

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Inturi Rama Rao, Accountant Member

ITA No.2230/Hyd/2018		
Assessment Year: 2004-05		
Gokul Prasad Patel, H.No.5-8-569, Street No.9, Mubarak Bazar Lane, Abid Road, Hyderabad – 500001. PAN : ABKPP2201R.	Vs.	The Income Tax Officer, Ward – 13(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		None.
Revenue by:		Shri Rohit Mujumdar for Srikanth – DR.
Date of hearing:		20/09/2021
Date of pronouncement:		24/09/2021

ORDER

PER BENCH :

This assessee’s appeal for AY.2004-05 arises from the CIT(A)-1, Hyderabad’s order dated 27.08.2018 passed in case No.0083/CIT(A)-1,Hyd/2017-18/2018-19 involving proceedings u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 [in short, ‘the Act’].

Case called twice. None appears at assessee’s behest. It is accordingly proceeded ex-parte.

2. The assessee raises the following substantive grounds in the instant appeal.

- 1. The order of the Learned CIT(Appeals)-1, Hyderabad is against law, weight of evidence and probabilities of the case.*
- 2. The learned CIT(A) grossly erred in upholding the impugned reassessment order and confirming the charging of capital gains to tax in A.Y.2004-05 despite the fact that the alleged transfer of property dated 31.10.2003 was held to be null and void in O.S.No.28 of 2004. Consequently, the learned CIT(A) committed a gross error in dismissing the appeal on this ground.*
- 3. The learned CIT(A) failed to appreciate that the alleged gift deed was got cancelled by a registered cancellation deed dated 26.03.2002 and consequently the alleged transfer claimed to give rise to chargeable capital gains was non est in the eyes of law.*
- 4. The learned CIT(A) failed to appreciate that the appellant had in fact paid full capital gains tax in the assessment year 2012-13 because the property was ultimately transferred for a compensation of Rs.40 lakh by virtue of a compromise decree dated 24.08.2011 in O.s.No.28/2004 in the Court of Addl Chief Judge, CCC, Secunderabad. Consequently, she erred in confirming the impugned reassessment.*
- 5. The appellant prays that the impugned reassessment be cancelled in view of the voluntary payment of capital gains tax by filing the return by the appellant for A.Y.2012-13 when the actual transfer of property took place by virtue of the compromise decree.*
- 6. For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed.”*

3. We have given our thoughtful consideration to Revenue's arguments in support of the impugned long term capital gains addition and perused the case records. Suffice to say, the assessee's averments in his above extracted grounds raises the clinching question that the alleged transfer of property herein dt.31.10.2003 had not only be declared null and void in learned civil court but also the very capital gains stood assessed in A.Y. 2012-13. The same; in our considered opinion requires afresh factual verification therefore in consequential proceedings. We

ordered accordingly. It is made clear that the Assessing Officer shall afford three effective opportunities of hearing to the assessee regarding the instant factual verification wherein he shall be at liberty to raise all factual as well as legal objections in the second round. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes in the above terms.

Order pronounced in the Open Court on 24th September, 2021.

Sd/- (INTURI RAMA RAO) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 24th September, 2021.

TYNM / sps

Copy to:

S.No	Addresses
1	M Gokul Prasad Patel, H.No.5-8-569, Street No.9, Mubarak Bazar Lane, Abid Road, Hyderabad – 500001.
2	The Income Tax Officer, Ward – 13(3), Hyderabad.
3	The CIT(A)-1, Hyderabad.
4	The Pr.CIT(1), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File.

By Order