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

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

आ.अपी.सं / **ITA No. 1584/Hyd/2019**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Smt. Neeta Goswami, Hyderabad [PAN No. ASIPG4817D]	Vs.	Income Tax Officer, Ward-12(3), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri B. Shanti Kumar, AR
राजस्व द्वारा/Revenue by: Shri A.P.Babu, DR

सुनवाई की तारीख/Date of hearing: 29/09/2022
घोषणा की तारीख/Pronouncement on: 17/10/2022

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 23/08/2019 passed by the learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld. CIT(A)") in the case of Ms. Neeta Goswami ("the assessee") for the assessment year 2016-17, assessee preferred this appeal.

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2016-17 on 28/03/2018 declaring an income of Rs. 34,45,900/-. Learned Assessing Officer noticed that the

assessee sold a house property under the court order at Rs. 2.45 crores and claimed deduction under section 54 of the Income Tax Act, 1961 (for short "the Act") to the tune of Rs. 2.11 crores while offering Rs. 34 lakhs as long term capital gains. Learned Assessing Officer, however, recorded that there was no evidence supporting the claim of the assessee and, therefore, added Rs. 2.11 crores to the income of the assessee.

3. In the first appellate proceedings, assessee produced a letter of allotment of Plot No. E-1403 admeasuring 738 sft. at Mumbai for a consideration of Rs. 1,82,45,042/- and submitted that along with stamp duty, registration charges and GST it comes to Rs. 2.11 crores, which she claimed as deduction. Learned CIT(A) however, noticed that out of this purchase amount, the assessee paid only Rs. 11 lakhs and, therefore, assessee is entitled to claim deduction under section 54 of the Act only to the extent of Rs. 11 lakhs and accordingly confirmed the addition to the extent of Rs. 2 crores.

4. Assessee is aggrieved by such an action of the learned CIT(A), assessee preferred this appeal stating that there is no justification for the learned CIT(A) to sustain the addition inasmuch as the assessee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow up action and taking the delivery of possession is only a formality. Placing reliance on the CBDT Circular No. 471 dated 15/10/1986, and Circular No. 672, dated 16/12/1993, learned AR argued that the investment in a flat under the self-financing scheme of the Delhi Development Authority (DDA) and the co-operative societies or other institutions similar to the self-financing scheme by the DDA.

5. Apart from the case on merits, assessee also challenged the assessment on the point of jurisdiction by way of additional ground. learned AR submitted that the assessment order dated 14/12/2018 was passed by the Income Tax Officer, Ward-12(3), Hyderabad, which falls within the jurisdiction of Range-12, Hyderabad, which is a salary range,

where only the tax payers who are having salaried income are assessed to tax, whereas the assessee is not a salaried employee and, therefore, the order passed by the learned Assessing Officer is without jurisdiction and assessment order is void ab initio. According to the learned AR, learned CIT(A) failed to deal with this aspect and, therefore, the impugned order as well as the assessment order are liable to be quashed, for want of jurisdiction. Learned AR placed reliance on the decisions reported in Kiran Singh and Others Vs. Chaman Paswan (1954) AIR SC 340, M/s. Mavany Brothers Vs. CIT [2015] 62 taxmann.com 50 (Bombay) and Sant Baba Mohan Singh Vs. CIT (1973) 90 ITR 197 (All) in support of his contention that this lack of jurisdiction goes to the root of the matter and vitiate the proceedings.

6. Per contra, learned DR submitted that there is no denial of the fact that the assessee paid only a sum of Rs. 11 lakhs towards purchase consideration during the year under consideration, and, therefore, the assessee cannot claim anything more as deduction under section 54 of the Act than what she has paid. He submitted that the CBDT circulars relied upon by the assessee relate to the self-financing scheme of the DDA or similar schemes floated by co-operative societies or other institutions which are similar to those mentioned in CBDT Circular No. 471. He accordingly submits that unless and until the assessee establishes that the scheme under which she seeks to purchase the property is similar to the scheme of allotment and construction of plots/houses by the DDA or any co-operative society or other similar institutions, the assessee cannot claim the application of the circular No. 471 or 672 relied upon by her. Learned AR placed reliance on the decisions reported in Humayun Suleman Merchant Vs. CCIT (2016) 73 taxman.com 2 (Bombay) and Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company, (2018) 9 SCC 1 (FB)(SC) in support of his contention that the assessee has to strictly comply with the conditions of section 54 of the Act to claim the deduction

therein because strict interpretation is to be adopted whilst construing an exemption provision.

7. Insofar as the additional ground is concerned, it is the argument of the learned DR that under section 124(3) of the Act, no person shall be entitled to call in question the jurisdiction of an Assessing Officer where he made a return under sub section (1) of section 139 of the Act after the expiry of one month from the date on which he was served with the notice under sub section (1) of section 142 of the Act and, therefore, inasmuch as the assessee never questioned the jurisdiction of the learned Assessing Officer till filing of the additional ground on 24/12/2021, the assessee is precluded from raising such an issue at this stage. Second submissions of the learned DR is that the assessee was a salaried employee and has habitually been filing the returns with the Income Tax Officer, Ward-12(3) of Hyderabad and as usual for this year also the assessee filed the return of income with such an authority and never at any point of time brought it to the notice of the authorities that for this year she has no salary income and, therefore, the Income Tax Officer, Ward-12(3), Hyderabad cannot complete the assessment. According to the learned DR, the assessee, having allowed the matter to be decided on merits without taking any objection under section 124(3)(a) of the Act, now at the second appellate stage cannot seek to unsettle the assessment on technical grounds. Thirdly he submitted that the decisions relied upon by the learned AR have no application to the facts of the case. He placed reliance on a decision reported in Abhishek Jain Vs. ITO (2018) 94 taxmann.com 355 (Delhi) in support of this contention.

8. We have gone through the record in the light of the submissions made on either side. On facts, it remains undisputed that in the earlier years the assessee was a salaried employee and the assessment was taking place in the salary range. For this year, depending upon the PAN, the case was allotted to Income Tax Officer, Ward-12(3), Hyderabad. Assessee never objected for the jurisdiction of the learned Assessing Officer. At no

point of time, the assessee brought it to the notice of the authorities that because there is no salary income in this year, though according to the PAN the matter was allotted to the Income Tax Officer, Ward-12(3), Hyderabad as a matter of fact, the salary range has no jurisdiction over the assessee for this year. For that matter, it is not the case of the assessee that she was never a salaried employee. Assessment order starts with the sentence that 'the assessee, salaried employees has filed…..', suggesting that the assessee filed returns of income earlier years as a salaried employee.

9. Basing on the PAN, the case was picked up for scrutiny by the Income Tax Officer, Ward-12(3), Hyderabad. Assessee never objected to the jurisdiction of Income Tax Officer, Ward-12(3). On this aspect, section 124(3) of the Act mandates that no person shall be entitled to call in question the jurisdiction of an Assessing Officer, where he has made a return under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier.

10. Now coming to the decisions relied upon by the assessee, insofar as the decision in Kiran Singh (supra) is concerned, it was a suit for ejection of the defendants, where the suit was originally valued at Rs. 2,950/-. Suit was tried by the subordinate judge and the first appeal was heard and dismissed by the District Judge. When the matter went to the Hon'ble High Court, objection was taken by the stamp reporter as to the valuation of the suit and it was decided by the Hon'ble High Court, the correct valuation was Rs. 9,980/- on which the plaintiff paid the court fee and a plea was taken whether the valuation was Rs. 2,950/- as valued in the plaint or Rs. 9,980/- as determined by the Hon'ble High Court, the original jurisdiction to try the suit was with the subordinate judge. However, such a valuation made a difference in respect of the first appellate court – whether District Court according to the valuation in the plaint, or High Court as per the valuation determined by the Hon'ble High Court. It was held by the Hon'ble

High Court that the appeal to the District Court was competent and that its decision could be reversed only if the appellants could establish prejudice on the merits and folding that on a consideration of the evidence no such prejudice had been shown, they dismissed the second appeal. When the matter was taken to the Hon'ble Apex Court, Hon'ble Apex Court observed that it is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and a defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties.

11. Hon'ble Apex Court, however, went further and while referring to section 11 of the Suits Valuation Act (SV Act), where it was stipulated that an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of over valuation or under valuation, should not be entertained by an appellate court, except as provided in the section, observed that such a provision is a self contained provision complete in itself and no objection to jurisdiction can be raised otherwise than in accordance with it. Hon'ble Apex Court held that this principle adopted in this section is the same as the principle enunciated section 21 of the Code of Civil Procedure (CPC) in respect of the objections relating to the territorial jurisdiction. After referring to the policy underlying sections 21 CPC and section 11 of SV Act. Hon'ble Apex Court held that when a case was tried by a court on merits, and judgment was rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as a technical and not open to consideration by an appellate court, unless there has been a

prejudice on merits. This is the ratio of the decision rendered by the Hon'ble Apex Court in the case of Kiran Singh (supra).

12. Having regard to the legislative policy in enacting 124(3) of the Act, no different conclusion can be reached in the case on hand. Legislature is very clear in laying down the policy that no questions relating to the jurisdiction of the learned Assessing Officer in a matter where the return under section 139(1) of the Act, shall be entertained after expiry of one month from the date on which the notice under section 142(1) of the Act was served.

13. Case of Manavy Brother (supra) relates to the exercise of the extraordinary jurisdiction by the learned Assessing Officer under section 147/148 of the Act in relation to the conditions precedent for such exercise. It has nothing to do with pecuniary or territorial jurisdiction. Observations of the Hon'ble Bombay High Court to the effect that lack of satisfaction of jurisdictional fact can never confer a jurisdiction and an objection to it can be raised at any time even in appeal proceedings, is not helpful to the assessee. Reliance on this decision is misconceived because the principles relating to lack of inherent jurisdiction cannot be extended to the exercise of pecuniary territorial jurisdiction.

14. Sant Baba Mohan Singh (supra), is a case that relates to the exercise of jurisdiction under section 31(3)(b) of the Income Tax Act, 1922 by the Appellate Assistant Commissioner, where the assessee contended that the case falls under section 31(1)(a) of the Income Tax Act, 1922. In this case also with reference to the facts, the Hon'ble Allahabad High Court observed that when the Assessing Officer had seisn over the case, he had over all jurisdiction over the case and in that sense had power to initiate the proceedings and in such case, it cannot be said that the proceedings are void ab initio. In this case, by no stretch of imagination can we say that the exercise of jurisdiction by the learned Assessing Officer is void ab initio inasmuch as under section 124(3) of the Act, the assessee is provided with

an opportunity to object the proceedings on the ground of want of jurisdiction before the learned Assessing Officer.

15. In Abhishek Jain (supra), the Hon'ble Delhi High Court discussed the issue in the light of the decision reported in CIT Vs. S.S.Ahluvalia (2014) 46 taxmann.com 169 (Delhi) and held that sub-section (3) of section 124 of the Act clearly states that no person can call in question jurisdiction of an Assessing Officer in case of non-compliance and/or after the period stipulated in clauses (a) and (b) which would negate and reject the arguments predicated on lack of subject matter jurisdiction.

16. On a careful consideration of the matter, we are of the considered opinion that neither the facts nor law are in favour of the assessee. Though the want of inherent jurisdiction vitiates the proceedings ab initio, lack of pecuniary or territorial jurisdiction does not vitiate the proceedings ipso facto but it requires the proof of resultant failure of justice because of such want of jurisdiction. This is the policy of the legislature under section 21 of the CPC as well as section 124(3) of the Act. We, therefore, find it difficult to sustain the argument advanced by the learned AR that the assessment is void ab initio for want of territorial jurisdiction with the learned Assessing Officer. We accordingly reject the contention advanced on behalf of the assessee that the assessee order is void ab initio for want of jurisdiction with the Income Tax Officer, Ward-12(3), Hyderabad.

17. Coming to the merits of the case, the assessee sold the a house property at Rs. 2.45 crores and claimed deduction under section 54 of the Act to the tune of Rs. 2.11 crores while offering long term capital gains at Rs. 34 lakhs, out of which as recorded by the learned CIT(A), only an amount of Rs. 11 lakhs was paid to the builder. Learned CIT(A), therefore, granted relief to the assessee in respect of Rs. 11 lakhs that was paid and confirmed the addition to the extent of Rs. 2 crores. Assessee does not plead that she paid anything more than Rs. 11 lakhs to Prime Terra Build

Tech. Assessee places reliance on Circular No. 471 and 672 (supra). Relevant portion of Circular No. 471 reads that:

> *"2. The Board had occasion to examine as to whether the acquisition of a fiat by an, allottee under the Self-Financing Scheme (SFS) of the D.D,A. amounts to purchase or is construction by the D.D.A. on behalf of the allottee. Under the SFS of the D.D.A., the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.*
>
> *3. The Board have been advised that under the above circumstances, the inference that can be drawn is that the, D.D.A. takes up the construction work on behalf of the allottee and that the transaction involved is not a sale. Under the scheme the tentative cost of construction is already determined and the D.D.A. facilitates the payment of the cost of construction in instalments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment of fiats under the Self-Financing Scheme of the D.D.A. shall be treated as cases of construction for the purpose of capital gains".*

18. Admittedly, assessee does not purchase the flat under the self-financing scheme of DDA. She, therefore, relies on Circular No. 672 wherein the board having considered the matter, decided that if the terms of the schemes of allotment and construction of a flats/houses by the cooperative societies or other institutions are similar to those mentioned in para to of the board circular No. 471, dated 15/10/1986, such cases may also be treated as cases of construction for the purpose of section 54 and 54F of the Act.

19. Though reliance is placed on the Circular Nos. 471 and 672, no material is produced before us to show that the assessee purchased the flat from any co-operative society or other institution under the schemes of allotment and construction of flats/houses which have the trappings of the self-financing scheme of DDA referred to in Circular No. 471. Purchase of property from a private real estate agency cannot be equated with DDA or any co-operative society and essentially the terms of purchase should match the scheme under which the DDA/any co-operative society, allots and constructs the flats/houses. Admittedly, the assessee did not deposit the un-utilized amounts in a notified bank account as required under law.

20. In Humayun Suleman Merchant (supra), it was held that where the assessee filed return of income and entire amount which was subjected to capital gain tax had not been utilized for the purpose of construction of new house, nor were un-utilized amounts deposited in notified bank accounts before filing return of income, the assessee is not entitled to claim deduction of that part of capital gains. This decision covers the case on hand.

21. On a careful consideration of the facts and law on this aspect, we do not find anything illegality or irregularity in the action of the authorities below and accordingly the grounds of appeal are devoid of merits. Consequently, they are dismissed.

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

Order pronounced in the open court on this the 17th day of October, 2022.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 17/10/2022

TNMM

Copy forwarded to:

1. Smt. Neeta Goswami, D.No. 14-6-47, Begum Bazar, Nampally, Hyderabad.
2. The Income Tax Officer, Ward-12(3), Hyderabad.
3. CIT(A)-1, Hyderabad.
4. Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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