

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

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1419/Hyd/2019		
A.Y. 2011-12		
Vishnu Agarwal, Hyderabad. PAN: AEDPA 4469 A (Appellant)	VS.	Income Tax Officer, Ward-4(4), Hyderabad. (Respondent)
Assessee by:	Shri M.V. Anil Kumar	
Revenue by:	Shri Waseem Ur Rahman, DR	
Date of hearing:	03/05/2021	
Date of pronouncement:	04/05/2021	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-1, Hyderabad in appeal No. 10451/2018-19/ITO 4(4)/CIT(A)-1/Hyd/2019-20, dated 09/07/2019 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the A.Y. 2011-12.

2. The assessee has raised six grounds in his appeal and they are extracted herein below for reference:

- “1. *The Order passed by the CIT(A) is against the facts and circumstances of the appellant’s case and is contrary to the provisions of the Act.*
2. *The Ld. CIT(A) ought to have considered the fact that the notice issued by the Ld. A.O. u/s. 148 is invalid and bad in law, since the approval is required to be obtained from one of them i.e., either from PCIT or from CIT but the same is specifically mentioned. Accordingly, the assessment order passed based on invalid proceedings U/s. 148 of the Act cannot be sustained.*

3. *The Ld CIT (A) has erred in confirming the addition made by the Ld. A.O. of Rs. 21,57,905/- under the head income from capital gains. The Ld. CIT(A) has failed to appreciate the fact that there was neither any receipt of sale consideration nor the possession of property was given, which includes that the transfer as per Sec 2(47) of the Act has not taken place.*
4. *The Ld. CIT(A) has not properly appreciated the fact that the Ld. A.O. has made the addition of Rs. 21,57,905/- based on the reasons that the assessment is getting time barred, which cannot be a valid reason for such addition. This is against the principles of natural justice and fair play.*
5. *The Ld. CIT(A) failed to appreciate the fact that the Ld. A.O. has not even issued a show cause notice to the appellant as to why the addition cannot be made. This is against the principles of natural justice and fair play.*
6. *The Ld. CIT(A) while passing the appellate order ought to have considered the fact that the Ld. A.O. has failed to communicate the reasons for reopening of assessment.”*

3. At the outset, the Ld. AR submitted that though the sale deed was executed by the assessee the sale has not concluded because the assessee has not received the sale consideration. The Ld. AR further submitted that on that regard there were disputes and the assessee has filed suit for cancelling the sale deed before the Hon'ble City Civil Court. The Ld. AR argued that these aspects were not properly considered by the ld. Revenue Authorities and on a mechanical basis invoked the provisions of section 50C of the Act and made addition in the hands of the assessee. It was therefore pleaded that the matter may be remitted back to the file of the Ld. AO thereby affording one more opportunity to the assessee of being heard to justify his stand before the Ld. Revenue Authorities. The Ld. DR on the other hand argued in support of the

orders of the Ld. Revenue Authorities and prayed for confirming the same.

4. After hearing both sides, we find some merit in the case of the assessee. If the assessee has not received the sale consideration from the purchaser, then obviously it cannot be stated that the sale has taken place. Therefore, if the submission of the Ld. AR is genuine and true then, it would not be necessary to invoke the provisions of section 45 & 50C of the Act in the case of the assessee. Hence, in the interest of justice, we hereby remit the entire matter back to the file of the ld. AO for de-novo consideration.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open Court on the 04th May, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 04th May, 2021.

OKK

Copy to:-

- 1) Vishnu Agarwal,3-5-45, Ramkote, Hyderabad.
- 2) Income Tax Officer, Ward-4(4), IT Towers, AC Guards, Masab Tank, Hyderabad.
- 3) The CIT(A) -1, Hyderabad.
- 4) The Pr. CIT-1, Hyderabad.
- 5) The DR, ITAT, Hyderabad

6) Guard File