

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

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 2223/HYD/2018**

Assessment Year: 2003-04

Mrs.Saleha Sultan, HYDERABAD [PAN: ALXPS6084N]	Vs	Income Tax Officer, Ward-6(1), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : NONE

For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 24-05-2021

Date of Pronouncement : 19-07-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This assessee's appeal for AY.2003-04 arises from the CIT(A)-9, Hyderabad's order dated 02-02-2017 passed in appeal No.0104 / ITO, Ward-6(1) / 2015-16, involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Cases called twice. None appeared for the assessee's behest. It is accordingly proceeded *ex-parte*.

2. It transpires at the outset that this assessee's instant appeal suffers from 257 days delay stated to be attributable to the reason(s) beyond her control as per condonation

petition/affidavit. No rebuttal has come from the departmental side. The impugned delay is condoned therefore.

3. The assessee has pleaded the following substantive grounds in the instant appeal:

*“1.The order of the Learned Commissioner of Income Tax (Appeals) is contrary to law and facts in the circumstances of the case.*

*2.The Learned Commissioner of Income-Tax erred that the Income-Tax Officer erred in re-opening the assessment without sufficient and valid reasons, on the facts and in the circumstances of the case.*

*3.The Learned Commissioner of Income-Tax erred in not appreciating the fact that the Income-Tax Officer erred in not supplying the reasons for re-opening the assessment, on the facts and in the circumstances of the case.*

*4.The Learned Commissioner of Income-Tax erred in bringing to tax-capital gains from property bearing No.Khasra No. 78.1.2.3.2.2.2, PHNo.23, NM-5,Vikas Khand Phanda, Village-Koh-e-fiza, Tehsil Huzur, Bhopal sold for Rs.10,50,000. He failed to appreciate the fact that since there is no cost of acquisition of the property inherited from ruler no capital gains could have been ascertained or brought to tax, on the facts and in the circumstances of the case.*

*5.Without prejudice to the above, the Learned Commissioner of Income-Tax erred in not directing the Income-Tax Officer to adopt the cost as on 01-04-1981 at the value certified by the approved valuer, amounting to Rs.1,73,000, property bearing No.Khasra No.78.1.2.3.2.2.2,PH No.23, RNM-5, Vikas Khand Phanda, Village-Koh-e- fiza, Tehsil uzur, Bhopal.*

*6.The Learned Commissioner of Income-Tax erred in bringing to tax-capital gains from property bearing No.Khasra No.78.1/2/3/2/2/2,PH No.23, RNM-5,Vikas Khand Phanda, Village-Koh-e- fiza, Tehsil Huzur, Bhopal sold for Rs.24,50,000. He failed to appreciate the fact that since, there is no cost of acquisition of the property inherited from the ruler and as such no capital gains could have been ascertained or brought to tax, on the facts and in the circumstances of the case.*

*7.Without prejudice to the above, the Learned Commissioner of Income-Tax erred in not directing the Income-Tax Officer to adopt the cost as on 01-04-1981 at the value certified by the approved valuer, amounting to Rs.4,66,000, property bearing No.Khasra No.78.1/2/3/2/2/2,PH No.23, RNM-5, Vikas Khand Phanda, Village-Koh-e- fiza, Tehsil Huzur, Bhopal.*

8. *The Learned commissioner of Income-Tax erred in bringing to tax - capital gains from property bearing No.Khasra No.78 Koh-e- fiza, Bhopal sold for Rs.7,50,000. He failed to appreciate the fact that since, there is no cost of acquisition of the property, it having been inherited from the ruler no capital gains could have been ascertained or brought to tax, on the facts and in the circumstances of the case.*

9. *Without prejudice to the above the Learned Commissioner of Income-Tax erred in not directing the Income-Tax Officer to adopt the cost as on 01-04-1981 at the value certified by the approved valuer, amounting to Rs.3,45,600 property bearing No.Khasra No.78 Koh-e-fiza, Bhopal.*

10. *The Learned Commissioner of Income-Tax further erred in not appreciating the fact that the Income-Tax Officer erred in adopting the value as per SRO, on the facts and in the circumstances of the case.*

11. *The Learned Commissioner of Income-Tax similarly erred in not appreciating the fact that the SRO value cannot be the market value of the property as on 01-04-1981, on the facts and in the circumstances of the case.*

12. *The appellant craves leave to add to, alter or amend any of the aforesaid grounds as advised, on or before the date of hearing”.*

4. Coming to the assessee’s first and foremost issue seeking to challenge validity of the impugned reopening, we notice from a perusal of the CIT(A)’s discussion in para 5.1 pg.3 that she had not pressed for the corresponding substantive ground in lower appellate proceedings. We thus decline the instant substantive grievance for this precise reason alone.

5. Next comes the latter issue of cost of acquisition of the impugned capital asset w.e.f.01-04-1981 u/s.48 Explanation (3) of the Income Tax Act.

Learned departmental representative fails to dispute in light of the CIT(A)’s detailed discussion in para 4 pg.2 that this case has been adopted in view of 1984-85 rates than w.e.f. 01-04-1987 (supra). Such a course of action adopting 1984-85 value of the cost of acquisition goes against the scheme of the

Act in foregoing terms. We therefore restore the assessee's instant substantive grievance back to the Assessing Officer to finalise the impugned cost of acquisition of the assessee's capital asset as on 01-04-1981 only. It is further made clear that Section 49(1)(iii) also makes it clear that the cost of acquisition in a case involving the succession inheritance or devolution without consideration is to be deemed to be the cost for which the previous owner of the property had acquired it. This is followed by the 1<sup>st</sup> Explanation that the expression "previous owner of the property" means land previous owner of the capital asset who had acquired it by way of consideration. We therefore direct the learned Assessing Officer to finalise the impugned computation after taking into consideration the foregoing statutory provision as per law.

6. This assessee's appeal is treated as partly allowed for statistical purposes in above terms.

*Order pronounced in the open court on 19<sup>th</sup> July, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 19-07-2021

TNMM

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

*Copy to :*

*1. Mrs. Saleha Sultan, C/o. M/s. M.A. Mohiaddin & Co., Chartered Accountants, 307, Lenaine Estate, 5-9-189, Abid Road, Hyderabad.*

*2. The Income Tax Officer, Ward-6(1), Hyderabad.*

*3. CIT(Appeals)-9, Hyderabad.*

*4. Pr. CIT-6, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*