

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1870/Hyd/2019		
Assessment Year:2009-10		
Laxmi Sukumaran, Secunderabad. PAN: APEPS 9463 C	Vs.	Income Tax Officer, Ward-15(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri M.V. Anil Kumar	
Revenue by:	Sri Sitarama Rao Akunuru	
Date of hearing:	12/01/2021	
Date of pronouncement:	02/02/2021	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-7, Hyderabad in appeal No. 0367/CIT(A)-7/2009-10, dated 07/10/2019 passed U/s. 144 r.w.s 147 and U/s. 250(6) of the Act for the A.Y. 2009-10.

2. The assessee has raised four grounds in her appeal and they are extracted herein below for reference:-

- (1) *"The Ld. CIT(A) has erred in confirming the action of the A.O. that the notice U/s. 148 of the Income Tax Act, 1961 was properly served. Your appellant submits that the notice was not served on your appellant as stated by the Assessing Officer and the signature on the acknowledgement is not that of your appellant or any person connected with your appellant or any authorised representative.*
- (2) *Your appellant submits that the allegation of the A.O. that the notice was served by speed post on your appellant on 11/3/2016 is wrong on the facts of the case. The certificate of post master*

does not state that the notice under section 148 of the Income Tax Act, 1961 was served on your appellant and in fact the certificate of the post master does not state that the notice U/s. 148 of the Income Tax Act, 1961 was served on your appellant and in fact the certificate of the post mater shows that the so called service was not on your appellant and also not at the address of your appellant. Your appellant submits inasmuch as no notice was served on your appellant within the time prescribed, the proceedings consequent to the issue of notice is null and void.

(3) Your appellant submits that the sale made was subject to short term capital gains and the consequent application of section 50C of the Income Tax Act, 1961 is erroneous. Your appellant submits that the alienation of property was by way of sale agreement and irrevocable power of attorney and hence the provisions of 50C of the Income Tax Act, 1961 are inapplicable and the actual consideration mentioned in the Power of Attorney should be substituted in place of guideline value by application of section 50C of the Income Tax Act, 1961.

(4) For these and such other grounds that may be urged at the time of hearing your appellant prays that the Hon'ble Members may delete the addition of Rs. 38,65,105/-“.

3. At the outset, during the time of hearing of the appeal, the Ld. AR submitted before me that the Ld. AO had passed ex-parte order U/s. 144 r.w.s 147 of the Act without providing proper opportunity to the assessee of being heard. The Ld. AR further submitted that the assessee could not appear before the Ld. A.O. due to personal constrains. It was further submitted that, on appeal though the Ld. CIT(A) had obtained remand report from the Ld. A.O., the Ld. CIT(A) without providing proper opportunity to the assessee to counter the remand report had passed the order against the assessee. It was therefore pleaded that the matter may be remitted back to the file of the Ld. A.O., so that the assessee can pursue the appeal effectively otherwise great injustice will be inflicted on the assessee who has only meagre income. On the other

hand, the Ld. DR vehemently argued in support of the orders of the Ld. Revenue Authorities and pleaded that the same may be confirmed.

4. After hearing the rival submissions and carefully perusing the materials on record, I do not find some merit in the arguments advanced by the Ld. AR. The Ld.CIT(A) ought to have provided proper opportunity to the assessee to rebut the remand report of the Ld.AO. Further, considering the fact that, the Ld.AO had also passed an ex-parte order and the poor financial status of the assessee, in the interest of justice, I hereby remit the matter back to the file of the Ld.AO for de-novo consideration. At the same breath, I also hereby caution the assessee and her Representative to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

Pronounced in the open Court on the second February, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 02nd February, 2021.

OKK

Copy to:-

- 1) Sri Laxmi Sukumaran C/o. M. Anandam & Co, Chartered Accountants, Flat No. 7A, Surya Towers, S.P. Road, Secunderabad, Telangana.
- 2) The Income Tax Officer, Ward-15(1), 5th Floor, Block-D, IT Towers, AC Guards, Hyderabad.
- 3) The CIT(A)-7, Hyderabad
- 4) The Pr. CIT-7, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File