

**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. 538/HYD/2019

Assessment Year: 2008-09

Smt.Padmavathi Reddy, C/o.GPA Holder Sri G.Murali Krishna Reddy, NIZAMABAD [PAN: CCTPR1132B]	Vs	Dy.Commissioner of Income Tax-1, International Taxation, HYDERABAD
(Appellant)		(Respondent)

For Assessee : Shri K.A.Sai Prasad, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 14-07-2021
Date of Pronouncement : 14-09-2021

ORDER

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

This assessee's appeal for AY.2008-09 arises from the CIT(A)-10, Hyderabad's order dated 30-07-2018 passed in case No.0044/CIT(A)-10/2016-17, in proceedings u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. It transpires at the outset that this assessee's instant appeal suffers from 89 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 raised the following substantive grounds in the instant appeal:

“1.The order of the learned First Appellate Authority is not correct either in law or on facts and in both.

2.The learned First Appellate Authority failed to appreciate the fact that the property in dispute owned by the State Government as per the Apex Court decision cannot be considered for capital gains u/s.50C of the I.T.Act in the hands of the appellant.

3. The learned First Appellate Authority is not justified in confirming the addition of Rs.1,36,33,062/- towards Long Term Capital Gains”.

4. Both the learned representatives next invited our attention to the CIT(A)'s detailed discussion taking into consideration the Assessing Officer's remand report as under:

“8. The related discussion is available in the assessment order from para 6 to para 10. The AO noted that against the sale consideration reported by the appellant at Rs.29,00,000/-, the SRO value, as per Section 50C, is Rs.2,81,06,000/-. The appellant stated that the property was in litigation and an SLP is still pending before the Hon'ble Supreme Court of India. As the appellant raised objections, the AO invoked Section 50C (2) and referred the matter to the Valuation Officer. The AO observed that after receipt of the valuation report, and in case of any variation, the LTCG will be modified, accordingly. Stating so, the AO concluded assessment.

8.1.Responding to the objections made by the appellant, the AO observed that Section 50C(1) is a deeming provision and needs to be applied, strictly. The Assessing Officer noted that nothing can persuade the situation including the genuine and valid difficulties of the appellant. In this connection, the AO also placed reliance upon the decision of the ITAT, Hyderabad Bench in the case of Smt. Chitti Parvatha Vardhanamma (2014) 45 Taxmann.com 327.

9.In the course of the appeal proceedings, the appellant reiterated the submissions made before the AO. Apart from these submissions, the appellant furnished additional evidences and stated that the Hon'ble Supreme Court gave a judgement on 09.08.2017 and the pending litigation got concluded. The appellant argued that as the Hon'ble Apex Court scrapped all the ownership rights of the private parties

involved, in the property under consideration, there can be no long term capital gains which are taxable in the case of the appellant.

10. After considering the additional evidences and the decision of the Hon'ble Supreme Court, the AO furnished remand report which is reproduced, as below.

"2. The Assessment Order was passed u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961 (herein: 'Act') in the case of the assessee Smt. C. Padmavathi Reddy on 31.03.2016 bringing to tax the LTC that escaped taxation. An appeal was filed by the assessee before the Ld. CIT(A) against the additions proposed in the Assessment Order. Further, a Petition was filed by the assessee before the Ld. CIT(A) urging admission of additional grounds of appeal under Rule 46A of the Income-tax Rules, 1962 (herein: 'Rules'). The assessee prayed for admission of the Hon'ble Supreme Court judgement in the case of Sheik Ahmed Bin Md. Amoodi (D) Tr. LRS & Ors. V State of Andhra Pradesh & Ors. in Civil Appeal Nos. 5439-5440 of 2015 (judgement delivered on 09.08.2017). During the scrutiny assessment proceedings, the assessee brought to the notice of the Assessing Officer about the pending case before the Hon'ble Supreme Court. However, since the judgement was not pronounced as on the date of assessment i.e., 31.03.2016, it was not taken into consideration while completing the assessment proceedings. A mention was, however, made in the Assessment Order regarding the pending proceedings before the Hon'ble Supreme Court. Now since the judgement is pronounced by the Hon'ble Supreme Court, the undersigned has no objection to the prayer of the assessee for admission of this Ruling of the Apex Court as additional evidence by the Ld. CIT(A). This judgement of the Apex Court is relevant for this case and can be taken as an additional evidence under Rule 46A(1)(c) of the Rules.

3. As per the Order of the Hon'ble Supreme Court dated 09.08.2017, the property transaction under question in this case and previous transactions for the same property are all declared null and void as the land in question belongs to the Government of undivided Andhra Pradesh (now Government of Telangana) and the Vendors mentioned in the sale transactions were declared to be land grabbers under the AP Land Grabbing (prohibition) Act. However, it is also seen that subsequent to the judgement of the Hon'ble Supreme Court, no action seems to have been taken by either the Government or the Vendors / Vendees. Therefore, even though illegal, a transaction has taken place and capital gains was realized by the assessee. The assessee, therefore, is liable to pay tax on this LTCG. Even if the income was not earned in a legal manner, still such income is taxable and it is not the concern of the income-tax Department as to how the assessee earned her income. This was upheld in many cases viz. CIT v K. Thangamani [2009J 309 ITR 15, [2009J 221 CTR 742 (Madras), K.P.G.B.U.G.M.S.S.A Mohammad Abdul Kareem & Co. v CIT [1948] 16

ITR 412 (Madras) and CIT v S. C. Kothari [1968J 69 ITR 1 (Gujarat). Until the transaction that took place giving rise to LTCG in the hands of the assessee is overturned by an action of the State Government / assessee/Vendees and the amounts received are paid back by the assessee to the Vendee, the transaction should be considered alive and taxed accordingly."

11. In response to the remand report of the AO, the appellant furnished objections vide letter dt. 05.07.2018 and the same are reproduced, as below.

1."It has been accepted that the original pattadars were declared to be land grabbers under the A.P. Land Grabbing (Prohibition Act) that the property belongs to the State Government. Therefore, all the subsequent transactions of purchase and sale were all declared null and void and there was no valid transfer and the sale deed executed by her on 17.11.2007 in Document No. 3808/2007 is declared to be invalid by virtue of the decision of the Supreme Court. Therefore, there is no capital gain and the assessment to be quashed. The assessee has no say in the matter and could not persuade the State Government to take any measures and the appellant stands in the chain of transactions and could not do anything on her own.

2.Without prejudice to the above, it is submitted that the assessing officer referred to the decisions of Madras High Court and Gujarat High Court, where in the income earned by the assessee through dubious means, is held to be taxable under residuary head, being income from other sources. There is no such illegal activity nor the income was tainted. Therefore, the decisions of the Hon'ble High Courts are not relevant to the facts of the instant case. The transaction, which is now declared null and void, could not be taxed under the residuary head.

3.It is also submitted that in view of the disputes and the eventual decision of the apex Court, the provisions of section 50C are not applicable, as there was no ownership over the land, which is a pre-requisite for application of Section 45 and section 50C.

It is therefore, prayed that the income from capital gain assessed at Rs. 1,36,33,062 be deleted."

11.1 In addition to the objections, as above, the appellant furnished further objections vide letter dt. 05.07.2018 (received on 09.07.2018) and the same are reproduced, as below.

1. "The sale transaction of plot of land 935 Sq. Yards in Municipal No. 8-2-686/13 in Survey No. 129 old, 403 new, Shaikpet village at Road No.12, Banjara Hills, Hyderabad of 50% share of the assessee, by way of agreement of sale-cum-General Power of Attorney with possession executed on 17.11.2007 and registered as Document No.

3808/2007, for consideration of Rs.29,00,000. The said sale transaction, now stands annulled because of the decision of the Supreme Court of India dtd. 09.08.2017 wherein the original owner was declared land grabber and the property is held to belong to the State Government. Therefore, the matter become final and the purchase transaction of the appellant from the owner dtd. 29.11.1983 Document No.3134/1993 and the aforesaid document dtd. 17.11.2007 and all the previous documents stand annulled as consequence of the Supreme Court judgment. There is no sale and the provisions of the Section 45 of the Income Tax Act, 1961 are not applicable .

2. With regard to the nature of the amount received from the buyers of Rs. 29,00,000 and held by the appellant is, amount due to them and payable and when the assessee gets her money from her vendor of the amount paid by her and then sale amount receiver by her stands refundable. Unit such time, the amount held by the assessee is a debt owed. It is a capital receipt and not a revenue as the only cause for receipt is the sale of land, a capital asset. The receipt partakes character of income only when it is a revenue receipt and as a result of such activity as held in all the decisions of the Hon'ble Courts as referred to in the report of the A.O. The same is not the case with the capital receipt in the hands of the appellant. The same can be construed as an advance, in the meanwhile, as provided u/s 51 of the Income Tax Act, 1961.

3.As consequence of the Supreme Court judgment, it should not result in subjecting to tax, the receipt of amount under the sale deed that has become void. The effect of the Apex court Judgment should be complete for all intents and purposes and the amount could not be brought to tax under any of the income heads in the guise of holding it as income.

Other-wise, this would tantamount to restrictive implementation of the judgment of the Supreme Court.

Please consider the above and allow the appeal. "

12. The material available on record has been considered. I am in agreement with the view taken by the AO. In so far as the question of adopting the SRO value is concerned, the law is clear and the AO is duty bound to invoke Section 50C of the LT. Act in the given set of facts. There can be no grievance on the part of the appellant as the AO has already noted, in the assessment order, that the value suggested by the Valuation Officer will take precedence in case of any variation. Therefore, the stand of the appellant, in respect of the application of section 50C, is rejected.

12.1 On the basis of the additional evidence furnished by the appellant, it is seen that the property transaction under consideration, and all previous transactions in respect of the property, have been declared null and void by the Hon'ble Supreme Court vide order dt.09.08.2017. The property now belongs to the Government of undivided Andhra Pradesh and the vendors, appearing in the sale transactions, have been declared as "land grabbers".

12.2 As rightly pointed out by the AO, the fact is that the appellant already derived capital gains even though the sale transaction, resulting in realisation of capital gains, has now been held to be illegal. This basic position on the ground remains unaltered as the sale consideration received by the appellant continues to remain 'with the appellant. It is for the appellant to demonstrate that the sale consideration already received is returned back in an appropriate manner. There is also nothing on record to show that the Government concerned took any action in pursuance of the said order of the Hon'ble Apex Court.

12.3 As of now, it is an undisputed fact that the appellant already earned long term capital gains. Even if the related sale transaction is held to be illegal the income realised by the appellant is still taxable. In this connection, it is also seen that the decisions cited by the AO i.e., CIT v K.Thangamani [2009] 309 ITR 15, [2009] 221 CTR 742 (Madras), K-P.G.B.U.G.M.S.S.A Mohammad Abdul Kareem & Co. v CIT [1948] 16 ITR 412 (Madras) and CIT v S.C. Kothari [1968] 69 ITR 1 (Gujarat) are applicable to the present case.

12.4 There is no merit in the objections raised by the appellant. The appellant states that there is no capital gain as there is no valid transfer. This is not the correct position in view of the discussion made, as above. Even if the transfer is invalid, the income already earned i.e., the capital gains realised are still taxable. The appellant stated that the decisions, relied upon by the AO, are not relevant. This statement of the appellant is incorrect as the essence of the said decisions is that the income can be taxed even if the same is not earned in a legal manner.

12.5 Also, there is no ambiguity about the head of the income in the present case. As the appellant realised long term capital gains, the same will be taxed under the head of Capital Gains. If and when the sale consideration is returned back, in an appropriate manner, and the decision of the Hon'ble Apex Court is implemented, on the ground, then, there will be no capital gains to be taxed. There is no other legally possible scenario available in the present scheme of things.

12.6 The argument of the appellant that Section 50C will not apply in the absence of ownership is without any merit. Before the Hon'ble

Apex Court declared the sale transaction as illegal, the appellant had ownership rights. Therefore, the AO correctly applied Section 50C. As already discussed above, the appellant gets relief from taxation of capital gains only when the sale consideration is returned back in an appropriate manner. Till such time, the capital gains realised by the appellant remains taxable.

12.7 The appellant argued that as there is no sale transaction, the amount held by the appellant should be treated as a capital receipt and a debt owed. The appellant also argued that the sale consideration received can be construed as an advance. These arguments cannot be accepted for the simple reason that the nature of the receipt, in the hands of the appellant, is already known and cannot be arbitrarily changed. There is no legal basis for such an attempt. The fact of the matter is that there was a sale transaction which resulted in taxable long term capital gains. Accordingly, the gains were taxed. Mere declaration of the sale transaction, as illegal, will not change the position in respect of taxability of capital gains. Only when the appellant parts with the sale consideration realised, the question of relief from taxation of capital gains arises.

12.8 The appellant stated that denial of relief from taxing the capital gains amounts to restrictive implementation of the judgement of the Hon'ble Supreme Court. Income earned, legally or otherwise, is taxable. Therefore, denial of relief cannot be seen as restrictive implementation of the said decision. It is for the Government concerned and the parties involved to follow and implement the decision of Hon'ble Apex Court. If that is done and the sale consideration is returned back, the question of granting relief arises.

12.9 Considering the totality of facts and circumstances, these grounds of appeal are dismissed.

13. In the result, the appeal stands dismissed”.

5. A perusal of the foregoing detailed lower appellate discussion makes it clear that the issue relates to title of the assessee's capital asset i.e., plot of land measuring 935 sq. yards in Municipal No.8-2-686/13 in Survey No.129 (Old), 403 (New), Shaikpet village at Road No.12, Banjara Hills, Hyderabad to the extent of ½ share involving POA cum possession executed on 17-11-2007 forming subject matter of adjudication before hon'ble apex court. Their lordships decision dt.09-08-2017 un-disputedly held therein the original

owner of the capital asset / assessee's vendor to be a land grabber only. The necessary corollary that flows therefore is that all the subsequent vendors as well as vendees (including assessee) have to be treated as mere tress-passers having no right or title over the land. That being the case, we conclude that the learned lower authorities' action assessing the assessee's consideration money in issue under the head 'long term capital gains' after invoking Section 50C of the Act has no legs to stand. We thus delete the impugned long term capital gain addition of Rs.1,36,33,062/- for this precise reason alone.

6. Learned departmental representative next argued that the assessee has admittedly received the impugned sale consideration from her vendee(s) which deserves to be assessed as under the residuary head of income from 'other' sources. We therefore leave it open for the departmental authorities to proceed against the assessee as per law so as to assess the impugned sum in her hands. It is further made clear that our instant liberty granted to the department shall not preclude the assessee from raising all her legal/factual arguments in consequential proceedings; if any.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 14th September, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

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

Hyderabad,
Dated: 14-09-2021

Copy to :

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2.Dy.Commissioner of Income Tax-1, International Taxation Hyderabad.

3.CIT(Appeals)-10, Hyderabad.

4.CIT(IT&TP)-Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.