

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

(Through Video Conference)

Before Smt. P. Madhavi Devi, Judicial Member

**ITA Nos. 1701 & 1702/Hyd./2019
Assessment Year: 2010-11**

Sri Rajendra Oruganti
Warangal

vs.

ITO, Ward 5
Warangal

PAN: ADKPO8205A

(Appellant)

(Respondent)

For Assessee: Sri P. Vinod, Adv.

For Revenue: Sh. Sunil Kumar Pandey, D.R.

Date of Hearing : 05/01/2021

Date of Pronouncement : 06/01/2021

ORDER

Both are assessee's appeals for A.Y. 2010-11 against the order of CIT(A)-3, Hyderabad dated 25.10.2019 confirming the quantum addition made by A.O. and against the penalty levied by A.O. u/s 271(1)(c) of the Income Tax Act, 1961 and confirmed by the CIT(A) vide order dated 15.10.2019.

Both these appeals were taken up for hearing through Video Conference on 05.01.2021 and both the parties were heard.

2. Brief facts of the case are that the assessee is an individual. As per the information available on record, the AO observed that the assessee owned a piece of land along with another person and had entered into a Development-cum-General Power of Attorney Deed with M/s Laxmi Constructions vide registered document no.3817/2009 dated 31.07.2009

along with the other land lord Sri Oruganti Arjun. The AO observed that the market value of the transaction was stated at Rs.1,46,85,300/- and that the landlords share was 30% while the assessee's share was half of 30% i.e. 15%. He further observed that the assessee had acquired the land through a release (relinquishment) deed bearing no. 3657/1997 dated 20.11.1997 and therefore the Development agreement will attract capital gain tax. He observed that the assessee did not file his return of income admitting long term capital gain and therefore the case was reopened u/s 147 of the Act by issuing notice to the assessee u/s 148 of the Income Tax Act, 1961. Though several notices were issued to assessee, none appeared and therefore, the AO was constrained to complete the assessment ex parte the assessee and estimated the long term capital gain of the assessee at Rs.19,78,366/- and brought it to tax.

2.1. Aggrieved, assessee preferred appeals before the CIT(A), but since none appeared before the CIT(A), the CIT(A) confirmed the assessment order and also held that the appeal was not maintainable since assessee did not file any return of income. As regards assessee's appeal on levy of penalty u/s 271(1)(c) of the Act, the CIT(A) held that this appeal is also not maintainable.

2.2. Aggrieved, assessee is in appeal before the Tribunal.

2.3. Ld.Counsel for the assessee fairly admitted that the assessee did not appear before the AO and also before the CIT(A), but according to him, the AO and the CIT(A) ought to have gone through the Development Agreement before computing the long term capital gain tax payable by the assessee. He submitted that the CIT(A) ought to have given an opportunity to the assessee to explain as to how the appeal before him was maintainable.

2.4. Ld.DR, however, supported the orders of the authorities below.

3. Having regard to the rival contentions and material placed on record, I find that both the assessment order as well as the order of CIT(A) are ex parte the assessee. The CIT(A) has held that the appeal against the assessment order is not maintainable. Ld.Counsel for the assessee submitted that the assessee would be in a position to explain to CIT(A) as to how the appeal before him is maintainable. Taking the same into consideration, I deem it fit and proper to set aside both the orders to the file of CIT(A) with a direction to decide the maintainability of the appeals after affording the assessee an opportunity of hearing and if he is satisfied about their maintainability, then he may decide the appeals on merits.

4. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced on 06/01/2021.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 06th January, 2021

**gmv*

Copy of Order forwarded to:

1. Sri Rajendra Oruganti C/o Sri P.Vinod, Advocate, Flat no.610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad 500 001 Telangana State
2. ITO, Ward 5, Warangal.
3. ACIT, Warangal Range, Warangal
4. CIT(A)-3, Hyderabad.
5. Pr.CIT -3, Hyderabad
- 6 D.R. ITAT Hyderabad
7. Guard File