

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 1657 & 1658/Hyd/2016		
A.Y.: 2011-12 & 2012-13		
Sri Arun Kumar Agarwal, Secunderabad - 500 003. PAN: ACCPA 8722 H	VS.	Deputy Commissioner of Income Tax, Circle-3(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by	Shri M.V. Anil Kumar	
Revenue by	Shri Vijay Garla Dinne, DR	
Date of hearing:	26/07/2021	
Date of pronouncement:	06/08/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

These two appeals are filed by the assessee against the order of the Ld. CIT(A)-3, Hyderabad in appeal No.0099 & 0123/CIT(A)-3/15-16, dated 09/09/2016 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the A.Y. 2011-12 and 2012-13.

2. The assessee has raised three grounds in his appeal for the A.Y. 2011-12 and they are extracted herein below for reference:-

- "1. *The order of the Ld. CIT(A)-3, Hyderabad dated 09/09/2016 is erroneous, contrary to law and facts of the case.*

2. *The CIT(A) is not justified in confirming the action of the Assessing Officer considering that transfer of land had taken place on 10/11/2010 and subjecting long term capital gains on such transfer in Asst. Year 2011-12, when in fact actual possession of vacant land was given by the appellant only after demolition of all the structures on the land and at the time of registering the sale deed on 28/09/2011 and is therefore to be subjected to tax Asst. Year 2012-13.*
3. *For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that the Hon'ble Tribunal be pleased to direct the Assessing Officer not to consider that transfer of land has taken place in Asst. Year 2011-12 and subjecting the same to Long Term Capital Gains in that A.Y. in the interest of justice."*

3. The assessee has raised five grounds in his appeal for the A.Y. 2012-13 and they are extracted herein below for reference:-

- “1. *The order of the CIT(A)-3, Hyderabad dated 9/9/2016 is erroneous, contrary to law and facts of the case.*
2. *a) The CIT(A) is not justified in confirming the disallowance of claim made by the appellant u/s. 54F stating that long term capital gain of Rs. 2,75,66,209/- is liable to tax for asst. year 2011-12. CIT(A) ought to have seen that deduction was claimed U/s. 54F by the appellant in A.Y. 2012-13 based on the execution of sale deed in favour of Maruti Suzuki Ltd on 28/09/2011 and agreement with Vasanta Green Projects for acquiring a villa for consideration of Rs. 3.05 Crs was entered into on 31/10/2013 which is within 3 years from the date of transfer of land. It is further relevant to note that the payment against such agreement was made on 13/11/2013 with small delay.*
b) The CIT(A) ought to have seen that little delay in payment of consideration had occurred only due to the fact that Dept. Took some time in granting permission for withdrawal of money from capital gains scheme account.
3. *The CIT(A) ought to have seen that the A.O. having subjected to LTCG to tax in A.Y. 2011-12, is not justified in raising demand once again in A.Y. 2012-13 against sale of the same property.*
4. *For all the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that the Hon'ble Tribunal be pleased to direct the A.O. to allow the claim made by the appellant U/s 54F in the interest of justice."*

4. At the outset, the Ld. AR submitted before us by stating that the Ld. CIT (A) has passed ex-parte order without providing proper

opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. CIT (A). Therefore the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

5. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit in the submissions of the Ld. DR. The Ld. CIT (A) had posted the case on four occasions. However, none appeared on behalf of the assessee before the CIT(A) on the dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeals ex-parte. In this situation, We do not find much strength in the arguments advanced by the ld. AR. However, considering the prayer of the Ld. AR, in the interest of justice, We hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeals afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the

Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

6. In the result, both the appeals filed by the assessee are allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 06th August, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 06th August, 2021.

OKK

Copy to:-

- 1) Sri Arun Kumar Agarwal, 7th Floor, 105, Surya Towers, S.P. Road, Secunderabad – 500 003.
- 2) Dy. Commissioner of Income Tax, Circle-3(2), Hyderabad.
- 3) The CIT (A)-3, Hyderabad.
- 4) The Principal Commissioner of Income Tax-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File