

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 1208/Hyd/2018  
Assessment Year: 2011-12

Sujatha Atchutani,  
Hyderabad.

vs. Dy. Commissioner of  
Income-tax, Circle – 6(1),  
Hyderabad.

PAN – ABBPA 8757E

Appellant

Respondent

Assessee by: Shri M. Naga Deepak  
Revenue by: Shri Rajat Mitra

Date of hearing: 18/11/2019  
Date of pronouncement: 27/11/2019

**ORDER**

**PER P. MADHAVI DEVI, J.M.:**

This is an appeal of the assessee against the order of CIT(A) – 6, Hyderabad, dated 12/02/2018 for AY 2011-12.

2. Brief facts of the case are that the assessee, an individual, deriving income from capital gains and other sources, filed her return of income for the AY 2011-12 on 31/07/2011 admitting taxable income at Rs. 24,62,710. During the assessment proceedings u/s 143(3) of the Act, the assessee submitted that she has failed to admit income from house property amounting to Rs. 44,000/- and accordingly offered the same to tax. The AO added the same after allowing 30% of standard deduction and made addition of Rs. 30,800/-.

2.1 The AO also observed that the assessee has admitted the short term capital gains (STCG) of Rs. 11,21,991/- from the sale of inherited property at Guntur. The details of the transactions were called for and the assessee vide letter dated 20/10/2013 submitted the details regarding sale of two properties one at Guntur and the other at Hyderabad and also investment in house property at Hyderabad. The AO observed that assessee has filed revised computation vide letter dated 13/11/2013 wherein income other than capital gains was computed at Rs. 13,71,516/- and long term capital gains (LTCG) at Rs. 3,86,678/-. Further, vide letter dated 19/11/2013, assessee also explained the reasons that led to certain errors in the computation and requested to take the computation filed on 14/11/2013 into account and issue the resultant refund. The AO, however, observed that the assessee's claim of LTCG of Rs. 3,86,678/- instead of STCG of Rs. 11,21,991/- offered in the return of income is not validated by a revised return. He, therefore, did not entertain the claim by following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT, [2006] 284 ITR 323. He, therefore, computed the taxable income of the assessee at Rs. 24,93,510/- by adding the income from house property of Rs. 30,800/- to the returned income of the assessee of Rs. 24,62,710/- and brought it to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A), who accepted the assessee's contention that the assessee has inherited the property at Guntur and the gain on sale of such property is LTCG and not STCG as disclosed by the assessee in the original return of income.

3.1 Further the gain on sale of property at Hyderabad was also accepted by the CIT(A) to be LTCG, but, held that SRO

value of the property is to be taken as sale consideration u/s 50C and LTCG should be computed accordingly. Therefore, he issued a notice for enhancement of the LTCG on account of sale of Guntur property, as according to him, the cost of acquisition has been wrongly computed and also for adopting SRO value in respect of Hyderabad property. After hearing the assessee, he computed the LTCG on sale of Guntur property at Rs. 33,22,679/- and on sale of Hyderabad property at Rs. 11,43,849/- and thereafter allowed the claim of exemption u/s 54 of the Act to the extent of Rs. 34,50,250/-. Against this order, the assessee is in appeal before us by raising the following grounds of appeal:

*"1. The order ITA No. 1181/2014-15/132/CIT(A)-6, dated 12/02/2018 of the CIT(A) for the AY 2011-12, is contrary to law, facts, without fully appreciating the factual and the legal position in the proper perspective and in the circumstances of the case.*

*2. The learned CIT (Appeals-6), has erred in enhancing the assessment to the extent of Rs. 10,16,278/- under the deemed provisions of Section 50C of Income tax Act, on the ground of non-disclosure of capital gains in the returns, which was not the subject matter of Appeal before him.*

*3. The learned CIT (Appeals) has failed to follow the settled principle that legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field.*

*4. The learned CIT (A) ignored the fact that Deemed provisions under sec. 50C have been received by the transferor, is for the limited purpose of computation of capital gain u/s 48 and Investment of actual sale proceeds, not deemed consideration u/s 50C, relevant for exemption u/s 54.*

*5. The learned CIT(A) would have been given a square deal to appellants about their "bona fide/inadvertent/human error/ mere omission in the return of income for not claiming exemption under Section 54 on Hyderabad property in terms of CBDT Circular No. 14(XL-35) dated 11.04.1955.*

6. *The learned CIT (A), has taken advantage of mistake is committed due to professional advice/A.R miss representation considering only Land value as on 01.04.1981 and did not include the construction value and additions for inherited Guntur Property.*

7. *The learned CIT(A) has erred on the fact that the Government of Andhra Pradesh has substantially increased the fair market value of the property for levy of stamp duty increased within a short span of 1 month for Hyderabad Property during the material period.*

8. *The learned CIT(A), ignored the fact that A.O. rejected revised computations of the Appellant would have been given a square deal from the Department on the basis of CBDT Circular No.114 XL-35 of 1955, dated 11.05.1955*

9. *The learned CIT(A) failed to appreciate that having regard to law and the facts of the case the Appellant has not committed any concealment of income in terms of section 271(1)(c) of the 1. T. Act, 1961*

10. *The Appellant craves leave to file additional grounds/arguments at the time of hearing.”*

4. Ld. Counsel for the assessee while reiterating the submissions made before the authorities below submitted that the property at Guntur was not an open plot, but, there was a structure thereon, but the CIT(A) while computing indexed cost of acquisition has considered the value of plot only and has not given any weightage to the building thereon. Therefore, according to him, computation of cost of acquisition is erroneous. Thus, he submitted that the issue should be set aside to the file of AO for recomputing the cost of acquisition with respect to Guntur property and exemption u/s 54 should be allowed to that extent as well.

5. Ld. DR was also heard.

6. Having regard to the facts of the case and material on record, it is observed that CIT(A) has accepted the capital

gain on sale of Guntur property to be LTCG. Having held so, he ought to have correctly computed the cost of acquisition with the value of land as well as building thereon. Since the value of the building has not been considered as cost of acquisition, we deem it fit and proper to remand the issue to the file of the AO with a direction to recompute the capital gains on sale of Guntur property by taking into consideration the value of the land as well as the building thereon and exemption u/s 54 shall be allowed on such LTCG. Accordingly, the grounds raised by the assessee on this issue are treated as allowed for statistical purposes.

7. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 27<sup>th</sup> November, 2019.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Hyderabad, dated 27<sup>th</sup> November, 2019.

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Copy forwarded to:

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2. *DCIT, Circle - 6(1), Hyderabad*
3. *CIT(A) – 6, Hyderabad*
4. *Pr. CIT - 6, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

