

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

AND

Shri A. Mohan Alankamony, Accountant Member

ITA No.110/Hyd/2019		
Assessment Year: 2010-11		
Shri Ravinder Reddy Katta Warangal PAN:APHPK9602E (Appellant)	Vs.	Income Tax Officer Ward-3 Warangal (Respondent)
Assessee by:	Sri G. Manikya Prasad	
Revenue by:	Smt. K.J. Divya, DR	
Date of hearing:	26/11/2019	
Date of pronouncement:	29/11/2019	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-3, Hyderabad, dated 15.11.2018.

2. Brief facts of the case are that the assessee is an individual. The AO received information that the assessee has sold a house property on 2.6.2009 for a sale consideration of Rs.10,92,000/- while the market value of the property as per the SRO Data is Rs.16,09,500/-. Therefore, he was of the opinion that the provisions of section 50C of the Act, are applicable and the capital gain was chargeable to tax and since it has escaped the assessment, he issued a notice u/s 148 of the I.T. Act. However, the assessee did not respond to the notice and therefore, the AO completed the assessment based on the material available before

him and brought a sum of Rs.13,70,525/- to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) along with additional evidence and also raised an additional ground. The CIT (A) however, did not admit the additional ground filed by the assessee holding it to be an afterthought and seeking regularization of a belatedly filed return of income. He, therefore, dismissed the assessee's appeal and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

"1 . The Appellant submits that the learned C.I.T (Appeals) failed in not considering the Additional grounds of Appeal in proper perspective.

2. The Appellant submits that the Return of Income filed in response to the letter/notice and the Additional Grounds filed under Rule 46 A of the Income Tax Rules ought to have been considered by the learned C.I.T. (Appeals).

3. The learned C.IT. Appeals erred in stating that the return filed is a belated return and not filed in response to formal notice which is not true as per record.

4. The Appellant submits that the Assessing Officer failed to take cognizance of the Return of Income filed which is on the record of the Department before completing the assessment U/s 144.

5. The Appellant prays that the Assessing Officer may be directed to consider the Return of Income filed in response to the formal letter in completing the assessment.

6. The Appellant submits that the courts have held the correct income should be taxed and technicalities should not be hindrance to allow relief to the tax payer.

7. The Appellant submits that in assessment u/ s t44 all the information has to be taken into consideration and Assessing Officer failed to take the information/return with department filed in response to the Notice.

8. The Appellant on the grounds prayed above or any other grounds that may be urged at the time of hearing

prays to grant exemption claimed U/s 54 of the I.T. Act considering the return of income filed by the Appellant”.

3. The learned Counsel for the assessee submitted that, though he had filed a belated return, due to ill health, he could not attend to the notice of the AO and furnish the requisite information. He submitted that the assessee was eligible for exemption of the capital gain u/s 54 of the Act and all such evidence was filed before the CIT (A), but without considering the merits of the assessee's claim, he has dismissed the assessee's appeal and therefore, prayed for remand of the issue to the file of the AO/CIT (A).

4. The learned DR, however, submitted that the assessee failed to appear before the authorities below and the return filed by the assessee is belated and therefore, the claims made therein cannot be considered.

5. Having regard to the rival contentions and the material on record, we find that the assessee could not appear before the AO for the reasons of ill health and before the CIT (A) the assessee has filed all the relevant details. Considering the assessee's contention that he has a case and he has a strong point on merits and that he was eligible for exemption from capital gain tax u/s 54 of the Act and in the interest of justice of only, the order of the CIT (A) is set aside and the matter is remanded to the file of the AO with a direction to consider the claims made by the assessee in the return of income filed by the assessee and also the claim of exemption u/s 54 of the I.T. Act.

6. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 29th November, 2019.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2019.

Vinodan/sps

Copy to:

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C.As, H.No.11-26-53, Sudharma Buildings, MG Road, Warangal
- 2 ITO Ward-3 Income Tax Office, Station Road, Warangal
- 3 CIT (A)-3 Hyderabad
- 4 Pr. CIT – 3 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order