

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

Before Shri S.S. Godara, Judicial Member

ITA No.530/Hyd/2021		
Assessment Year: 2012-13		
Smt. Singanamala Vidyadhari, Chennai PAN: ABEPV9446L	Vs.	ACIT, Central Circle Tirupati
(Appellant)		(Respondent)
Assessee by:	Sri K.A. Sai Prasad	
Revenue by:	Sri Venkanna Tejwath, Sr DR	
Date of hearing:	15/03/2022	
Date of pronouncement:	21/03/2022	

ORDER

This assessee's appeal for the A.Y 2012-13 arise against the CIT(A)-12, Hyderabad's order dated 29.10.2021 passed in case No.10630/2019-20 in proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 ("the Act").

Heard both the parties. Case file perused.

2. The assessee raises the following twin grounds in the instant appeal:

1. The learned First Appellate Authority, in the facts and circumstances of the case, erred in rejecting the appellant's claim for indexed cost of acquisition on built-up area sold and not allowing the Long-Term Capital Loss of Rs.92,68,610/- as claimed by the appellant.

2. The learned First Appellate Authority, failed to appreciate the fact that the initiation of proceedings u/s 147 by the Assessing Officer on assumption of wrong facts regarding sale of flats in question is bad in law.

3. Learned AR is very fair in not pressing the foregoing later substantive ground challenging validity of reopening. Rejected accordingly.

4. I next proceed to deal with the assessee's former substantive ground regarding her cost of acquisition as under:

"6.0 Addition made towards capital gains amounting to Rs. 23,27,048/-:

6.1 It is seen that while finalizing the assessment proceedings, the AD has made the addition on the following grounds:

"Vide this office notice u/s. 142(1) dated 28.08.2019 the assessee was specifically asked to provide details with documents for claim of capital loss to the tune of Rs. 54,41,426/-. The assessee has provided the sale deed for sale of flats.

The assessee did not produce any documentary evidences in respect of her claim in the return of income. The assessee's husband Sri S. Ramesh Babu appeared on 18.12.2019. On that day the assessee did not file any details but told he relies on the details filed so far.

Since, the assessee did not provide any documentary evidences in support of her claim, the computation of capital gains done with the materials available on records as under:

6.2 The appellant has contested the said addition, and in support of his claim, the following submissions have been made by the appellant's AR :

"In this appeal the only grievance is regarding the computation of the capital gains. As can be seen from the above computation, the assessing officer has not given deduction for indexed cost of the built up area. He has taken the cost of construction of the built up area of 6610 sft at Rs. 2770 and deducted the same from the sale proceeds of Rs. 2,07,30,000/. The assessing officer failed to consider that the built-up area is held by the appellant for more than three years and hence is eligible for deduction of indexed cost of acquisition as directed by the Hon'ble Commissioner in his order for earlier years in the appellant's own case. In this regard kind attention of the Hon'ble Commissioner is invited to the order of the Commissioner for A. Y. 2009-10 to 2011-12 & 2014-15 (page no.18of the paper book) wherein

the Commissioner directed the assessing officer to treat date of entering into joint development agreement as date of acquisition of built-up area. In this case, since the date of joint development agreement is 15/7/06 and the date of sale of the flats in question is 20/4/2011, the period of holding is more than three years and therefore the assessing officer should have granted deduction for indexed cost for the built-up area also. The revised workings are as under:

Hence it is prayed that the Hon'ble Commissioner be pleased to direct the assessing officer to grant deduction of indexed cost of built-up area and recomputed the long-term capital loss at Rs. 92,68,610/~ as against capital gain assessed at Rs. 23,27,048/-. The Assessing Officer, it is prayed be directed to adopt the revised workings given above. It is humbly submitted that the said workings are in line with directions given in the appellate order for earlier years. "

6.3 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the submissions filed by the appellant's AR. Briefly, the facts are while computing capital gains, the AO has allowed indexation benefit on the sale of the land treating it as long-term capital gain whereas while computing the capital gains on the sale of built up area, the AQ has not given the benefit of indexation. The appellant claims that she is entitled to the benefit of indexation on the cost of construction as it was to be treated as a long-term capital gain.

6.3.1 I have considered the submissions of the appellant. It is seen that the cost of construction of the built-up area is based on an estimation of the cost per sft, as ITA No.10630/2019-20, CIT (A)-12, Hyd Smt. S. Vidyadhari, A.V 2012-13 ,

intimated by the builder Ms. Jayabheri Constructions with whom the appellant had

. entered into a Joint Development Agreement (JDA). It is also an admitted fact that the -appellant has sold the right embedded in the said two flats emanating from the JDA and has not sold the actual flats after construction by the builder. Indexation benefit is provided to offset the cost Inflation of the investment of the owner of the long-term capital asset so that the cost is adjusted to the year of sale and set off again~ consideration. Admittedly. the two flats were not constructed and only a right to receive a flat has been sold by the appellant. Therefore. there is no basis for providing the indexation benefit on the estimated cost of the said flats that were sold during the year. Hence. the

grounds of the appeal pertaining to the indexation benefit are DISMISSED”.

5. Learned DR failed to rebut the clinching fact that the CIT (A) has himself held the assessee to have sold or transferred her right to receive the flat(s) only whereas the impugned cost of acquisition has been denied regarding the estimated cost of the flats per se.

6. The assessee, has sought to highlight the fact that in fact, no flat could see completed construction in her land. Be that as it may, the fact remains that once the CIT (A) has himself held the assessee to have sold her right to receive the flat, as the case may be, the corresponding cost of acquisition also deserved to be allowed as per law. I therefore, direct the Assessing Officer to redecide the instant cost of acquisition issue afresh followed by necessary computation within three effective opportunity of hearing. Ordered accordingly.

7. This assessee’s appeal is partly allowed in above terms.

Order pronounced in the Open Court on 21st March,2022.

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, dated 21st March, 2022.

Vinodan/sps

Copy to:

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3	CIT (A)-12, Hyderabad
4	Pr.CIT Central, Visakhahatnam
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order