

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B – SMC' BENCH : Hyderabad**

(Through Video Conference)

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 1649/Hyd./2017
A.Y. 2008-09**

Mohd. Abdul Hameed
D.No.2-4-663, Sundernagar
Kachiguda
Hyderabad

vs.

ITO, Ward 4 (3)
Hyderabad

PAN: AECPM1492C

(Appellant)

(Respondent)

For Assessee: Smt. S. Sandhya, A.R.

For Revenue: Sh. A. Venkata Rao, D.R.

Date of Hearing : 01/10/2020

Date of Pronouncement 08/10/2020

ORDER

This is assessee's appeal for the A.Y. 2008-09 against the order of Ld.CIT(A)-1, Hyderabad dated 08.06.2017.

This appeal has been taken up for hearing through video conference on 01.10.2020 and both the parties were heard.

2. Brief facts of the case are that the assessee, an individual, deriving income from commission filed his return of income on 03.06.2008 for the AY 2008-09 admitting total income of Rs.1,35,593/-. Thereafter, the Assessing Officer (A.O.) received information that the assessee has sold a property vide Doc.No.72 dated 01.07.2008 for a consideration of Rs.10,00,000/- during the F.Y. 2007-08 relevant to A.Y. 2008-09 as against

the SRO value of the property at Rs.66,98,240/-. Since the provisions of Sec.50C of the Income Tax Act, 1961 were applicable to the case the AO believed that there was an escapement of income and accordingly he issued a notice u/s 148 of the I.T.Act, 1961.

2.1. The assessee appeared before the AO and provided the relevant information called for. The assessee submitted that he had sold the immovable property in the capacity of real estate commission agent on 07.01.2008 vide document no.72/2008 as a GPA Holder. The A.O. examined the documents and found that the assessee had entered into an Agreement of sale cum General Power of Attorney with one Mr. Mohd. Younus on 28.11.2005 for transfer of a part of immovable property bearing H.No.1-4-341/1 and 1-4-342 admeasuring 434 sq.yards out of 721 sq.yards and as seen from the sale deed dated 07.01.2008, the assessee himself represented the vendor i.e. Mr. Mohd. Younus in the capacity of AGPA holder and not GPA holder. AO also examined Mr.Mohd. Younus on oath on 21.12.2015 who stated that he had sold the property in 2005 through agreement of sale along with possession for Rs.9,50,000/- and that he had also reflected the same in his ITR for AY 2006-07 and furnished copies also before the AO.

2.2. Thereafter, the assessee vide letter dated 23.12.2015 requested for referring the said property for valuation u/s 55A of the Act for arriving at the actual value of the property for adoption and for calculating the capital gain. Accordingly the property valuation was referred to the Valuation Cell and the Asst. Valuation Officer submitted his report estimating the fair market value of the property at Rs.35,85,000/- after considering the factors like locality, comparable sale, statement of objections of the assessee etc. Further vide letter dated 29.03.2016 assessee filed a No Objection letter for adopting the value as per Valuation Officer's report and requested to allow expenditure incurred in connection with purchase of the property. However, since the assessee failed to substantiate the claim for expenses for purchase of the property, the AO allowed part of the expenditure claimed by the assessee and arrived at short term capital gain of Rs.17,95,400/-.

2.3. Aggrieved, assessee preferred an appeal before the CIT(A) claiming that the assessee had paid Rs.9,50,000/- to get the tenants vacated and further a commission of Rs.3,47,000/- was also paid to agents at the time of sale. He further submitted that there were various disadvantages to the plot which was sold by the assessee and therefore, the value of the property should not be taken at Rs.35,00,000/- but it should be taken as Rs.29,59,780/-. The CIT(A), however, confirmed the order of the AO.

3. The Assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

- 1) *The order of the Ld.CIT(A) is erroneous both on facts and in law.*
- 2) *The Ld.CIT(A) erred in confirming the disallowance of the payments made by the appellant to the tenants for vacating the premises of Rs.9,50,000/- and commission paid to the third parties of Rs.3,47,000/-.*
- 3) *The Ld.CIT(A) erred in relying on the valuation report of the Assistant Valuation Officer without considering the explanation of the appellant that the report submitted is not correctly prepared.*
- 4) *Any other ground/grounds that may be urged at the time of hearing.*

4. Ld.Counsel for the assessee Sri S. Rama Rao submitted that the property was sold for a consideration of Rs.10,00,000/- only and as there was a grave yard beside the plot of land and also factory on the other side and it was in an area with a very narrow road. Therefore, according to him there were various disadvantages to the property and as such assessee had to sell the property at a lower price. Ld.Counsel for the assessee further submitted that the expenses incurred by the assessee for vacating the property etc. also should be allowed while arriving at the Fair Market Value of the property u/s 55A of the I.T.Act, 1961.

4.1. The Ld.DR, on the other hand, supported the orders of the authorities below and submitted that it was at the request of the assessee that the property was referred to the Valuation Officer and the AO and the CIT(A) have adopted the value as per the Valuation Officer's report after taking into

consideration all the disadvantages pointed out by the assessee. Therefore, the Ld.DR submitted that no interference is called for on the issue.

5. Having regard to the rival contentions and the material placed on record, I find that the SRO value of the property was around Rs.62,98,240/- where as the Valuation Officer has valued the property at Rs.35,85,000/- after taking into account all the disadvantages pointed out by the assessee. The assessee has filed the affidavits of certain persons confirming the receipt of money from the assessee for vacating the premises. Taking of the facts into consideration, and in the interest of justice, I direct the A.O. to adopt the value of the property at Rs.30,00,000/-, thereafter allow the expenditure incurred by assessee which has already been allowed in the assessment order and to recompute the short term capital gain. With regard to the claim of the assessee on expenditure of Rs.9,50,000/- alleged to have been incurred for getting the premises vacated and the commission payment of Rs.3,47,000/- the same is not believable as according to the assessee, he has sold the property only for Rs.10,00,000/- and for such a property, he could not have paid such huge amounts. The higher value for the property is adopted by applying the provision of Section 50C of the Act. Therefore, these claims are not allowable.

6. In the result, assessee's appeal is partly allowed.

Order pronounced on 08th October, 2020.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Dated: 08th October, 2020.

*gmv

Copy forwarded to:

1. Sri Mohd. Abdul Hameed, D.No.2-4-663, Sunder Nagar, Kachiguda, Hyderabad.
2. ITO, Ward 4 (3), Hyderabad./ACIT, Range 4, Hyderabad
3. CIT(A)-1, Hyderabad
4. Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.