

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

ITA No. & Asst. Year	Appellant	Respondent
173/Hyd/2017 2008-09	Income Tax Officer, Ward 7(2), Hyderabad.	Shri Konijeti Ashok Kumar, Hyderabad. PAN AHBPK 1507C
1157/Hyd/2017 2008-09	-do-	Shri Konijeti Pavan Kumar, Hyderabad. PAN AHBPK 1509N
1158/Hyd/2017 2008-09	-do-	Smt. Konijeti Usha Rani, Hyderabad. PAN AHBPK 1510H

Appellant By : Shri R. Dipak (D.R.)

Respondent By : Shri Laxminiwas Sharma, C.A.

Date of Hearing : 28.04.2021.

Date of Pronouncement : 27.05.2021.

O R D E R

Per Laxmi Prasad Sahu, A.M. :

These three appeals are filed by the Revenue against the orders of Commissioner of Income Tax (Appeals)-3, Hyderabad dt.4.11.2016 and 4.4.2017 respectively, for the Assessment Year 2008-09.

2. The identical grounds of appeal raised by the Revenue are as under :

ITA No.173/Hyd/2017

1. The Ld. CIT(A) erred both in law and on facts of the case.

2. The Ld. CIT(A) ought to have confirmed the SRO value adopted by the AO for the purpose of working out the capital gains, since (i) the buyers are enjoying the unencumbered right over the property and (ii) the assessee constructed function halls on the land claimed to be under the ULC Act and superstructures on the balance adjacent and sold later.

3. The Ld. CIT(A) ought to have taken the fact in cognizance that the property remained at Section 10(1) stage of the ULC Act and that the land has not got vested with the Government, in the absence of an order passed under Section 10(3) of the ULC Act.

4. The Ld. CIT(A) failed to appreciate that if the land was really under the ULC Act, the assessee as seller could not have

sold the land and the buyer also could not have bought the land from the assessee.

5. The Ld. CIT(A) ought to have remanded the matter for verification of additional evidences/submissions made by the assessee regarding striking off of survey numbers of the land in all documents as the same could have been verified with the buyer.

6. Any other ground that may be urged at the time of hearing.”

From the above grounds of appeal, it is clear that the issue involved in all the appeals are similar in nature therefore for the sake of convenience and brevity, we decide to take up ITA No.173/Hyd/2017 and the decision of this appeal shall apply mutatis mutandis to other two appeals.

3. The brief facts of the case are that the assessee filed his Return of Income for the Assessment Year 2008-09 on 31.03.2009 declaring income of Rs.20,13,750. Later on the Investigation Wing of Income Tax Department that the assessee along with three other family members have sold

house property during the period from 26.11.2007 to 15.12.2007 and it was observed that there was a huge difference between sale value and its Sub-Registrar Office value (for stamp duty purpose). It was also noticed that Section 50C is applied then there will be omission on the part of assessee to avail Long Term Capital Gain (LTCG). Accordingly, a notice u/s. 148 was issued and served on the assessee on 7.10.2014. In response to the notice issued by the I.T. Department u/s. 148 of the Act, the assessee filed a letter dt.4.11.2014 stating that the Return filed u/s. 139 of the Act may be treated as Return filed in response to the notice. Subsequently, other statutory notices were issued to the assessee. The assessee filed various documents relating to the Urban Land Ceiling Act (ULCA) and stated that the ULC Act is not in force in respect of the land under consideration therefore Section 50C of the Act is not applicable. The AR of the assessee also requested to the Assessing Officer that the matter

may kindly be referred to the Department Valuation Officer (DVO) but the Assessing Officer denied by holding as under :

“ The assessee requested to refer the valuation to the Valuation Officer, which is rejected for the reason that when the plea of Urban Land Ceiling itself is rejected, it would not be correct to refer the matter to DVO. Moreover, the valuation is not for any apparent reason i.e. location of the property, distance form the main road, surroundings and uneven/barren land etc. but only a pretext, which did not prevent any activity carried on in the land.”

The Assessing Officer has also examined the details as filed by the assessee and accordingly he computed the capital gains. The proceedings also made in respect of other two assessees i.e. Shri K. Pavan Kumar and Smt. K. Usha Rani in the ratio of 50:50. Feeling aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(Appeals) and CIT(Appeals) observed after examining the details filed by the assessee, he allowed the appeal of the assessee and in respect of protective assessments

also. Feeling aggrieved by the order of the CIT(Appeals), the Revenue is in appeal before the Tribunal.

4. The learned departmental representative submitted that the CIT(Appeals) has wrongly considered the ULC Act which has been repealed by the State Legislature vide Resolution dt.27.03.2008 and the assessee has unencumbered right on the property and has constructed function hall on the land and later on sold the property and he also strongly objected that the other additional evidences were submitted but the CIT(Appeals) did not give any opportunity to the Assessing Officer before accepting the additional evidences. Therefore, he requested the issue in this ground be restored to Assessing Officer for examination afresh.

5. On the other hand, the Id. AR relied on the order of the CIT(Appeals) and submitted that if ULC Act is admissible in the case on hand then Section 50C cannot be applied. He further submitted that the assessee had

requested the Assessing Officer to refer the matter to the DVO but the Assessing Officer denied. In addition to the above, he has filed written synopsis as under :

ITA No. 173 (Mr. Ashok Konijeti) is the lead case (other two are protective assessments)

In 1995 the assessee entered into an agreement of sale for selling property measuring 6540 square yards to the family members of Sri Kishen Agarwal and received some consideration. **(This fact has been verified and accepted by the learned CIT(A), please refer point no. (c) on page no. 6 of the CIT(A) order)**. However, **since the properties sold were subject to proceedings under Urban Land Ceiling Act (ULC Act), the sale deeds were executed lately in September 2007** and since the property was subject to provisions of ULC act, the survey numbers were strucked-off and properties were identified by House numbers.

Property sold was subject to ULC Act at the time of original sale agreement and executing the sale deed.

The special officer and competent authority had issued notices u/s 8(1) & 8(3) of the ULC Act in the name of Mr. Konijeti Mallaiah Gupta (assessee's father, from whom assessee had received the properties) whereby the competent authority had determined Mr. Konijeti Mallaiah Gupta as **owner of surplus land of 1.11,540 Sq. metres. (notice dated 26.02.1994)**. The matter went upto High Court in **writ petition no. 20204 of 2002 filed by assessee and the High Court vide order dated 14.10.2008 abated the proceedings under ULC Act** as by that time **the Act was repealed by the state legislature vide resolution dated 27.03.2008**. Subsequent to the order of hon'ble high court, **the government issued a memo dated 11.07.2012** declaring that the **property doesn't attract the provisions of ULC Act**. Thereafter the Tahsildar vide letter dated **24.05.2014** allowed construction in the area covering all the door numbers 13-6-446, 446/1,2,3,4 & 5, 447 covered in survey numbers 136, 137,138/1,138/2, 138/3, 140,141,142,143,144. **(All the documents were submitted before AO as well as CIT(A). In first paragraph on page no. 2 of the assessment order the AO mentions "He (assessee's AR) also filed letters on various dates contesting that the provision of section 50C of the Act are not applicable as the land was covered under the Urban Land Ceiling Act" and in last sentence of the paragraph below the table on Page 2 the AO mentions "He (assessee's AR) also filed evidence to show that the land was covered by ULC Act"**.

It can be seen that at time of entering into the sale agreement in 1995 and even at the time of execution of sale deeds in September 2007 the property was subject to the provisions of ULC Act (since the resolution for repealing the ULC Act was passed by state legislature only on 27.03.2008) and hence the property sold could not fetch the normal market value. After considering all the above facts and after verifying the documents, the learned CIT(A) in paragraph no. 7 of the CIT(A)'s order has rightly held "There is no doubt that lands sold by the appellant was subject matter of ULC Act and hence SRO value cannot be taken as sale consideration."

As regards the submission of Ld. DR that the ULC Act was repealed in the same year in which the lands were sold, we wish to state that firstly the sale agreements were entered in the year 1995 and sale deeds were executed in September 2007 and both the events are much before the repealing of ULC Act which was done by passing resolution only on 27.03.2008 and hence the finding of CIT(A) that the lands were subject to ULC Act at the time of sale may please be upheld.

We also wish to bring to your honours kind notice the judgement of Hon'ble Supreme Court in the case of S.N. Wadiyar (Dead) Through LR Vs. Commissioner Of Wealth Tax (378 ITR 9) wherein the Apex court has after considering the provisions of ULC Act in detail has held that even though the vacant land in excess of ceiling limit was not acquired by the State Government as notification under s. 10(1) of the Ceiling Act had not been issued, the process had started as the assessee had filed statement in the prescribed form as per the provisions of s. 6(1) of the Ceiling Act and the Competent Authority had also prepared a draft statement under s. 8 which was duly served upon the assessee. As long as the act was operative the assessee was not entitled to hold the land and therefore the property had to be valued for a price not more than the compensation payable by the government under the Act i.e. Rs. 2,00,000/- maximum. (Copy of the Supreme Court order is enclosed) - Pg.no. 3 to 12.

In the present case the lands have been sold for Rs. 65,40,000/- which is much more than the amount that would have been received if the land would have been taken by Government. The SC court case cited above squarely covers the issue involved in the present appeal, although it was in the context of wealth tax and the present case is regarding the applicability of section 50C of the Income Tax Act but the underlying issue in both the case is same i.e. valuation of land which is subject matter of proceedings under ULC Act.

6. After hearing both the sides and perusal of the record available, we observe that the CIT(Appeals) has decided the issue in favour of the assessee by holding as under :

“ 6(b) All the survey numbers totaling to 5.35 Acres were subject matter of ULCA (Urban Land Ceiling Act.)

Therefore the appellant filed a suit before Hon'ble High Court of Andhra Pradesh in 2002 against Government of Andhra Pradesh; Commissioner of Land Revenue, AP; Special Officer and Competent Authority, ULC; MRO, Asif Nagar and District Collector, Hyderabad.

With a request to stay ULC orders by Commissioner, Land Revenue in Appeal No.Hyd/446/94 and Hyd/25/2000 dated 3/12/2001.

(c) In 1995 the assessee entered an agreement of sale for selling 6540 square yards to the family members of Sri Kishen Agarwal. Though this agreement copy is not brought on record, it is mentioned in sale deeds of 2007 that

"..... in the year 1995, and as received above consideration amount from vendee out of agreed sale consideration of amount."

(d) For the sake of convenience the land was divided into 8 portions and 8 separate documents were entered during September, 2007. During the course of appeal proceedings it was explained that generally the lands covered under ULC cannot be registered, therefore they were divided into plots and conveniently the survey numbers of the land was struck off in all the documents so that the registration authority would not know the fact that lands are covered under ULCA.

(e) The Government of Andhra Pradesh vide resolution dated 27.3.2008 abolished ULC Act. Thereafter the Hon'ble High Court of Andhra Pradesh vide its order dated 14.10.2008, referring the Govt. of Andhra Pradesh resolution dated 27.3.2008 abated ULC proceedings against the appellant's land of 5.35 Acres.

(f) On 11.7.2012 the Government of Andhra Pradesh issued ULC Clearance Certificate to the said lands.

(g) Vide letter dated 24.5.2014 the Tahsildar, Asif Nagar Mandal wrote a letter to District Collector, Hyderabad stating that in view of the Hon'ble High Court order recommend to issue NOC for construction of building.

7. Therefore there is no doubt that the lands sold by the appellant was subject matter of ULC Act. The agreement of sale was entered in the year 1995 , the sale deeds were executed in 2007 and the property was sold @ ₹1000/- per sq.yrd. Therefore the sale deeds were executed prior to the abolition of ULC Act. Therefore the market value/the SRO value can not be applied to this property u/s 50C.

The appellant in support of his contention that Sec.50C cannot be invoked where there are certain restrictions on transfer of land, relied on

AIMS Vs CIT WTR/2/1998 13/13 (Gujarat HC)

CWT Vs Ranganatha Mudaliar (K.S. ITR 619 (Madras)

CWT Vs Shardlow India Ltd (2006) 285 ITR 426 (Mad)

CWT Vs Simpson and General Finance Co. Ltd (2006) 285 ITR 429(Mad)

CIT Vs G.S.Krishnavati Vahuji Maharaj Kalyanraiji Temple (2003) 264 ITR 517 (Guj)

Therefore as the property was covered by ULC Act, Sec. 50C cannot be invoked and SRO value cannot be taken as the sale consideration. In result, 1st, 2nd, 3rd, 4th and 5th grounds of appeals are treated as allowed.”

From the above, it is clear that the CIT(Appeals) has examined the issue on the basis of documents available before him and has decided the issue in favour of the assessee by stating that the land was under the ULC Act and in such situation the section 50C of the Act cannot be applied. We also gone through the order of the Assessing Officer and submissions made by the learned authorised representative of the assessee, we notice that the sale documents were executed as under :

S.No.	Doc.No.	Date of sale	Details of Property sold	Sale value	SRO value	Difference
1	3196/2007	26-11-2007	H.No.13-6-446/2/H (870 Syrds)	8,70,000	88,12,000	79,42,000
2	3212/2007	26-11-2007	13-6-446/2/A (870 Syrds)	8,70,000	88,12,000	79,42,000
3	3259/2007	01-12-2007	H.No.13-6-446/2/B (800 Syrds)	8,00,000	81,12,000	73,12,000
4	3264/2007	01-12-2007	H.No 13-6-445/2/F (800 Syrds)	8,00,000	81,12,000	73,12,000
5	3421/2007	13-12-2007	H.No.13-6-446/2/D(800 Syrds)	8,00,000	81,12,000	73,12,000
6	3448/2007	14-12-2007	H.No.13-6-446/2/G (800 Syrds)	8,00,000	81,12,000	73,12,000
7	3462/2007	15-12-2007	H.No.13-6-446/2/C (800 Syrds)	8,00,000	81,12,000	73,12,000
8	3475/2007	15-12-2007	H.No.13-6-446/2/E (800 Syrds)	8,00,000	81,12,000	73,12,000
Total difference.				65,40,000	6,62,96,000	5,97,56,000

We further notice that on the above date of sale, the land was under the ULC Act and the state legislature repealed on 27.3.2008 and thereafter division of Hon'ble jurisdictional High Court, the state government issued a Memo on 11.7.2012 declaring that the property does not attract the provisions of ULC Act and thereafter the Tahsildar vide letter dt.24.5.2014 allowed the construction on the land. We do not find any substance in the arguments advanced by the Id. DR and there is no infirmity in the order of CIT(Appeals). Therefore we dismiss the appeal of the Revenue.

7. Further the Assessing Officer has made protective assessments in respect of Konijeti Pavan Kumar (ITA No.1157/Hyd/2017) and Smt. Usha Rani (ITA

No.1158/Hyd/2017); the issue in the said property has been decided (supra). Since we have decided the appeal of Revenue on similar issue in respect of Shri Konijeti Ashok Kumar (ITA No.173/Hyd/2017), therefore the decision of ITA 173/Hyd/2017 shall apply mutatis mutandis in the case of ITA Nos.1157/Hyd/2017 & 1158/Hyd/2017 also. the CIT(Appeals) in respect of protective assessments are also dismissed.

8. In the result, all the three appeals of Revenue are dismissed. A copy of common order passed should be kept in respective files.

Order pronounced in the open court on 27th May,2021.

Sd/-

(S.S. GODARA)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Hyderabad, Dt. 27.05.2021.

* Reddy gp

Copy to :

1.	i) Shri Konijeti Ashok Kumar, H.No.13-6-447, Konijeti Enclave, Gudimalkapur, Hyderabad. ii) Shri Konijeti Pavan Kumar, Konijeti Enclave, Hyderabad. iii) Smt. Usha Rani K, Konijeti Enclave, Hyderabad.
2.	Pr. CIT-3, Hyderabad.
3.	C I T(A)-3, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.