

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ A ‘ Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Shri S.S. Godara, Judicial Member**  
**AND**  
**Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.117/Hyd/2020		
Assessment Year: 2013-14		
Devaki Kamarajan, No.19-7-97-A, RC Road, Tirupati – 517501, Chittoor District, Andhra Pradesh.	Vs.	The Asst. Commissioner of Income Tax, Circle 1(1), Tirupati.
PAN : AFQPK7350A		
(Appellant)		(Respondent)
Assessee by:	Smt. S. Sandhya - AR	
Revenue by:	Shri Ravi Kiran - DR	
Date of hearing:	21/10/2021	
Date of pronouncement:	26/11/2021	

**ORDER**

**Per S. S. Godara, J.M.**

This assessee’s appeal for A.Y. 2013-14 arises against the Principal Commissioner of Income Tax, Tirupati’s order dated 21.01.2019 passed in case No.U/s.263/PCIT/TPT/2018-19 involving proceedings under section 263 of the Income Tax Act, 1961( in short “the Act”).

Heard both the parties. Case file perused.

2. Learned counsel has submitted at the outset that delay in question of 313 days is neither intentional nor deliberate but on account of circumstances beyond assessee's control and more particularly, it is only case of lack of communication between the assessee; a very old lady, her auditor the authorized counsel. The same are unrebutted from the Revenue's side during the course of hearing. We therefore condone the delay of 313 days in foregoing facts and circumstances of the case.

3. Coming to the assessee's sole substantive grievance that the PCIT herein has erred in law and on facts in framing the corresponding regular assessment dated 31.12.2016 as an erroneous one causing prejudice to the interest of the Revenue, we note that he has held the Assessing Officer to have completed the foregoing scrutiny assessment in a hurry on the last day without even examining the application of section 50C of the Act for the purpose of determining the correct capital gains.

4. We next find with the able assistance of both the parties that the factual position of is just the opposite in the assessment order wherein the Assessing Officer had duly considered and concluded that section 50C of the Act would not apply in assessee's case. The question as to whether such a speaking order affirmed by the AO would be taken as an instance of no enquiry for the purpose of assumption of revisionary jurisdiction in 263 proceedings, hon'ble Delhi high court's landmark decision in the case of ITO Vs. D.G. Housing Projects Ltd (2012) 343 ITR 329 (Del) has drawn a distinction

between the cases involving lack of enquiry and wrong opinion on merits recorded by the Assessing Officer. Their lordship hold in Para 17 that when dealing with such an occasion of the Assessing Officer having formed a wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous. We wish to reiterate here that the learned PCIT herein has simply treated the impugned assessment as a case of no enquiry on section 50C issue inspite of the fact that the assessing authority had clearly recorded about non-applicability of section 50C qua the assessee's alleged transfer agreement executed in the year 2002. We thus quote hon'ble apex court's landmark decision M/s Malabar Industries Co., Vs. CIT (2000) 243 ITR 83 (SC) that an assessment has to be both erroneous as well as causing prejudice to interest of Revenue; simultaneously, before it is sought to be subjected to section 263 revision jurisdiction. We accordingly accept the assessee's arguments to reverse the learned PCIT revision directions under challenge. The Assessing Officer's regular assessment herein dated 31.12.2016 stands restored as the necessary corollary.

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

Order pronounced in the Open Court on 26<sup>th</sup> November, 2021.

<b>Sd/-</b> <b>(LAXMI PRASAD SAHU)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 26<sup>th</sup> November, 2021.

**TYNM/sps**

Copy to:

S.No	Addresses
1	Devaki Kamarajan, No.19-7-97-A, RC Road, Tirupati – 517501, Chittoor District, Andhra Pradesh.
2	The Asst. Commissioner of Income Tax, Circle 1(1), Tirupati.
3	Principal Commissioner of Income Tax, Tirupati.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*