

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

ITA No. 357/Hyd/2019
Assessment Year: 2011-12

Mohammed Aslam vs. Income-tax Officer,
Shareef, Secunderabad. Ward – 10(5), Hyderabad.

PAN – DTDPS 1318 N

Appellant

Respondent

Assessee by: Shri B. Shanthi Kumar
Revenue by: Shri Nilanjan Dey

Date of hearing: 11/03/2020
Date of pronouncement: 30/04/2020

ORDER

This is assessee's appeal for the AY 2011-12 against the order of CIT(A) – 6, Hyderabad, dated 12/11/2018.

2. Brief facts of the case are that the assessee, an individual, did not file any return of income for the AY under consideration. Subsequently, the department received specific information that vide document No. 1320/2010 registered at SRO, Banjara Hills, assessee has sold an immovable property at Gulshan Colony, bearing Municipal No. 8-1-402/B/B, admeasuring 197 sq.yds. with built-up area of 100 sq.ft. on 16th April, 2010 for a sale consideration of Rs. 20,00,000/- as against SRO value of Rs. 29,85,000/-. Since the assessee did not file the return of income offering capital gain arising out of the above transaction to tax, the AO, believing that there is

an escapement of income chargeable to tax, issued a notice u/s 148 of the Act. In response to the same, the assessee submitted that the property in question was already sold to Shri Syed Waliullah Hussaini and in support of the same, a copy of an unregistered Agreement of Sale-cum-GPA was filed. The AO, however, observed that the said agreement was neither signed by witnesses nor was it registered at SRO. He, therefore, did not accept that there is an agreement of sale and asked the assessee to furnish copies of registered agreement of sale-cum-GPA, and Special Power of Attorney registered at a Stamp Registration Authority. However, there was no response from the assessee. The AO, therefore, computed the capital gains on account of transfer of property at Rs. 28,52,580/-, by taking the SRO value of the property at Rs. 29,85,000/- and after reducing the indexed cost of acquisition as per SRO rates at Rs. 1,32,420/- he brought the capital gains of Rs. 28,52,580/- to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), but, since none appeared for the assessee before the CIT(A), the CIT(A) confirmed the order of AO and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

"1. The AO erred in assessing to tax Long Term Capital Gain of Rs.28,52,580/-."

4. The Id. counsel for the assessee prayed that the assessee should be given a fair opportunity to explain his case. He also submitted that a petition seeking admission of additional evidence, which is a copy of a registered agreement of sale cum general power of attorney vide document No. 3154/2009 dated 7/9/2009 stating as under:

"2. The assessee has filed copy of Agreement of Sale cum General Power of Attorney Document No.3154/2009 registered with District Registrar, Hyderabad South, in support of his contention as part of the paper book filed by the assessee. It is submitted that this document being filed before the Hon'ble Income Tax Appellate Tribunal as additional evidence constitute supporting evidence to show that the assessee has sold his house property during the Asst. Year 2010-11.

3. The assessee submits that the sale deeds could not have been filed before the lower authorities since the same were not available with the assessee and alternatively the assessee produced unsigned draft document in proof of sale of his property. When immovable property is transferred, a draft sale deed is prepared. Assessee possessed copy of such draft sale deed. When the transfer is effected, the sale deed is registered and collected by vendee. Unfortunately, assessee could not obtain copy of the registered document and produce before AO. At the appellate stage also assessee could not produce the registered document. This is due to the fact that the CIT(Appeals) issued posting notice dated 25.10.2018 posting the case for hearing on 09.11.2018 and passed the order on 12.11.2018. In that short time assessee could not produce the copy of the registered document. Assessee seeks excuse for his failure to obtain copy of the registered document and produce the same before the departmental

authorities. Hence the deeds are being filed before the Hon'ble ITAT as additional evidence.

4. The assessee prays that the documents filed in paper book may kindly be admitted as additional evidence and taken into account while adjudicating the appeal."

5. After hearing the Id. DR and considering the submissions of the Id. counsel for the assessee and the additional evidence filed by the assessee, I find that this document goes to the root of the matter and therefore, in the interest of justice, it is admitted and I deem it fit and proper to remand the matter to the file of the AO for de-novo consideration in accordance with law after giving a fair opportunity of hearing to the assessee in the matter. The assessee is directed to cooperate with the AO for expediting the assessment.

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

Pronounced in the open court on 30th April, 2020.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 30th April, 2020.

Kv

Copy forwarded to:

1. *Mohammed Aslam Shareef, 9-3-99, Rezimental Bazar, Secunderabad.*
2. *ITO, Ward – 10(5), Hyderabad*
3. *CIT(A) - 6 Hyderabad.*
4. *Pr. CIT - 6, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

S.No.	Description	Date	Intls	
1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3.	Draft proposed & placed before the second Member			JM/AM
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5.	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8.	Date on which file goes to the Head Clerk			
9.	Date of Dispatch of order			