

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

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

ITA No. 1508Hyd/2018
Assessment Year: 2008-09

N. Chandrasekhar, vs. Income-tax Officer,
Hyderabad. Ward – 10(1), Hyderabad

PAN – ACGPN 6472M

Appellant Respondent

Assessee by: Shri A.V. Raghuram
Revenue by: Shri Y.V.S.T. Sai

Date of hearing: 13/05/2019
Date of pronouncement: 12/06/2019

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 6, Hyderabad, dated, 09/02/2018 for AY 2008-09.

2. Brief facts of the case, as noted in the assessment order are, during the year under consideration, the assessee sold a property at 16-2-677/2/1, Tirumala Towers, Judges Colony, Malakpet, Hyderabad for a sale consideration of Rs. 45,00,000/-. However, the agreed market value for stamp duty purposes was Rs. 55,30,000/-, which is evident as per Doc. No. 5025/2007 dated 19/09/2007. As the assessee did not file the return of income for the Ay 2008-09, the AO issued a notice u/s 148 on the ground that the income chargeable to tax being capital gains has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961 (in short 'the Act'). Since there was no response from the assessee to

the notices/letters issued/affixtures by the department nor filed the return of income, the AO proceeded to complete the assessment u/s 144 of the Act. The AO referring to the provisions of section 50C, observed that the assessee ought to have taken into consideration the value adopted by the stamp valuation authority of Rs. 55,30,000/- as sale value and should have computed the long term capital gains accordingly. As the assessee failed to do so, the AO computed the capital gains of the assessee at Rs. 50,90,456/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. When the assessee has raised objection against the assumption of jurisdiction u/s 147 of the Act on the ground that there was no service of notice u/s 148 of the Act on the assessee, the CIT(A) rejected the contention of the assessee.

4.1 As regards the issue of computation of capital gains on the sale of flat, the assessee contended that he did not sell any property during FY 2007-08 relevant to impugned AY 2008-09 and the sale deed was in respect of property located at 16-2-677/2/1, Tirumala towers, Judges colony, Malakpet, Hyderabad, on the basis of which the AO computed capital gains was not owned by the assessee. He submitted that in the said document his name was appearing as confirming party and accordingly, he signed the document as confirming party rather than seller/vendor of the property. Further, he filed written submissions, which were extracted by the CIT(A) at page 8 of his order.

4.2 After considering the submissions of the assessee, the CIT(A) directed the AO to delete the addition in the hands of the assessee by observing as under:

“7.7 Also, I have verified the bank statement copies of the developer and the return of income filed by the developer and found that the sale proceeds of the property were duly reflected in the bank account of the developer. Accordingly, I am of the considered opinion that the assessee did not involve in the said transaction as the owner of the flat and he did not receive any part of the consideration in his personal capacity. He actually signed the document, along with his brother, in his capacity as one of the original owners of the property. However, the AO has wrongly assessed the capital gains in the hands of the assessee rather than in the hands of the developer.”

CIT(A)'s findings and directions u/s 150(1) of the Act.

4.3 During the course of the appellate proceedings, the AR of the assessee was asked to clarify two important issues with regard to two levels Of incidence of taxation in the hands of the assessee i.e.

i) Whether the assessee has admitted capital gains pursuant to entering into ADCGPA with the developer M/s. Tirumala Homes Pvt. Ltd. on 12.03.1998 either in the A Y 1998-99 or in the year in which the possession of his share of built up area consisting of six flats has been handed over by the developer to the assessee.

2) Whether the assessee has admitted capital gains on sale of his share of built up area consisting of six flats received from the developer.

4.4 In response thereto, the assessee vide his written submissions dated 09.02.2018 submitted that he did not offer any income under the head Capital Gains on the transfer of the property through ADCGPA either in the year of development agreement i.e. FY 1997-98 relevant to AY 1998-99 or the year in which possession of the built up area consisting of six flats was handed over to him by the developer. As such, the assessee has failed to offer income under the head Capital Gains on transfer of the property through ADCGPA till date. Accordingly, the income has escaped assessment at the first level of incidence of taxation.

4.5 Insofar as the second level of incident of taxation i.e. in the event of sale of his share of built up area consisting of six flats received by the assessee from the developer, it is stated by the assessee that he did not sell any of the six flats till date. On the other hand, it is submitted that, out of six flats, he gifted two flats to his daughter and one flat to his son, and out of the remaining three flats, one is leased out and two flats are vacant. Accordingly, it is submitted that there is no second level of incidence of taxation till date.

4.6 After considering the submissions of the assessee, the CIT(A) gave the following directions u/s 150(1) of the Act, as under:

8.4 In view of the above, the AO is directed to take necessary action to bring the income under the head Capital Gains which had escaped the assessment with regard to first level of incidence of taxation on account of transfer of the property through ADCGPA. Similarly, the AO is directed to verify and cause necessary enquiries to ascertain whether any of the six flats received by the assessee from the developer have been transferred within the meaning of Sec. 2(47) of the Act and take necessary action to tax the income under the head Capital Gains in the year of transfer of such flats."

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Id. Commissioner of Income Tax (Appeals)-6, Hyderabad, having allowed the appeal of the Appellant on merits, erred in giving directions in respect of bringing to tax capital gains on account of transfer of property through agreement of Development cum GPA (ADCGPA) dt. 12.03.1998. The Commissioner (Appeals) ought not to have given such a direction to the AO as it is not relevant for Ay 2008-09 with which the Commissioner (Appeals) was dealing with, and at any rate was not necessary for disposal of appeal before him.

2. The Commissioner (Appeals) further erred in directing the AO to verify and cause necessary enquiries to ascertain whether any of the six flats received by the assessee from the developer have been transferred and to take necessary action to tax the income under the head capital gains in the year of transfer of such flats. The Commissioner (Appeals) failed to appreciate that the same is not necessary for disposal of appeal and further any such issue was not part of record or assessment before the Assessing Officer.

3. On the facts and in the circumstances of the case, the Commissioner (Appeals) has travelled beyond the brief in giving the directions contained in paragraph 8.4 of the appellate order resulting in illegal directions which have to be expunged from the appellate order.

For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal.

6. Before us, Id. AR referred to the Para 7.6 & 8.4 of CIT(A)'s order and submitted that the directions given by Id. CIT(A) are not covered by section 150(2) and 251 of the Act. He submitted that Id. CIT(A) is expected to consider and decide the issue arising out of proceedings before him. He cannot give direction which is not part of appeal proceedings. In this regard, he relied on the following cases:

1. CIT Vs. Sardari Lal & co., [2001] 251 ITR 864 (Del.)(FB).
2. Computer Science Corporation India (P) Ltd. Vs. Addl. CIT & Ors., [2014] 268 CTR (MP) 110.

7. On the other hand, Id. DR submitted that the Id. CIT(A) relied on the material available on papers of appeal and CIT(A) has power to give direction and he relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Kanpur Coal Syndicate, 1965 AIR 325.

8. In rejoinder, Id. AR submitted that it is not same issue, AO relied only on one sale deed. The other information for the issue was not before CIT(A).

9. Considered the rival submissions and perused the material on record. We notice that assessee entered into Development-cum-GPA with the developer M/s Tirumala Homes Pvt Ltd. on 12/03/98 relevant to AY 1998-99. Accordingly, he was allotted 6 flats as compensation for transfer of land for development. The said flats are still in the possession of him and his family members. In the AY under consideration i.e. AY 2008-09, the developer sold flats and assessee was asked to sign the papers as consenting party. The Id. CIT(A) came to conclusion that the sale was made by the developer and not by the assessee. Accordingly, adjudicated in favour of the assessee. But, in his order, he passed passing comments and direction to AO to investigate the chargeability of tax in the transaction which was taken place in the AY 1998-99. In our considered view, the assessee came on appeal to protest the action of AO to bring to tax the transaction which was not undertaken by the Assessee. Id. CIT(A) was satisfied that this transaction was not undertaken by the assessee. This was only issue arising out of the appeal filed before him. He invoked an issue, which

was taken place in AY 1998-99 i.e. 18 years before at the time of passing AO or 20 years at the time of his order. The period of limitation was over long time back when he wrote the order. His direction has no practical value as well as not implementable. Certainly will not fall within the provisions of section 150 nor u/s 251. This kind of directions are practically not implementable. Therefore, such orders are not sustainable.

9.1 Accordingly, we direct the AO not to proceed with such impracticable directions and, thus, grounds raised by the assessee are allowed.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 12th June, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 12th June, 2019.

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Copy forwarded to:

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6. *Guard File*