

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

**BEFORE SHRI A. MOHAN ALANKAMONY
ACCOUNTANT MEMBER**

	ITA No.510/Hyd/2018		
	Assessment Year: 2009-10		
Sri Venkat Ramana Reddy Vade, H.No.5-77/4/201, Vivekananda Nagar, Street No. 8, Habsiguda, Hyderabad. PAN: ACVPV 7024 J	Vs.	Income Tax Officer, Ward-15(2), Hyderabad.	
(Appellant)		(Respondent)	
Assessee by:	Sri K.C. Devdas		
Revenue by:	Smt. K.J. Divya, DR		
Date of hearing:	19/07/2019		
Date of pronouncement:	27/08/2019		

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-7, Hyderabad dated 08/01/2018 in appeal No. 0041/CIT(A)-7/2017-18 passed U/s. 143(3) r.w.s 147 & 250(6) of the Act for the assessment year 2009-10.

2, The assessee has raised several grounds in his appeal however, the crux of the issue is that the Ld. CIT (A) has erred in partly sustaining the order of the Ld. AO who had computed the STCG of the assessee invoking the provisions of section 50C of the Act.

3. The brief facts of the case are that the assessee is an individual resident filed his return of income in response to notice U/s. 148 of the Act on 31/3/2016 declaring STCG of Rs. 4,58,842/-. The Ld. AO had reopened the case of the assessee because as per the information received from the SRO it was observed that the assessee had sold two immovable residential properties for Rs. 18 lakhs and Rs. 22 lakhs respectively aggregating to Rs. 40 lakhs as against the market value of Rs. 36,30,000/- and Rs. 43,95,000 aggregating to Rs. 80,25,000/-.

4. Thereafter, the Ld. AO computed the STCG of the assessee by invoking the provisions of section 50C of the Act as follows: -

<u>Actual sale consideration</u>	<u>Rs. 40,00,000</u>
Market Value as per the provisions of sec. 50C (from both properties)	Rs. 80,25,000
Less: Cost of acquisition (as claimed by the Assessee)	Rs. 32,09,000
Lest of cost of improvement	<u>Rs. 2,98,000</u>
Short Term Capital Gain	<u>Rs. 45,18,000</u>

5. On appeal before the Ld. CIT (A) the assessee had argued stating that the Ld. AO had referred the Valuation to the Valuation Officer as per the request of the assessee however, without awaiting for the receipt of the Valuation Report proceeded to adopt the value stated by the SRO

and computed the STCG of the assessee at Rs. 45,18,000/-. It was further submitted that subsequently the Valuation Report was received by the Ld. AO wherein the value determined was much lesser than the value stated by the SRO and accordingly additional evidence were filed before the Ld.CIT(A). The Ld. CIT (A) after examining the issue and obtaining the remand report from the Ld. A.O granted only partial relief to the assessee by simply adopting the value determined by the Valuation Officer at Rs. 57,35,000/- without applying his mind on the value of the property considering its drawback. Aggrieved by the order of the ld. CIT (A), the assessee is in appeal before this Bench of the Tribunal.

6. The Ld. AR vehemently argued before me stating that the Ld. DVO himself has recognized the drawback of the land sold by the assessee and adopted the value at Rs. 57,35,000/- though the valuation of the SRO was determined at 80,25,000/-. The Ld. AR further argued by stating that the relief granted by the Ld.DVO as well as the Ld.CIT(A) is not appropriate as the assessee had sold the property at the realistic actual market value. It was therefore pleaded that the addition made by the Ld. AO may be deleted. The Ld. DR on the other hand argued in support of the order of the Ld. CIT (A) and prayed for sustaining the same.

7. I have heard the rival submissions and carefully perused the materials on record. For reference, I hereby extract the relevant portion of the Valuation Report of the Ld. DVO: -

Fair Market Rate of the property per sq. yds as on
15/12/2008 & 16/1/2009

Sl no	Influencing factors Adopted	% age adopted	Rate per sq. yd.
1.	Guideline / Market rat value as per the SRO Azampura, for the area falls under Ward-16, Block-2 of Saidabad Colony, Triveni Nagar, Hyderabad is adopted since similar type of comparative sale instances are not available etc.		15000.00
2.	Deduct for the disadvantage as the property is having non perfect and irregular shape etc.	-5%	-750.00
3.	Deduct for the disadvantage as the property is located in low profile area etc	-11%	-1650.00
4.	Deduct for reduction in market rate due to not having proper approach road to reach the property and having dead end etc	-5%	-750.00
5.	Deduct for reduction in market rate due to impact of recession during property transaction period and separate Telangana State bifurcation agitations etc.	-7%	-1050.00

Fair Market Rate of the property per sq. yd as

On (single property, two sale deeds are executed)

05.12.2008 & 16.01.2008 = 10800.00
Per sq.yd

Fair Market Value of the Total property as on

05.12.2008 & 16.01.2008 =

Area in sq. yds. Rate per
(240 + 291) = 531 sq. yd

For plot	531.0	10800.0	5734800.00
		Total	5734800.00

Say Rs. 57,35,000/-

(Rupees Fifty-Seven Lakhs thirty five thousands only)

8. From the above, it is apparent the land sold by the assessee has drawbacks such as irregular shape, location of the land in the dead end of the lay out & low profile area, and further the value of the property is hit by the recession in the real estate market due to bifurcation of the State as Telangana and Andhra Pradesh. The Ld. DVO though in his own wisdom had estimated the value of the property at Rs. 57,35,000/- by accepting the drawbacks of the property and the market scenario, while substantiating the quantum for granting relief to the assessee, in my view he has not made realistic working. Further, on perusing the facts, I find that: -

- (i) The cost of acquisition of the property which falls little less than the period of 2 years from the date of the sale is Rs. 32,09,000/-
- (ii) The aggregate actual sale proceeds received by the assessee within the span of 2 years from the date of purchase of the property is Rs. 40 lakhs, thus there is an appreciation of 25% in the value of the property [$\text{Rs. } 32,09,000 + (\text{Rs. } 32,09,000 \times 25\%) = \text{Approx. Rs. } 40,00,000$].
- (iii) The market value of the property sold estimated by the Ld. DVO is 57,35,000/-. Thus, the appreciation of the property is

estimated at 79% within a span of 2 years. [Rs. 32,09,000 + (Rs. 32,09,000 X 79%) = Approx. Rs.57.44 lakhs]

- (iv) The market value determined by the Ld. State Stamp Valuation Authority (SSVA) which is adopted by the Ld. AO for computing the STCG by invoking the provisions of section 50C of the Act is Rs. 80,25,000/-. Thus, the appreciation in value of the property determined by the Ld.SSVA and adopted by the Ld. AO is 150%. [Rs. 32,09,000 + (Rs. 32,09,000 X 150%) = Approx. Rs.80.22 lakhs].

9. From the above, it is apparent that it would not be possible or reasonable to estimate the increase in the market value of the property at the time of the sale of the property by 150% or 79% within a span of two years especially when there is no evidence on record to suggest that the locality underwent massive transformation. Further, there is nothing on record to suggest that the assessee had purchased the property below the market value of Rs. 32,09,000/- within the period of 2 years from the date of sale. In this situation, in order to address the issue simpler and to render speedy justice, I am of the considered view that the reasonable estimation of the appreciation of the property within the span of 2 years may be adopted at 35% from the acquisition cost which works out to approximately Rs. 43 lakhs [32,09,000 + (Rs.

32,09,000 X 35% = Approx. Rs. 43 lacks], which can be considered as the deemed full value of the consideration received or accrued to the assessee for the purpose of determining the short-term capital gain by invoking the provisions of Section 50C of the Act. Therefore, I hereby direct the Ld. AO to compute the STCG of the assessee by treating the market value of the property invoking the provisions of section 50C of the Act at Rs. 43 lakhs instead of Rs. 57,35,000/- sustained by the Ld.CIT(A). It is Ordered accordingly.

10. In the result the appeal of the assessee is partly allowed as indicated hereinabove.

Pronounced in the open Court on 27th August, 2019.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 27th August, 2019

OKK

Copy to:-

- 1) Sri Venkat Ramana Reddy Vade C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No. 92, Jubilee Hills, Hyderabad – 500 096.
- 2) ITO, Ward-15(2), Hyderabad.
- 3) The CIT(A)-7, Hyderabad
- 4) The Pr. CIT-7, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File