

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 2157/H/2018 Assessment Year: 2014-15		
Dy. Commissioner of Income-tax, Circle - 17(2), Hyderabad.	Vs.	Nimmagadda Prasad, Secunderabad. PAN - ABKPN 3078N
(Appellant)		(Respondent)
Revenue by:		Shri Narayanamurthy Naik
Assessee by:		Shri K.A. Sai Prasad
Date of hearing:		10/05/2021
Date of pronouncement:		25/08/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Revenue is directed against CIT(A) - 5, Hyderabad's order dated 07/09/2018 for AY 2014-15 involving proceedings u/s 144 of the Income- Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. The Order of Ld. CIT(A) is erroneous both on law and facts.

2. *The Ld. CIT(A) erred in allowing assessee's appeal with regard to claim of capital loss of Rs. 6,02,82,495 on sale of property vide unregistered sale agreement which does not constitute valid transfer as held by the Apex Court in Suraj lamps and Industries Pvt. Limited Vs. State of Haryana (2011) in 14 taxman.com 103 and which is also not a valid transfer under section 53A of Transfer of Property Act as held by the Supreme Court in CIT Vs. Balbir Singh Maini (86 taxmann.com 94 SC).*

3. *The Ld. CIT(A) erred in not appreciating that the entire arrangement i.e. sale of property vide unregistered sale agreement by the assessee to his wife was a sham transaction, a colourable device which was employed to result in capital loss, and thereby reduce the tax liability from capital gains arising during the year.*

4. *Any other ground that may be raised at the time of hearing."*

2. Brief facts of the case are that the appellant is Director of M/s. VANPIC Ports Pvt. Ltd. He filed his return of income for AY 2014-15 on 28.07.2014 admitting income of Rs 2,17,71,760/-. The same was taken up for scrutiny through CASS. The A.O completed the assessment u/s 144 vide order dated 01.12.2016 arriving at total assessed income of Rs. 74,80,05,526/- as there was no response to the hearing notices/show cause notice issued during the course of the assessment proceedings. The additions made were on account of LTCG on sale of land at Rs. 10,56,15,000/- and LTCG on sale of asset of Rs. 54,04,57,660/- and unexplained investment of Rs. 8,01,61,106/-.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) allowed the appeal of the assessee.

4. Aggrieved, the revenue is in appeal before the ITAT.

5. As per grounds of appeal, the issue in dispute is against the action of CIT(A) in allowing assessee's claim with regard to capital loss of Rs. 6,02,82,495/-.

6. Briefly the case facts relating to the said ground are that the assessee had shown long term capital gain in respect of sale of land/land & building and claimed full value of consideration at Rs. 10,56,15,000/-. Assessee had also shown cost of acquisition of the property after indexation at Rs. 16,58,97,495/-. When the AO asked the assessee to furnish proof in support of his claim of cost of acquisition, the assessee failed to furnish the same. In the absence of any information filed, the AO had taken cost of acquisition of the assessee as nil and the entire sale consideration of Rs. 10,56,15,000/- was treated as long term capital gain and added the same to the returned income of the assessee.

7. On appeal, the CIT(A) after considering the submissions of the assessee, observed as under:

"In those paras of the remand report, the AO has accepted that the land was sold by the appellant, for which substantial consideration has been received coupled with the handing over of the possession of the said land. The buyer has also reflected the same in her balance sheet and the Wealth Tax Returns subsequently. The AO has however stated that the property is not yet been registered. There is no requirement within the meaning of the word "transfer" as per Income Tax Act for the charge ability of capital gains, for the registration of property as long as the possession and part consideration has been effected with regard to the subject property. Therefore, the above will have no relevance with regard to the computation and chargeability of capital gains for the year under consideration and the appellant has already offered the sale consideration for the purpose of computing the capital gains or capital loss in the instant case.

The AO has further stated that the quantum of sale consideration has been settled with certain investments of almost equivalent amounts. The mode of payment of sale consideration is not relevant for the purpose of chargeability of capital gains especially when a clear finding of fact has been recorded by the AO that the transaction has been done as per SRO value within the meaning of section 50C of the Income Tax Act, which has been specifically instituted for the purpose of taxing such assets.

The computation as submitted by the appellant, with regard to the transaction is reproduced as under:

<i>Statement showing computation of capital gains for YE 31/03/2014</i>		
<i>Sale proceeds of Road No. 25, Jubilee Hills, Hyderabad, sold on Dec'2013</i>	<i>(2347 Sq.yds.)</i>	<i>10,56,15,000</i>
<i>Less: Indexed cost of acquisition registered in Oct.,2020</i>		

<i>FY</i>			
2009-10	9,00,00,000*939/632	13,37,18,354	
2010-11	2,30,26,644*939/711	3,04,10,715	
2011-12	17,68,425	17,68,425	16,58,97,495
<i>Taxable profit</i>			(6,02,82,495)

The same thus is accepted and the addition, made in the para 4- of the order is hereby deleted.”.

8. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

9. The Id. CIT-DR has filed written submissions, which are placed on record and vehemently argued the case by relying on the order of the AO.

10. On the other hand, the Id. AR relied on the order of the CIT(A) and has filed written submissions, which are placed on record.

11. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We have perused the written submissions filed by both the parties. Before allowing the assessee's claim of capital loss, the CIT(A) categorically observed that *“in those paras of the remand report, the AO has accepted that the land was sold by the appellant, for which substantial consideration has been received coupled with the handing over of the possession of the said land. The buyer has also reflected the same in her balance sheet and*

the Wealth Tax Returns subsequently. The AO has however stated that the property is not yet been registered. There is no requirement within the meaning of the word "transfer" as per Income Tax Act for the charge ability of capital gains, for the registration of property as long as the possession and part consideration has been effected with regard to the subject property. Therefore, the above will have no relevance with regard to the computation and chargeability of capital gains for the year under consideration and the appellant has already offered the sale consideration for the purpose of computing the capital gains or capital loss in the instant case." Therefore, we do not find any reason to interfere with the observations of the CIT(A) before allowing the assessee's claim. Thus, we uphold the order of the CIT(A) on this issue and dismiss the grounds raised by the revenue on this issue.

12. In the result, appeal of the revenue is dismissed.

13. We lastly acknowledge that although the instant appeals are being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such cases where the limitation

period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

Pronounced in the open court on 25th August, 2021.

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

JUDICIAL MEMBER

Hyderabad, Dated: 25th August, 2021.

Sd/-

(L. P. SAHU)

ACCOUNTANT MEMBER

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Copy to :

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4	<i>Pr. CIT - 5, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>