

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 1513/Hyd/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Saireddy Pruthviraj Reddy,  
Hyderabad  
[PAN No. BHCPS0720H] Vs. Income Tax Officer,  
Ward-14(4),  
Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri C.S.Subrahmanyam, AR  
राजस्व द्वारा / Revenue by: Shri Rohit Mujumdar, DR

सुनवाई की तारीख/Date of hearing: 15-06-2022  
घोषणा की तारीख/Pronouncement on: 23-06-2022

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the order dated 01-07-2019, passed by the Learned Commissioner of Income Tax (Appeals)-6, Hyderabad ("Ld. CIT(A)") in the case of M/s.Sri Saireddy Pruthviraj Reddy ("the assessee") for the AY.2014-15, assessee preferred this appeal.

2. Briefly stated facts relevant for disposal of this appeal are that the assessee is an individual and deriving income under various heads viz., salary, capital gains, income from house property and income from other sources. For the AY.2014-15, the assessee filed his return of income on 25-03-2015 declaring a total income at Rs. 52,57,120/-. During the course of assessment, learned Assessing Officer noticed that during the financial year 2013-14 the assessee sold 5 flats and got gain on some flats and suffered loss on some of the flats. Assessee, however, had shown the cost of acquisition for flat No. 914 of SMR Vinay Symphony as Rs. 27,43,000/- whereas for flat No. 319 in the same apartment the cost of acquisition was shown as Rs. 6,50,000/-. Learned Assessing Officer noted that the assessee acquired the flat No. 914 from his mother Smt. Saritha under a gift deed, and the cost of acquisition was taken as the fair market value of such flat at the time of receipt of such flat by Smt. Saritha. Flat No. 319 was acquired by the assessee under a joint development agreement, under which the assessee transferred a plot of his land and on exchange he received the flat. Inasmuch as both the flats are of the same size and in the same building, learned Assessing Officer had taken the value of the land that was transferred for the purpose of joint development agreement as the cost of acquisition in the hands of the mother of the assessee, and on that premise the learned Assessing Officer took the cost of acquisition for the assessee at Rs. 6.5 Lakhs and after indexation, computed the capital gains. Assessment was completed on 30-12-2016 u/s. 143(3) of the Act, determining the total income of the assessee at Rs. 82,83,760/- by making an addition of Rs. 30,26,635/- under the head 'Long Term Capital Gains'.

3. Aggrieved by such an action of the learned Assessing Officer, the assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) analysed the facts of the case afresh and held that insofar as the acquisition of property by the assessee under the gift deed executed by his mother, in terms of section 49(1) of the Act the cost of acquisition in the hands of the assessee shall be deemed to be the cost in the hands of his mother; that the mother will acquire the property in exchange of the plot of land worth Rs. 4,79,660/-; and, therefore, the cost of acquisition in the hands of the assessee shall be Rs. 5,45,660/- and because the assessee had shown Rs. 6.50 Lakhs which is beneficial to the assessee, the same could be accepted. On this premise, Ld. CIT(A) dismissed the appeal.

4. Aggrieved by such findings of Ld. CIT(A), the assessee is in appeal before us. It is submitted on behalf of the assessee that the assessee claimed cost of acquisition of Rs. 27,43,000/- against the sale of Flat No. 914, which property was acquired by him as gift from her mother Smt. S.Saritha Sai Reddy; that such cost comprises of Rs. 27,23,000/- being cost of acquisition of Smt. S Saritha Sai Reddy and Rs. 20,000/- being stamp duty and registration charges for the gift deed. Smt. Saritha Sai Reddy acquired the Flat No.914 after giving her land to development; that she transferred land to the builder and in lieu received the properties; that she offered this development transaction in her return for the A.Y.2011-12 and paid taxes; that, therefore, the sale proceeds offered to tax as part of development transaction for which she received Flat No.914, would be the cost of acquisition for her to acquire such Flat No.914. Ld. AR furnished the details of the PAN card, and other relevant documents relating to the mother of the assessee. Ld. AR further submitted that, Smt. S. Saritha Sai Reddy

offered Rs. 27,23,000/- as sale proceeds for transfer of her land in lieu of Flat No.914, by way of development agreement, and, therefore, her cost of acquisition for Flat No.914 would be Rs. 27,23,000/- as such an amount was fully offered to tax while taxing the development transaction. Finally it is submitted that the assessee received Flat No.914 as gift from his mother Smt. S Saritha Sai Reddy, therefore, the cost of acquisition of Rs. 27,23,000/- in her case has to be allowed as cost in case of assessee, while taxing the sale of Flat No.914 is assessee's hands.

5. Per contra, learned DR relied on the orders of the learned Assessing Officer and Ld. CIT(A). He submitted that it is the settled position of law that nothing could be added or nothing could be subtracted from the cost of acquisition of the previous owner as is held in the decisions reported in CIT Vs. Shanthi Chandran (2000) 241 ITR 371 (Madras) and Sonia Maria Mistri Vs. ITO (2013) 141 ITD 508 (Mumbai Tribunal). He submitted that is not known for what reasons the mother of the assessee added something to the cost of acquisition and what is the basis for such addition. He submitted that the loss speaks of 'cost of acquisition', but not 'fair market value'. He, therefore, submits that the authorities below are perfectly right in taking the cost of acquisition in the hands of the mother of the assessee as the cost of acquisition for the assessee and, therefore, the findings of the authorities below do not warrant any disturbance.

6. We have gone through the record in the light of the submissions made on either side. Facts are simple, clear and admitted. Under sale deed dated 08-01-2007, vide sale deed No. 613 of 2007, the mother of the assessee purchased 116 square yards of land out of 216 square yards of land in survey No. 79 of Gachibowli Village, Serilingampally Mandal, Ranga

Reddy District for a total consideration of Rs. 4,79,660/-. Pursuant to the joint development agreement dated 09-02-2007 and supplementary agreement dated 02-04-2010 she transferred the said land to the developer for consideration of receiving 50% of the built up area/flats developed by the developer in proportion to the undivided share of land owned by her, because along with her the assessee also participated in such agreements. Subsequently when the flats are built, the mother of the assessee received flat No. 914 in exchange of the land that was transferred by her under the joint development agreement. It, therefore, goes without saying that the mother of the assessee got the flat No. 914 in exchange of the plot of land transferred by her the worth of which was Rs. 5,25,660/- inclusive of the stamp duty and registration charges. For all practical purposes, the authorities below are of the opinion that this amount constitutes the cost of acquisition of the flat No. 914 in the hands of the mother of the assessee.

7. It is pleaded by the assessee before us that while receiving the flat No. 914, the mother of the assessee valued the same at Rs. 27,23,000/- and offered to tax the capital gains arising therefrom. On this premise the assessee insists that the cost of acquisition of plot No. 914 in the hands of the mother was not Rs. 5,25,660/- but it is actually Rs. 27,23,000/-. By adding a sum of Rs. 20,000 incurred by the assessee towards gift deed, assessee values the cost of acquisition in his hands at Rs. 27,43,000/-, which the Revenue vehemently disputes.

8. The language employed by section 49(1) of the Act is unequivocal. It contemplates that where the capital asset becomes the property of the assessee, under a gift or will, the cost of acquisition of the asset shall be

deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the asset incurred or borne by the previous owner or the assessee, as the case may be. Nowhere in this section, can we find the expression “the fair market value”. We do not know what prompted the mother of the assessee to offer the capital gains while receiving the flat No. 914, with reference to the fair market value. When the provisions speaks very clearly and unequivocally, there is no reason to read something into it which the legislature did not intend.

9. CIT Vs. Shanthi Chandran (supra) is a case where the question that had fallen for consideration was whether in a family settlement analogous to a partition cost to previous owner is to be taken into account as cost of acquisition of shares and not the value mentioned in the family settlement deed by the settler. The Hon'ble Court held in unequivocal terms that the cost of acquisition means cost of acquisition but not the value mentioned in the documents. Insofar as the tax law is concerned, it is not open for any one to read into the section what is not to be found in that section or to substitute the expressions with some other words. Cost of acquisition means cost of acquisition but not the cost perceived by the mother at the time of receiving the flat.

10. Inasmuch as the legislative language is clear and unambiguous, we do not find anything perverse in the orders of the authorities below, and merely because of some voluntary act of the mother of the assessee in valuing the property on higher side at the time of receiving of the same, we do not accept the contention that the authorities should have accepted such escalated value. Law contemplates only ‘cost of acquisition’ but not

'fair market value'. Voluntary acts of the parties will not disturb the legal position or affect the impact of law.

11. With this view of the matter, we are of the considered opinion that there is nothing illegality or irregularity committed by the authorities below. We accordingly uphold the findings of the Ld. CIT(A) and decline to interfere with his findings. Appeal is devoid of merits and consequently dismissed.

12. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on this the 23<sup>rd</sup> day of June, 2022

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

TNMM

Hyderabad,  
Dated: 23-06-2022

Copy forwarded to:

1. Saireddy Pruthviraj Reddy, Plot No.275, Vinay Nivas, Road No.25, Jubilee Hills, Hyderabad.
2. Income Tax Officer, Ward-14(4), Hyderabad.
3. The CIT(Appeals)-6, Hyderabad.
4. The Pr.CIT-6, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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