

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

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

	ITA No.899/Hyd/2018		
	Assessment Year: 2013-14		
Nandamuri Ramakrishna, Hyderabad. PAN: AAXPN 3217 H	Vs.	ACIT, Circle-14(1), Hyderabad.	
(Appellant)		(Respondent)	
Assessee by:	Shri Shashank Dundu		
Revenue by:	Shri Rajendra Kumar, CIT-DR		
Date of hearing:	27/01/2022		
Date of pronouncement:	22/02/2022		

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. Principal Commissioner of Income Tax-6, Hyderabad in appeal F.No. 263/Pr. CIT-6/Hyd/2017-18, dated 08/03/2018 passed U/s. 263 of the Act for the AY 2013-14.

2. The assessee has raised three grounds in his appeal, and they are extracted herein below for reference:

- “1. The order of the Ld. Principal Commissioner of Income Tax-6, Hyderabad dated 08/03/2018 passed U/s. 263 is erroneous, contrary to law and facts of the case.
2. Pr. Commissioner of Income Tax-6 erred in holding that the Assessment order dated 31/03/2016 passed by the Assessing Officer is erroneous and is prejudicial to the interest of Revenue.

The Pr. Commissioner of Income Tax-6, ought to have seen that during the course of assessment proceedings, the appellant had submitted all the information required by the Assessing Officer during the course of hearings and after going through such information, the assessment was completed. Learned Commissioner of Income Tax ought to have seen that the Assessing Officer's order is neither erroneous nor prejudicial to the interest of revenue for this Asst. Year.

Hence, the Pr. Commissioner of Income Tax-1 is not justified in passing an order U/s. 263 directing the Assessing Officer to do the assessment.

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 this Hon'ble Tribunal may be pleased to cancel the order passed by the Pr. Commissioner of Income Tax-6, Hyderabad U/s. 263 in the interest of justice."*

3. The brief facts of the case are that the assessee is an individual filed his return of income for the relevant assessment year 21/12/2013 admitting total income of Rs. 1,33,57,420/- and agricultural income of Rs. 7,500/-. Thereafter the case was taken up for scrutiny and the assessment was completed U/s. 143(3) of the Act vide order dated 31/3/2016 wherein the returned income was accepted, and no further addition was made. Subsequently, the Ld. Pr. CIT invoked his power U/s. 263 of the Act because it was observed that the assessee had taken into account the entire cost of the building instead of excluding the portion of built-up area gifted to his brother Shri N. Balakrishna while computing his LTCG. He thereafter directed the Ld. AO to re-do the assessment by computing the correct capital gain viz., by excluding the cost of the built-up structure gifted to his brother Shri N. Balakrishna while arriving at the cost of land and building. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before us.

4. At the outset, the Ld. AR submitted before us that the assessee's land abutting the main road was acquired by the Government and substantial portion of the building on the land was demolished while acquiring the land for widening of the road. Subsequently, the balance portion of the land along with the undemolished portion of the building was gifted by the assessee to Shri N. Balakrishna, his brother. It was further submitted that by virtue of the demolition of the major portion of the building the entire building became redundant and there could be no value attributable to the undemolished portion of the building. Subsequently the balance portion of the building had also to be demolished. However, while executing the gift deed, the Registration Authority valued the undemolished portion of the building for the purpose of computing the Stamp Duty. In order to avoid litigation and to speed up the registration of the Gift Deed, the assessee had accepted the demand of the Registration Authority. It was further submitted that for the purpose of computing LTCG derived from the compensation received from the Government the assessee had taken into account the cost of the entire building because effectively the undemolished portion of the building was useless and served no purpose because as a result of the acquisition the entire building was lost. It was therefore submitted that the computation adopted by the assessee by valuing the entire cost of the building for deriving at the LTCG is in order and therefore the Ld. AO had not disturbed the return filed by the assessee by examining the issue. It was therefore pleaded that the order of the

Ld. Pr. CIT may be set-aside. The Ld. DR on the other hand supported the order of the Ld. Pr. CIT and prayed for sustaining the same.

5. We have heard the rival submission and carefully perused the materials on record, and We find merit in the submission of the ld. AR. It is not in dispute that substantial portion of the building was demolished in the acquisition proceedings. In such situation it is obvious that the value of the entire building is lost. Hence, the cost of construction of the entire building should be taken into consideration while computing the LTCG of the assessee because no value can be attributed to the undemolished portion of the building. Facts being so, the ld. AO had judiciously accepted the computation of LTCG adopted by the assessee. In this situation, we are of the view that the Ld. Pr. CIT was not justified in invoking his powers U/s. 263 of the Act and directing the Ld. AO to re-do the assessment by excluding the cost of the partial undemolished building structure gifted to Shri N. Balakrishna while arriving at the LTCG of the assessee. Therefore, we hereby quash the order of the Ld. Pr. CIT passed U/s. 263 of the Act.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 22nd February, 2022.

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 22nd February, 2022.

OKK

Copy to:-

- 1) **Appellant:** Nandamuri Ramakrishna, Plot No. 257, MLA & MP Colony, Road No. 10C, Jubilee Hills, Hyderabad – 500 033.
- 2) Asst. Commissioner of Income Tax, Circle-14(1), Hyderabad.
- 3) The Principal Commissioner of Income Tax-6, Hyderabad.
- 4) The DR, ITAT, Hyderabad
- 5) Guard File
- 6)