

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No. 506/H/2018 Assessment Year: 2007-08 | | |
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| Mohammed Abdul Hai, Hyderabad. PAN - AAHPH 7905 G (Appellant) | Vs. | Income-tax Officer, Ward - 4(1), Hyderabad. (Respondent) |
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| Assessee by: | | Shri C. Suresh |
| Revenue by: | | Shri Rohit Muzumdar |
| | | |
| Date of hearing: | | 16/02/2021 |
| Date of pronouncement: | | 23/02/2021 |

ORDER

PER BENCH:

This appeal filed by the assessee is directed against CIT(A) - 8, Hyderabad's order dated 01/12/2017 for AY 2007-08 challenging the reopening of the assessment u/s 147 of the Income-tax Act, 1961 (in short 'the Act') and the addition on account of capital gains.

2. At the outset, the Id. AR of the assessee did not press the legal grounds regarding challenging of reopening of assessment u/s 147 of the Act, therefore, the same are dismissed as not pressed.

3. As regards the issue of capital gains, the brief facts of the case are that an information was received by the AO that the assessee had sold properties and the details of which are as under:

| S.No. | Document No. | Seller Name | Sale consideration | SRO value |
|-------|----------------------------|--|--------------------|-------------|
| 1 | 4222/2006, dtd. 06/11/2006 | Mohd. Abdul Hai | Rs. 50,00,000/- | 1,52,98,800 |
| 2 | 1417/2006 dtd. 01/04/2006 | Mohd. Abdul Hai, Umatiya, Sadia, Mohd. Ahmed Huzaifa | | |

3.1 The AO noticed that the assessee has not filed any return of income u/s 139 of the Act and, accordingly, he issued notice u/s 148 of the Act on 27/03/2014, which was issued and served by an affixture at the last known address of the assessee. However, there was no compliance from the assessee to the said notice. Accordingly, the AO completed

the assessment u/s 144 of the Act by computing the long term capital gains against the document No. 4222/2006 at Rs. 1,52,98,800/- without giving any cost of acquisition to the assessee and in respect of property No. 1417/2006 the sale consideration has taken at Rs. 45,46,000/- and since there were 5 parties, assessee's share of 1/5th on Rs. 45,46,000/- come to Rs. 9,07,700/-.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee. Still aggrieved, the assessee is in appeal before the ITAT.

5. Before us, the ld. AR of the assessee submitted that the AO has not followed the provisions of section 50C for determining long term capital gains on the impugned properties as the AO ought to have referred the matter to the DVO before computing capital gains and, therefore, the matter may be remitted back to the AO for reconsideration of the issue afresh for determination of cost of acquisition

of assets after referring to the DVO as per section 50C of the Act.

6. The Id. DR has not objected to the submission of the Id. AR that the matter may be remitted back to the AO for reconsideration of the issue.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of the revenue authorities. We find that while computing capital gains, the AO has not taken the cost of acquisition into consideration. It is observed that while determining the taxable capital gains on sale of property, the owner is entitled to the benefit of cost of acquisition, which includes all the expenses which are incurred by the owner in purchasing such capital asset. Since assessee has protested in adopting the SRO value, AO should have referred this matter to the DVO instead of adopting SRO value u/s 50C(2) of the Act. In our considered view, SRO value cannot be accepted as market value unless it is verified by an expert valuer. Therefore, we remit this issue

back to the file of AO to redo the assessment de-novo after getting a report from the DVO. Accordingly, the grounds raised by the assessee on this issue are treated as allowed for statistical purposes.

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

Pronounced in the open court on 23rd February, 2021.

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

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd February, 2021.

Kv

copy to :

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|---|---|
| 1 | <i>Shri Mohammed Abdul Hai, C/o M/s Sekhar & Suresh, CAs., 133/4, RP Road, Secunderabad - 500 003</i> |
| 2 | <i>ITO, Ward - 4(1), IT Towers, Hyderabad.</i> |
| 3 | <i>CIT(A) - 8, Hyderabad.</i> |
| 4 | <i>Pr. CIT - I, Hyderabad</i> |
| 5 | <i>ITAT, DR, Hyderabad.</i> |
| 6 | <i>Guard File.</i> |