

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

(Through Video Conference)

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 1243/Hyd./2019
A.Y. 2008-09**

Smt. Koppolu Suguna
H.No.3-3-8/1, Bagh Ameer
Kukatpally
Hyderabad

vs.

ITO, Ward 11 (5)
Hyderabad

PAN: CPVVK7532M

(Appellant)

(Respondent)

For Assessee: Sh. D.L. Narasimha, A.R.
For Revenue: Sh. A. Venkata Rao, D.R.

Date of Hearing : 01/10/2020
Date of Pronouncement 12/10/2020

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 was taken up for hearing through video conference on 01.10.2020 and both the parties were heard.

At the outset, it was noticed that there is a delay of 13 days in filing of the appeal and the assessee has filed an application along with affidavit for condonation of delay. Being satisfied with the reasons given in the Application and as the Ld.DR did not seriously oppose the condonation of delay, the delay is condoned and I proceed to decide the appeal as under.

2. Brief facts of the case are that the assessee is an individual having no independent source of income. The AO received information that the assessee has sold a property at plot no.2887 admeasuring 500 sq.yards situated at Shankar hills colony of Vattinagulapally Village and Grampanchayat, Rajendra Nagar Mandal, R.R.District vide doc.no.801 of 2007 dated 22.12.2007 for a consideration of Rs.4,00,000/-. When verified from the office records, the AO observed that the assessee had not filed her return of income for the relevant A.Y. Therefore, AO issued notice u/s 148 of the I.T. Act, 1961 and also notice u/s 142(1) calling for information. During the assessment proceedings, assessee submitted documents in support of the indexed cost of acquisition and indexed cost of improvement and also transfer expenses. Thereafter, the AO after allowing the indexed cost of acquisition (Rs.4,40,000/-), indexed cost of improvement (Rs.5,03,771/-) and also transfer expenses of Rs.1,50,000/-, arrived at long term capital gain of Rs.11,36,229/-. The AO observed that the market value of the property as on the date of sale was Rs.27,50,000/- and therefore the provisions of S.50C were applicable. AO, accordingly, adopted the said value as deemed consideration and computed the income of assessee.

2.1. Aggrieved, assessee preferred an appeal before the CIT(A) stating that the property was actually sold for Rs.4,00,000/- only because of various deficiencies such as the property being located in a hilly area without approach roads and basic amenities, and as there was no development activity due to the GO.Ms.No.111 dated 8th March,1996 prohibiting any development activity in the area. The assessee therefore requested the AO to refer the matter to the Valuation Officer (VO) to obtain the correct value of such land. The CIT(A) directed the AO to refer the matter to Valuation Officer and accordingly AO submitted Valuation report on 26.12.2018. On considering the valuation of the property by VO at Rs.15.13 lakhs, the CIT(A) directed the AO to adopt the same valuation in place of SRO value and work out the capital gain accordingly.

3. Aggrieved, by the order of CIT(A), assessee is in appeal before the Tribunal by raising the following grounds.

"1. The Order of the Learned Commissioner of Income Tax (Appeals) 1, Hyderabad passed for the Assessment Year 2008-09 in ITA. No. 0140/2016-17/ITO, Ward 11(5)/CIT(A)-1/HYD/2018-19 is erroneous both in law and also on facts of the case.
2. At the outset the assessee-appellant prays that the marginal delay of 13 days which took place in filing the present appeal before the Honourable Appellate Tribunal may kindly be CONSIDERED and the appeal may be entertained on consideration of the reasons recorded in the accompanying NOTARIZED AFFIDAVIT Dt. 07-08-2019.
3. Taking cognisance of the fact that there was no ISSUANCE AND SERVICE of the initial notice U/s. 143(2), which is MANDATORY, as established by the assessment record and such issue ~Y raised by the assessee in her letter dt. 06-03-2019 filed with the Appellate authority remain UNADJUDICATED, the impugned Order dt. 07-03-2019, cited SUPRA, may be VOID AB INITIO;
4. Also taking cognisance of the fact that the assessee-appellant OBJECTED to the identification of the Market value of the property at Rs. 15,13,000/- by the learned District Valuation Officer on various reasons incorporated in her explanatory reply dt. 06-03-2019 cited SUPRA, and such OBJECTIONS were not CONSIDERED and adjudicated by the Learned CIT (Appeals), the impugned order dt. 07-03-2019 may be DEVOID OF ANY MERIT AND THUS NOT SUSTAINABLE IN LAW;
5. Also giving due weight to the fact that the authorities did not identify and enforce the Long Term Capital Gains (LTCG) in identical cases, who disposed of their plots which are located in the same venture along with the assessee-appellant at the same point of time, Enforceability of the impugned LTCG liability against the assessee with reference to the Market value as laid down by Section 50C of the Income Tax Act on NOTIONAL BASIS and ignoring various objections raised by the assessee-appellant before the Learned Assessing Officer and also the Learned CIT(Appeals), may be against the RULE OF CONSISTANCY upheld by the judiciary in many-a-case, and thus the SAME MAY BE VOID IN LAW;
6. For these reasons and other reasons which may be advanced during the course of hearing of the appeal, It is humbly requested that the LTCG liability to the extent sustained by the Learned CIT (Appeals) may be ordered to be deleted in the interests of equity and justice and also to be in conformity with the provisions of law."

3.1. At the time of hearing, the Ld.Counsel for the assessee submitted that assessee is not pressing ground no.3 and also argued only on the valuation to be adopted for the property and did not raise any arguments with regard to any other grounds of appeal.

3.2. The Ld.Counsel for the assessee submitted that the assessee had given the sale instances of the surrounding plots but the VO has not considered the same and has not given proper weightage and discount to the various disadvantages pointed out by the assessee. He pointed out that analysis of the fair market value of the assessee was placed at page 48 of the paper book. He submitted that the VO has adopted the value of the property at Rs.3,025/-

per sq.yard which is very much higher as compared to the sale instances submitted by the assessee. He therefore prayed that the actual consideration received by assessee may be adopted for computation of capital gain.

3.3. The Ld.DR, on the other hand, supported the orders of CIT(A) and submitted that the assessee herself had requested the CIT(A) to refer the valuation of the property to the Valuation Officer and accordingly, the VO has submitted the report and only after considering the objections of the assessee at length, the CIT(A) had directed the AO to adopt the valuation arrived at by the VO, and therefore there is no case for the assessee for any further relief.

4. Having regard to the rival contentions and the material placed on record, I find that the assessee had filed its objections to the Valuating Officer which have been considered by the V.O. However, the V.O. has not referred to the sale instances filed by the assessee, but has taken the guideline value of the SRO for the relevant year. The assessee has filed sale instances at pages 60 to 90 and as seen therefrom the sale consideration mentioned therein for similar properties was around Rs.2,50,000/-. But I find that these sale instances were two to three years prior to the sale executed by the assessee. Therefore, they may not reflect the actual market value of the property as on the date of the sale. However, giving weightage to the sale instances, I deem it fit and proper to adopt the market value of the property at Rs.2,000/- per sq.yard and direct the AO to recompute the long term capital gain by adopting the same and bring the long term capital gain to tax after allowing the other relevant expenditure and exemption u/s 54F of the I.T.Act, 1961.

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

Order pronounced on 12th October, 2020.

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

Dated: 12th October, 2020.

*gmv

Copy forwarded to:

1. Smt. Koppolu Suguna, H.No.3-3-8/1, Bagh Ameeri, Kukatpally, Hyderabad 500 072
2. ITO, Ward 11 (5), Hyderabad./ACIT, Range 11, Hyderabad
3. CIT(A)-1, Hyderabad
4. Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.