide a sale deed. The assessee initially has not filed any return of income. The Assessing Officer on a specific information came to know that the assessee has sold property in the assessment year 2010-11 for Rs. 41,45,000/-. Accordingly notice u/s 148 was issued on 24/03/2017 by calling the assessee to file the return of income. Assessee has not filed any reply. The Assessing Officer has issued a show cause notice against dated 23/11/2017 and in response, the assessee has filed return of income on 14/12/2017 and submitted that during the year under consideration, he was engaged in the business of developing properties and the same is sold for Rs. 41,45,000/- and also claimed expenditure of Rs. 38,12,155/-. The assessee has not field any proof in support of its claim and therefore, the A.O. has treated that the activity carried on by the assessee is not a business activity and computed the short term capital gains by considering the sale consideration received by the assessee of Rs. 41,45,000/- and allowed the expenditure of Rs. 9,50,000/- by estimating the cost of construction.

3. On appeal, CIT(A) confirmed the order of the A.O. on the ground that the assessee has not filed any details and also on the ground that the activity carried on by the assessee is not a business activity. On being aggrieved, assessee carried the matter in appeal before the Tribunal.

4. Learned Counsel for the Assessee submitted that the assessee has purchased a plot of land with an intent to carry on the business of construction and therefore, the Assessing Officer treating the sale consideration received by the assessee as short term capital gains is not correct. Alternatively, it is submitted that the assessee has incurred expenditure to the tune of Rs. 38,12,155/- whereas the A.O. allowed Rs. 9,50,000/- which is very meagre and submitted that the Valuation Officer valued the expenditure at Rs. 39,32,000/- and submitted that the same may be allowed.

5. On the other hand, Ld DR supported the orders of the lower authorities.

6. I heard both the parties and perused the orders of the lower authorities as well as the material on record. The assessee has purchased a plot of land and constructed a double storey residential house and the same is sold for Rs. 41,45,000/- (as per the SRO). The assessee initially has not filed the return of income. Subsequently, in

response to the notice u/s 148 assessee filed the return of income and claimed the expenditure to the tune of Rs. 38,12,155/- and submitted that the activity carried on by the assessee has to be considered as a business activity. The assessee failed to substantiate before the A.O. as well as the CIT(A) that the activity carried by him is a business activity. Even before us, the assessee is not able to establish that the single transaction carried on by the assessee has to be considered as a business activity and he has not filed any details to substantiate its claim. Under these facts and circumstances of the case, I am of the opinion that the activity carried on by the assessee cannot be considered as a business activity. I find that the A.O. and the CIT(A) has rightly held that the sale consideration received by the assessee has to be considered as short term capital gains.

7. So far as the alternate ground raised by the assessee is that the assessee's claim of an expenditure was allowed by the A.O. only to the extent of Rs. 9,50,000/-. Before the Tribunal, the assessee has filed a valuation report dated 26/09/2017 wherein the Govt. Approved Valuer vide his report dated 26/09/2017 estimated the cost of construction @ Rs. 39,32,000/-. I find that this report is filed neither before the A.O. nor before the CIT(A). However, I find that the A.O. has estimated the cost of construction at Rs. 9,50,000/- on the claim made by the assessee of Rs. 38,12,155/- whereas the Govt. Approved Valuer

estimated the cost of construction at Rs. 39,32,000/-. Under these facts and circumstances of the case, I am of the opinion that the cost of construction can be reasonably estimated at Rs. 25 lakhs instead of Rs. 9,50,000/- as estimated by the A.O. Accordingly, we direct the A.O. to estimate the cost of construction at Rs. 25 lakhs and order accordingly.

8. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24th May, 2019.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 24th May, 2019.

OKK, Sr.PS

Copy to

1.	Syed Safiuddin, 8-1-40/A/145, Shaikpet, Tolichowki, Hyderabad-08.
2.	ITO, Ward-14(4), Hyderabad.
3.	CIT (A)-6, Hyderabad.
4.	Pr. CIT-6, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File