

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(THROUGH VIRTUAL CONFERENCE)**

The assessee in ITA No. 622/Hyd/2017 is the assessee, who is represented by his LR, while, the assessee in ITA No. 623/Hyd/2017 is the son of the assessee in ITA No. 622/Hyd/2017. The appeals are filed against the orders of CIT(A)

– 2, Hyderabad, dated 30/01/2017 in the case of each of the assessee.

2. Brief facts of the case are that late Shri Dhanagiri had executed a registered sale deed No. 9521 of 2007 dated 11/10/2007 for a consideration of Rs. 1,20,95,000/-. The AO received this information and verified the records to find that the assessee has not filed any return of income offering capital gains from the above transaction to tax. Therefore, he initiated proceedings u/s 147 of the Act by issuing a notice u/s 148 of the Act on 03/03/2015. Since there was no response to the said notice, notice u/s 142(1) was issued on 10/06/2015 calling for information relating to the transaction done by the assessee during year under consideration. In response to the said notice, legal heirs of the assessee attended from time to time and submitted the information called for. Legal heirs submitted that registered document No. 9521 dated 11/10/2007 was executed on the advice of the Advocate to deal with the court cases and that they have not received any sale consideration towards the same. It was submitted that there was a title dispute in respect of the said land, which was pending in the courts and that neither the assessee nor the purchaser was in possession of the suit land and that the third party was in possession of the said land. It was, therefore, prayed that the proposed action u/s 147 be dropped.

Further, vide letter dated 22/02/2015, it was submitted that “original owner of the land was late Shri Ratan Lal and after his demise, his legal heirs were Hari Prasad and Kishan Lal. After the demise of Shri Ratan Lal, the legal heirs inherited the property equally and after the death of Shri Hari Prasad, his legal heirs sold 30 guntas vide sale deed dated 25/08/2005 and the legal heirs of Mr. Balamukund Prasad sold their claimed share of 29 guntas vide sale deed dated 24/11/2008. It was submitted that the occupants of the said land being D. Vittal and D. Mallesh sons of late D. Balaiah executed registered agreement of sale cum GPA dated 11/10/2007 in favour of E. Ashok, who is an advocate, though there was no absolute title for the persons involved in the transaction. As the matter of title was pending before the High Courts and the assesseees are only occupants, it cannot be said that the assesseees disposed off the property with absolute ownership or right and that the assesseees did not receive any consideration from the so called transferee and the document was brought into existence only to strengthen their ownership with regard to ownership. The AO was not convinced with the said contention of the assessee and he observed that as per the registered agreement of sale cum GPA, the assessee had sold the property to E. Ashok for a consideration of Rs. 1,20,95,000/- and has also mentioned that they have given peaceful possession of the agricultural land having the recitals in the agreement and

capital gains have arisen on account of the said transaction. Since the assessee did not offer the capital gains to tax, the AO computed the capital gains accordingly, and brought it to tax.

3. Aggrieved, the assessees preferred appeals before the CIT(A) stating that the agreement of sale cum GPA dated 11/10/2007 has subsequently been cancelled vide registered document dated 25/04/2016 and therefore, levying of tax in respect of alleged capital gain is not sustainable. Assessee also filed copies of Plaints and the cancellation deed before the CIT(A). However, the CIT(A) was not convinced with the assessee's submissions and has confirmed the order of AO and the assessee is in second appeal before us by raising the following grounds of appeal, which are common in both the appeals:

"1. The order of the Hon'ble CIT(A) is erroneous in the law as well as on facts.

2. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

3. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in initiation of action u/s.147 of the IT Act without having any basis and therefore the same ought to have been quashed.

4. The Hon'ble CIT(A) ought to have observed that the land sold was agriculture land and therefore the same would not come into the definition of capital asset attracting long term capital gain tax.

5. *The Hon'ble CIT(A) ought to have observed that there was no real sale transaction or acceptance of consideration and therefore there was no tax liability in respect of the said transaction.*

6. *The Hon'ble CIT(A) ought to have observed that the document dated 11.10.2007 was executed to safeguard the interest of the transferor and as there is multiple litigation with regard to title there cannot be any gain liable to tax.*

7. *The Hon'ble CIT(A) ought to have observed that the said document dated 11.10.2007 was subsequently cancelled vide registered document dated 25.04.2016 and therefore levying of tax in respect of alleged capital gain in the light of document 11.10.2007 is not sustainable and therefore liable to be deleted.*

8. *The Hon'ble CIT(A) ought to have taken into consideration the observations of Additional District Judge, R R Dist. contained in the order dated 26.04.2016 and ought to have concluded that the assessee was not having any legal title over the property mentioned in the document dated 11.10.2007 and therefore ought to have deleted the addition.*

9. *Any other ground will be raised at the time of hearing."*

4. Having regard to the rival submissions and on perusing the material on record, we find that the assessment was completed on 24/02/2016, whereas, the registered agreement of sale cum GP was allegedly cancelled on 25/04/2016 i.e. after the assessment order has been passed. Therefore, the assessee filed the same before the CIT(A) along with documents relating to court cases. However, we find that the CIT(A) has neither called for any remand report nor has he verified the documents so filed by the assessee, but, has summarily rejected the assessee's contentions. Even the proceeding of the Lok Adalat is dated

26/04/2016, which is after passing of the assessment order. As for the Memorandum of Compromise filed before the Lok Adalat, the assesseees are shown at Sl. No. 13 & 14 of the respondents and at para 9 thereof, it mentioned that they have no right in the property and that they have executed agreement of sale cum GPA on 11/10/2007 registered as document No. 9521/2007 in favour of defendant No. 15 i.e. E. Ashok without delivery of possession and it is also mentioned that agreement of sale cum GPA executed in favour of Sr. No. 15 has already been cancelled through deed of cancellation dated 25/04/2016 registered as document No. 269/2016 of 2016 and as such defendant Nos. 13 to 15 have no right whatsoever in the property. Since these documents were not considered by the CIT(A), we deem it fit and proper to remit the issue to the file of the AO for reconsideration of the issue in the light of these documents. If these documents are found to be genuine and it is found that the assessee have no right whatsoever in the property and therefore, they are not the owners of the property, there cannot be any liability of capital gains in the hands of the assesseees from the sale of such property. The AO shall consider these facts before completing the assessment. Accordingly, the grounds raised in both the appeals are treated as allowed for statistical purposes.

5. In the result, both the appeals of the assesseees are allowed for statistical purposes.

Order pronounced in the open court on 5th October, 2020

**Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER**

**Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, Dated: 5th October, 2020
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Copy to :

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2. ITO, Ward – 8(2), Hyderabad.
3. CIT(Appeals) - 2, Hyderabad.
4. The Pr.CIT - 2, Hyderabad.
5. D.R. ITAT, Hyderabad.
6. Guard File.

S.No.	Details	Date
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. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	

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*ITA Nos. 622 & 623/Hyd/2018
Mallesh and Vittal Sulige*

10	Date of Dispatch of order	
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