

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.91/Hyd/2021 & SA No.5/Hyd/2021		
Assessment Year: 2012-13		
Shri Rao Pamganamamula, Texas, USA PAN:CKIPP3397K (Appellant)	Vs.	Income Tax Officer (International Taxation)- II, Hyderabad (Respondent)
Assessee by:	Sri D.V. Anjaneyulu	
Revenue by:	Sri Rohit Mujumdar,DR	
Date of hearing:	24/02/2021	
Date of pronouncement:	03/03/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2012-13 and S.A. for the A.Y 2012-13 against the order of the CIT (A)-10, Hyderabad, dated 27.10.2020.

2. At the outset, it is seen that there is a delay of 29 days in filing of this appeal. Satisfied with the reasons given in the condonation petition, the delay is condoned and the appeal is decided as under:

3. Brief facts of the case are that the assessee, a non-resident, did not file any return of income for the A.Y 2010-11. As per the information received from the Director of Income Tax (I&CI), Hyderabad, the assessee was the owner of the property,

bearing House No.8-3-833/A-52, Flat No.A-52, Steel & Mines Complex, Srinagar Colony, Hyderabad, admeasuring 82.85 sq. yards (850 sft) and that the said property was sold to Sri Vijay Kumar Uppal for a total sale consideration of Rs.22,00,000/- as against the market value of Rs.31,61,200/- through Sale Deed No.1215/2012, dated 29.03.2012.

4. Since the assessee has not filed the return of income for the A.Y 2012-13 admitting the above transaction, proceedings u/s 147 were initiated by issuance of a notice u/s 148 of the Act on 3.3.2016. Thereafter, as none appeared for the assessee, the AO proceeded to complete the assessment ex-parte the assessee, He invoked the provisions of 50C and adopted the market value being Rs.31,61,200/- as the sale consideration and after allowing indexed cost of acquisition of Rs.75,114/-, he arrived at the long-term capital gain of Rs.30,86,086/- and brought it to tax.

5. Aggrieved, the assessee filed an appeal before the CIT (A) claiming that invoking of the provisions of section 50C is erroneous and also that the AO ought to have allowed the cost of construction of Rs.2,10,000/- and cost of improvement of Rs.2,20,000/- incurred by the assessee during the financial year 1987-88 while computing the Long Term Capital Gains. The CIT (A) however, confirmed the application of provisions of section 50C to the facts of the case before us, but as far as the cost of acquisition and cost of improvement are concerned, he directed the AO to allow 75% of the claim which comes to around Rs.3,82,500/- and allow indexation thereon. Thus, the assessee's appeal is partly allowed and the assessee is in second appeal

before us seeking 100% allowance on cost of construction and cost of improvement.

6. The learned Counsel for the assessee reiterated the submissions made before the authorities below and submitted that the investments were made in the financial year 1987-88 and therefore, the assessee could not have produced any documentary evidence with regard to the cost of construction and cost of improvement in the building since more than 20 years have elapsed. Therefore, he prayed that the entire cost of construction and cost of improvement claimed by the assessee be allowed.

7. The learned DR supported the orders of the authorities below.

8. Having regard to the rival contentions and the material on record, we find that the assessment was taken up for scrutiny in 2016 by issuance of a notice u/s 148 whereas the property was sold in the financial year 2011-12. The assessee had claimed the cost of acquisition, cost of improvement for computation of Capital Gains only before the CIT (A). The CIT (A), though accepted that there is cost of construction and cost of improvement, which are to be allowed, the CIT (A) has allowed only 75% of both on the ground, that the assessee has not produced the documentary evidence with regard to the same after 20 years of such construction and improvement. In our opinion, where the CIT (A) has accepted part of the cost of construction and improvement, he ought to have accepted it in full. Therefore, the appeal of the assessee is allowed by allowing the balance of 25% as well.

9. Since the appeal has been disposed of, the Stay Application has become infructuous and is accordingly dismissed.

10. In the result, appeal of the assessee is allowed and Stay Application is dismissed.

Order pronounced in the Open Court on 3rd March, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 3rd March, 2021.

Vinodan/sps

Copy to:

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- 2 ITO (International Taxation)-II Hyderabad
- 3 CIT (A)-10 Hyderabad
- 4 CIT – (IT & TP) Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order