

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.1800/Hyd/2019		
Assessment Year: 2010-11		
The Joint Commissioner of Income Tax (OSD), Circle – 3(1), (i/c), Hyderabad.	Vs.	Shri Srinivasa Kumar Sankranthi, R/o.Hyderabad. PAN : ADPPS0607K.
(Appellant)		(Respondent)
Assessee by:	Shri M.V. Anil Kumar	
Revenue by:	Shri Rajendra Kumar, CIT-DR	
Date of hearing:	19.07.2022	
Date of pronouncement:	20.07.2022	

ORDER

Per Laliet Kumar, J.M.

This appeal is filed by the Revenue feeling aggrieved with the order of Id. Commissioner of Income Tax (Appeals) -1, Hyderabad dt.08.07.2019 passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 for the assessment year 2010-11 on the following grounds:-

“1. The ld.CIT(A) erred both in law and on facts of the case.

2. On the facts and circumstances of the case and in law, the ld.CIT(A) erred in allowing the appeal without hearing the Assessing Officer ignoring that the assessment was completed u/s 144 r.w.s. 147 as the assessee neither appeared nor furnished any information during the course of assessment proceedings.

3. On the facts and circumstances of the case and in law, the ld.CIT(A) erred in allowing the appeal without hearing the Assessing Officer ignoring that the assessee neither appeared nor furnished any information during the course of penalty proceedings.

4. On the facts and circumstances of the case and in law, the ld.CIT(A) erred in allowing the appeal without following the due procedure laid under Rule 46A of Income Tax Rules, 1962.”

2. The captioned appeal filed by the assessee is barred by limitation by 4 days. The assessee has moved a petition requesting the bench to condone the delay. We heard the party on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

3. The brief facts of the case are that assessee had sold four properties along with others and since the assessee did not file his return of income admitting capital gains on the said transactions to tax, the AO issued notice u/s 148 and 142(1) of the Act and show cause letters. Since there is no response from the assessee, AO completed the assessment u/s 144 r.w.s. 147 of the Act on 27.12.2017 by determining the total income at Rs.7,68,20,000/- towards income from capital gains u/s 50C of the Act. Feeling aggrieved with the order of AO, assessee carried the matter before ld.CIT(A), who allowed the appeal of assessee.

4. Feeling aggrieved with the order of Id.CIT(A), Revenue is now in appeal before us.

5. Before us, the Id.DR for the Revenue had submitted that notices were sent on the address of the assessee mentioned in sale deed through speed post and thereafter, the service was affected through affixation. However, none appeared before the Assessing Officer and therefore, the Assessing Officer had completed the assessment u/s 144 r.w.s. 147 of the Act. Feeling aggrieved with the order of Assessing Officer, assessee had preferred appeal before Id.CIT(A) who vide non-speaking order had allowed the appeal of the assessee. Our attention was drawn to para 5 of the order of Id.CIT(A).

"5. I have carefully the considered the facts of the case, assessment order and submission of the appellant along with case laws. As per sale deeds No.1309/109 dated dt.11-05-2009, sale deed No.945/09 dt.01.40.2009, sale deed dt.2756/09 dt.18.09.2009 and sale deed No.1363/09 dt.14.05.2009, the Assessing Officer made the assessment. On verification of these sale deeds, it is observed that these flats which were sold are belongs to the share of the developer and not the landlord i.e., the appellant. In this case, the appellant filed the Return of Income disclosing total income of Rs.1,67,280/- and the same was not incorporated by the Assessing Officer and completed the assessment u/s.143 r.w.s. 144 of Income tax Act, 1961.

The notice u/s.148 was issued by the Assessing Officer on 30-03-2017 and mentioned in the order that " in spite of the efforts made , the inspector could not find the present whereabouts of the assessee. Hence, the notice was served by affixture." Regarding this issue, the appellant, during the course of appeal proceedings it was submitted that the appellant has filed subsequent returns with a new address, i.e ., " B-201, Fortune Enclave, Road No.10, Banjara Hills " and 142(1) intimations were also received by the appellant on the said address, which is available with the Assessing Officer with PAN also. Therefore, the Assessing Officer not made any efforts to consider this address and Return of Income available with him and failed to issue notices to this address and affixed in the old address only is not justified. On verification of the Returns of Income and Intimations, notice issued I too u/s.148 in agreement and assessment with the completed appellant u/s.144 submissions r.w.s.147 and of therefore I.T.Act is not correct.

Even on merits also, as discussed above, these flats sold for not of appellant. Even though the assessment completed u/s.144 of the I.T. Act, the same sale which were available before the Assessing Officer at the time of assessment itself proves that the flats sold were not belongs to the appellant. Therefore, no fresh opportunity was given to the Assessing Officer and addition made by the Assessing officer deleted. At the same time, the Assessing Officer directed to consider the returned income disclosed of Rs.167,280/- as taxable which was not considered while passing the order u/s.144 r.w.s.14 of Income Tax Act, 1961.”

6. It was submitted by the Id.DR that the Id.CIT(A) had decided the issue merely on the basis of the submissions made by the assessee and without calling for remand report from the Assessing Officer. It was submitted that in the present case, the matter is required to be remanded back for a fresh adjudication before the Id.CIT(A) and the direction to be issued to the Id.CIT(A) to grant opportunity of hearing to the Assessing Officer at the time of denovo adjudication of the appeal.

7. Per contra, the Id.AR for the assessee has submitted that the sale deed on the basis of which the additions were made by the Assessing Officer were available with the Assessing Officer, notices were sent on the address given on the sale deed namely Flat No.610, Brindavan Apartments, Red Hills, Hyderabad – 500004 and not on the address mentioned in the PAN data. Further, it was submitted that the assessee is not the owner of the property which is clear from various pages of the paper book containing various sale deeds where the owner of the properties sold in the sale deeds were mentioned as the “Developer of the property”. The Id.AR had also submitted that the assessee was regularly filing the return of income and that the order passed by the Id.CIT(A) is not in accordance with the law.

8. We have heard the rival submissions and perused the material on record. It was also the contention of the assessee that the assessee has been regularly filing the return of income and the above said fact was duly mentioned before the Id.CIT(A). The assessment order passed by the Assessing Officer shows that the addresses of the assessee mentioned in the sale deed was Flat No.610, Brindavan Apartments, Red Hills, Hyderabad – 500004 where the notices u/s 148 of the Act were issued. Assessing Officer's order shows that the notices were also sent through speed post. However, the notices sent through speed post were returned by postal authorities as unserved and thereafter, the officials of the Revenue tried to trace the assessee and as the assessee is not available, the service was affected through affixation and consequently, the order u/s 144 r.w.s. 147 of the Act was passed.

9. In appeal, the Id.AR has brought on record that no efforts were made by the Assessing Officer to serve notices on the assessee on the address given as per PAN data and further the assessee is regularly assessed by the concerned tax authorities and therefore, the entire exercise undertaken by the Assessing Officer was incorrect. On merit, it was submitted that the sale deed on the basis of which the additions were made in the hands of the assessee, do not belong to assessee and it is clear from the bare perusal of the sale deed (vide Para 1 of Page 19 of the paper book), which was formed basis for making the addition, wherein it was mentioned as under :

"1. That in consideration of payment of total sale consideration of Rs.1,60,00,000/(Rupees One Crore Sixty Lakhs Only), in favour of the Developer the receipt of which, the Vendors/Developer hereby admit and acknowledge, the Vendors/Developer do hereby convey, transfer and sell to the Vendee the Schedule II residential flat with super built up area of 5380 Sq.ft. (including proportionate share in common areas), bearing Flat No. F-304 (DUPLEX), in Second and Third Floor in 'F' Block along with three car parking slots together with undivided share of land equivalent to 465 Square Yards out of total land admeasuring 19,599 Square yards in Sy Nos.129/34 and 129/35 of Shaikpet Village, in the residential complex known as "FORTUNE ENCLAVE" situated at Rear side of Road No. 12, Banjara Hills, Hyderabad (more fully described in the Schedule II hereunder and

delineated in the map enclosed herewith) by way of absolute sale in favour of the Vendee(s) together with all rights of easements attached to the same.”

10. From the perusal of the above, it is clear that the consideration was received by the Developer and receipt thereof was acknowledged and admitted by the Developer / Vendor (including the assessee). The inter-se arrangement between the Developer / Vendor was required to be examined by the Id.CIT(A) while passing the order. However, there is no discussion in the order as to on what basis, the Id.CIT(A) came to the conclusion that the flats sold were belonged to the developer and not to the vendors. It was also not examined by the Id.CIT(A) that on what basis, the developer became the owner of the flats sold by and what was the consideration in lieu of transfer of right, if any, was received by the assessee. In fact, Id.CIT(A) had decided the issue without calling for the remand report from the Assessing Officer. In the light of the above observations, we are of the opinion that the matter is required to be remanded back to the file of the Id.CIT(A) with the following directions :

- 1) Ld.CIT(A) shall decide the appeal denovo after affording opportunities of hearing to the Assessing Officer as well as to the assessee. Needless to say Id.CIT(A) shall call the remand report from the Assessing Officer before deciding the appeal.
- 2) The assessee shall file all the documents (joint development agreement, power of attorney, receipts, approval plan, completion certificate etc.) by virtue of which the ownership of the flats / lands was transferred in favour of the developer.
- 3) The assessee shall also file development agreement if any entered between the assessee and developer.

- 4) The assessee shall produce any other admissible evidence demonstrating that the assessee is not the owner of the flats sold by the assessee along with others.
- 5) The Id.CIT(A) shall decide the appeal in accordance with the law and pass the reasoned speaking order.

Accordingly, the appeal of the Revenue is allowed for statistical purposes.

11. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 20th July 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th July, 2022.
Yamini/Sr.P.S.

Copy to:

S.No	Addresses
1	The Joint Commissioner of Income Tax (OSD), Circle 3(1)(i/c) 7 th Floor, Signature Towers, Kondapur Hyderabad – 500034.
2	Sri Srinivasa Kumar Sankranthi, B-201, Fortune Enclave, Road No.12, Banjara Hills, Hyderabad.
3	CIT(Appeals) – 1, Hyderabad.
4	PCIT – 1, Hyderabad.
5	DR, ITAT 'A' Bench, Hyderabad.
6	Guard File

By Order