

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A-SMC" : HYDERABAD**

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

(THROUGH VIRTUAL CONFERENCE)

I.T.A. No. 1210/HYD/2019
Assessment Year: 2011-12

Miryala Exports & Imports Pvt.
Ltd., Hyderabad.

Income-tax Officer,
Vs Ward – 16(4), Hyderabad.

PAN – AACCM9283E

(Appellant)

(Respondent)

For Assessee : Shri P. Murali Mohana Rao
For Revenue : Shri Sunil Kumar Pandey

Date of Hearing : 23-11-2020
Date of Pronouncement : 25-11-2020

ORDER

This is an appeal of the assessee for the AY 2012-13 against the order of CIT(A) – 4, Hyderabad, dated 19/06/2019.

2. Brief facts of the case are that the assessee firm had not filed its return of income for the AY 2011-12. The AO received information that the assessee had sold an immovable property on 31/12/2010 vide document No. 3879/2010 for Rs. 5,00,000/- whereas the value of the said property as per the SRO is Rs. 50 lakhs. Therefore, a notice u/s 148 of the Act was issued to the

assessee, in response to which, the assessee filed its return of income on 09/05/2018 admitting Nil income. Thereafter, though, notices were issued to the assessee, none appeared for the assessee. Therefore, the AO proceeded to compute long term capital gains (LTGC) by applying provisions of section 50C of the Act and did not allow cost of acquisition and improvements for lack of evidence.

3. Aggrieved, the assessee filed an appeal before the CIT(A), but, did not appear before him nor filed any evidence. Therefore, the CIT(A) confirmed the assessment order and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

"1. The order of the Id. CIT(A) is erroneous both on facts and in law.

2. The Ld. CIT (A) erred in dismissing the appeal.

3. The Ld. CIT (A) ought to have appreciated that the assessment ul s 147 r.w.s. 144 of the Act has been made without giving a reasonable opportunity of being heard to the appellant.

4. The Ld. CIT (A) erred in not adjudicating ground nos.5, 6, 7 & 10 taken before him.

5. The Ld. CIT(A) ought to have appreciated that there is no actual transfer of the impugned property and that there is no consideration received in this regard.

6. The Ld. CIT(A) ought to have appreciated that since the sale agreement is not fructified, there is no transfer within the meaning of section 2(47) of the Act.

7. The Ld. CIT (A) ought to have appreciated that the very ownership of the impugned land is in dispute as the Government has allotted the land to the landless poor people in whose physical possession the land is at resent.

8. Without prejudice to other grounds, the Ld. CIT (A) ought to have appreciated that no cost of acquisition has been considered by the Assessing Officer while computing the capital gains u/s 48 of the Act.

9. Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the Assessing Officer violated the provisions of section 50C(2) of the Act.

10. The appellant may, add or alter or amend or modify or substitute or delete and I or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

11. The AO ought to have appreciated the fact that Government has imposed prohibition on transfer of these lands under section 22A of Registration Act and directed concerned MRO and sub registrars not to entertain registration.

12. Without prejudice, the AO erred in making an addition of Rs.7,14,286/- u/s 50C of the Act towards difference in sale consideration mentioned in the agreement and the value adopted by the SRO, without appreciating the fact that SRO value cannot be considered as basis for making addition u/s 50C of the Act.”

4. The Id. counsel for the assessee submitted that the assessee may be given an opportunity to present its case before the AO as both the assessment as well as appellate orders are ex-parte the assessee.

5. The Id. DR, however, opposed the remand stating that the authorities below have given sufficient opportunity to the assessee.

6. Having regard to the rival contentions and material on record, I find that the assessment was completed u/s 144 by applying the provisions of section 50C of the Act and even cost of acquisition has not been allowed to the assessee while computing LTCG. Before the CIT(A), the assessee had explained in detail that the assessee has not received any amount in excess of amount admitted by the assessee as it was agricultural land, which was assigned by way of decree of Hon'ble AP High Court because of mutation and that the Government has imposed prohibition on these lands u/s 22A of Registration Act and directed concerned MRO/SRO not to entertain registrations. The CIT(A) has not decided the appeal on merits, but, has dismissed the appeal for non-appearance of the assessee. Though, the CIT(A) mentioned that number of opportunities were given and the assessee was absent, he has not recorded the dates of hearing on which the assessee did not appear. As per the Form No. 35, the appeal was filed on 29/01/2019 and the order of CIT(A) is dated 19/06/2019. Therefore, I am of the opinion that in the interest of justice, assessee should be given another opportunity to present its case. In view of the same, I remit the issue to the file of the AO with a direction to reconsider the issue de-novo in accordance with law. The assessee is directed to produce all the relevant

material before the AO to substantiate its case and cooperate with him for early completion of the assessment.

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

Order pronounced in the open court on 25th November, 2020.

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

Hyderabad, Dated: November, 2020.

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Copy to :

- 1. M/s Miryala Exports & Imports Pvt. Ltd., C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad – 82*
- 2. ITO, Ward – 16(4), Hyderabad.*
- 3. CIT(Appeals) - 4, Hyderabad.*
- 4. Pr. CIT – 4, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*