

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1052/Hyd/19	2009-10	Gangani Jaya Raj Rajendranagar Mandal, R.R.Dist., [PAN: ANMPR2335J]	Income Tax Officer, Ward-8(2), Hyderabad
1053/Hyd/19	2009-10	Hari Babu Gangani, Rajendranagar Mandal, R.R.Dist., [PAN: AOXPG3837Q]	
1054/Hyd/19	2009-10	Gangani Hari Krishna, Rajendranagar Mandal, R.R.Dist., [PAN: AZVPK8658E]	

For Assessee : Shri Mohd. Afzal, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 12-01-2021
Date of Pronouncement : 04-02-2021

ORDER

PER S.S.GODARA, J.M. :

These three assessee's appeals are for AY.2009-10 arises from the CIT(A)-1, Hyderabad's order dated 25-02-2019 passed in appeal Nos.0474, 0475 & 0476/16-17/ITO, Ward-8(2), Hyderabad/ CIT(A)-1/Hyd/2018-19, involving proceedings u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case files perused.

2. The assessees' identical sole substantive grievance raised in the instant appeals challenges correctness of both the lower authorities' action making long term capital gain addition of Rs.1,05,00,892/-; each, after invoking Section 50C of the Act, in the course of assessment and upheld in the CIT(A)'s order. Suffice to say it is not in dispute that both the lower authorities have gone by the stamp rate of the capital asset transferred by the assessees' at much lower value after invoking Section 50C of the Act thereby making the impugned addition.

3. Learned departmental representative fails to dispute that neither of the lower authority has made any statutory reference to the DVO u/s.50C(2) of the Act.

4. The Revenue at this stage raised the vehement contention that no such reference prayer came in the course of assessment at these assessees' behest. We find no merit in the Revenue's instant technical arguments. Hon'ble Calcutta high court decision Sunil Kumar Agarwal Vs. CIT (2014) [372 ITR 83] (Cal) holds that Section 50(C)(2) a reference to the DVO is mandatory in Sec.50C proceedings even if the assessee concerned fails to agitate the same at the appropriate stage.

5. Learned authorised representative at this stage stated during the course of hearing that the capital asset sold at the assessees' behest in the relevant previous year also involved some title dispute and other distressing factors. We therefore restore this sole issue of long term capital gain addition raised at the assessees' behest back to the Assessing Officer for his appropriate adjudication after making necessary reference to

the DVO as per law. It is made clear that the assesseees shall be at liberty to raise all factual/legal pleas in consequential proceedings.

6. These assesseees' appeals are treated as allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 4th February, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 04-02-2021

TNMM

Copy to :

1.Gangani Jaya Raj, C/o.Mohd.Afzal, Advocate, Flat No.402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad.

2.Hari Babu Gangani, C/o.Mohd.Afzal, Advocate, Flat No.402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad.

3.Gangani Hari Krishna, C/o.Mohd.Afzal, Advocate, Flat No.402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad.

4.The Income Tax Officer, Ward-8(2), Hyderabad.

5.CIT(Appeals)-1, Hyderabad.

6.The Pr.CIT-2, Hyderabad.

7.The Pr.CIT-1, Hyderabad.

8.D.R. ITAT, Hyderabad.

9.Guard File.