

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

**BEFORE SHRI P. MADHAVI DEVI, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCE)**

**ITA No. 959/Hyd/2018
Assessment Year: 2011-12**

Late Menthula Srinivasa Rao, vs. Income-tax Officer,
Rep. by L/R Smt. Menthula Naga Ward – 1, Khammam
Rani, Khammam

PAN – ABMPM 7805L

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Smt. K.J. Divya

Date of hearing : 18-06-2020
Date of pronouncement : 18-06-2020

ORDER

This is an assessee's appeal for the AY 2011-12 against the order of CIT(A) – 7, Hyderabad, dated 14/03/2018.

2. This case was taken up for hearing on 18-06-2020 through video conferencing and both the parties were heard.

3. Brief facts of the case are that the assessee, an individual, filed his return of income for AY 2011-12 on 30/09/2011 declaring total income of Rs. 2,77,060/-. The assessment was completed on 07/02/2014 u/s 143 (3) of the IT Act raising a demand of Rs.

1,77,190/-. Assessee went in appeal before the CIT(A), who remanded the matter to the file of the AO and the consequential order dated 08/02/2016 was also passed.

3.1 Thereafter, on verification of the information received from I&CI, Guntur, the AO noticed that the assessee has sold an immovable property i.e. 4298 sq.yds in Pedatanda Vilage Khammam Rural Mandal, Khammam District vide document No. 268 of 2011 dated 31/01/2011 for a consideration of Rs. 25,80,000/- and further that the assessee had acquired this property from Shri Gandluru Siva Pothula Veera Reddy, Hyderabad by way of GPA-cum-Sale on 09/06/2005 vide Doc. No. 1687/2005. Since the assessee has not offered capital gains from the sale of the property, a notice u/s 148 was issued to the assessee. In response to the same, it was informed by the assessee's wife that the assessee had expired on 25/05/2014. Therefore, the assessee's wife was brought on record and notices were issued to her as legal heir of the assessee. She submitted that she did not have any knowledge about the business activities of her husband, therefore, she is not in a position to submit any details. The AO, therefore, completed the assessment u/s 144 read with section 147 of the Act observing that the assessee had acquired property for Rs. 2 lakhs and has thereafter sold the property for a sum of Rs. 25,80,000/-. Thus, he computed the LTCG at Rs. 23,60,000/- and brought it to tax.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the AO and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

1) The order of the learned Commissioner of Income Tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income Tax (Appeals) erred in deciding the appeal without providing proper opportunity to the appellant.

3) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that no sale was effected by Late Sri Menthula Srinivasa Rao and, therefore, no capital gain arose to the appellant.

4) Both the Assessing Officer and learned Commissioner of Income Tax (Appeals) ought to have seen that the Document No.268/2011 dated 31.01.2011 was executed by Sri M.Srinivasa Rao as a power of Attorney holder of Sri Gandluru Sivapotuluru Veera Reddy and not on his own.

5) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that no sale was effected by the appellant and, therefore, no capital gain arose to the appellant.

6) Any other ground/ grounds that may be urged at the time of hearing.”

5. The Id. Counsel for the assessee reiterated the submissions made before authorities below while, the Id. DR supported the orders of the authorities and submitted that in GPA-cum-Sale Agreement, it is clearly stated that the GPA was executed in favour of the assessee after receiving a sum of Rs. 2 lakhs from him towards sale consideration. Therefore, according to him, the assessee has become the owner of the property and thereafter has sold the property and

therefore, he ought to have offered the capital gains to tax and the AO has rightly brought the capital gains to tax in the hands of the assessee. The Id. Counsel rebutted the findings of the AO and CIT(A) and submitted that since the assessee was not alive and his wife being a legal heir was not aware of the actual business activity of her husband, requested that the department be directed to call the Vendor and examine him with regard to receipt of sale consideration and prayed therefore that the matter be remitted to the file of the AO for examining the Vendor in the interest of justice.

6. Having regard to the rival contentions and material on record, I find that the assessee has expired before the reassessment proceedings could be initiated and the legal heir of the assessee, who is not conversant with the facts of the case, has been brought on record. On examination of the GPA-cum-sale agreement, the GPA holder/Vendee, has already paid sale consideration of Rs. 2 lakhs. Since he is not alive, the only other party, who can confirm the transaction is the Vendor i.e. Shri Gandluru Siva Pothula Veera Reddy. Therefore, in the interest of justice, I deem it fit and proper to remit the issue to the file of the AO with a direction to summon and examine the Vendor Shri Gandluru Siva Pothula Veera Reddy and if he confirms that the property was sold to the assessee for a sum of Rs. 2,00,000/-, only then, the LTCG shall be brought to tax in the hands of the assessee and if he submits that the document was only a GPA, then, no addition shall be made in the hands of the assessee.

With these directions, the grounds raised by the assessee 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 18th June, 2020

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMEBR

Hyderabad, Dated: 18th June, 2020

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- 1) *Late. Menthula Srinivasa Rao, rep. by L/R. Smt. Menthula Naga Rani, H.No. 4-5-55, SSRJ College Road, Bejjalavari Thota, Khammam.*
- 2) *ITO, Ward – 1, Ayakar Bhavan, Rajivgunt, Khammam.*
- 3) *CIT(A) - 7, Hyderabad*
- 4) *Pr. CIT – 7, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File.*

	Description	Date	Intls	
1.	Draft dictated on			
2.	Draft placed before author			
3	Draft proposed & placed before the second Member			
4	Draft discussed/approved by second Member			
5	Approved Draft comes to the Sr.P.S./PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			