

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri LALIET KUMAR, JUDICIAL MEMBER

ITA No.703/Hyd/2022		
Assessment Year: 2010-11		
Sree Ramama Cooperative Housing Society Ltd, Hyderabad PAN:AAYAS7363K (Appellant)	Vs.	A.C.I.T. Circle 15(1) Hyderabad (Respondent)
Assessee by:	Sri T. Rajendra Prasad, CA	
Revenue by:	Smt. Reema Yadav, Sr.AR	
Date of hearing:	16/1/2023	
Date of pronouncement:	16/01/2023	

ORDER

This appeal filed by the assessee is directed against the order dated 12-10-2022 of the learned NFAC/CIT (A)-, relating to A.Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is an association of persons, engaged in the business of sale of open plots in the name and style of M/s. Sree Ramana Co-operative Housing Society Ltd, situated at Parvathapur (V), Peerzadiguda Municipality, Mediapally Post, Ghatkesar Manda, Hyderabad 500098. The assessee is a non-filer for the assessment year under consideration and did not disclose the eligible Long Term Capital Gains to tax through an open Plots sold on behalf of the assessee AOP society during the previous year 2009-10 relevant to A.Y 2010-11. The case was reopened u/s 147 of the I.T. Act, 1961.

3. In this case the assessee society has purchased the land on 24.4.1982 and 15.7.1982 from Shri Poolchand Singh & others. Subsequent thereto the assessee has allotted the subject matter of the plots to Mr. Srinivasa Rao and Mr. Boka Narasimha Rao on 26.7.1982 for a total consideration of Rs.1600/- each. The land allotted to these persons were the subject matter of litigation as the said land was purchased by the assessee, though by registered document, but the sale was in contravention of the A.P. Land Reforms Act, 1973. The Seller Poolchand Singh & others have surrendered the excess holding in favour of the State as per the Act. The case was examined by the Hon'ble High Court and Hon'ble Supreme Court and the Hon'ble Supreme Court, finally vide order dated 24.11.2010, had decided the issue against the assessee by dismissing the civil appeal. The Hon'ble Supreme Court had upheld the order of the Hon'ble High Court. As the land allotted by the assessee/subsequent members were found to be void and bad in law and therefor with a view to earn the goodwill and to compensate the members/subsequent purchasers the assessee had allotted two plots on 28.10.2009 to Mr. P.V.S. Sudhakar and Sri P.K. Rama Krishna for a total consideration of Rs.32000/-each. The dispute before me is whether the assessee was liable for capital gain u/s 50C or not. It is the case of the assessee before us that the assessee had merely restituted the original allottee/subsequent buyer and no subsequent consideration was received by the assessee through on paper the assessee has mentioned in the record is Rs.32,000/- each has been received by the assessee. It was also the case of the assessee that the learned Assessing Officer had erred in taking the valuation of the property as guidance value fixed by SRO of the property transferred by the assessee to Mr. P.V.S. Sudhakar and Shri P.K. Rama Krishna for an amount of Rs.5,12,000/-each vide

document No.2532/2009 and 2534/2009 dated 28.10.2009 and the same was not the market value. Besides that it was the contention of the learned AR that the learned Assessing Officer while calculating the indexation cost has not given the benefit of the improvement/development made by the assessee for carving out the plot, building the road and providing other common facilities which were required to be taken into consideration while working out the indexation cost of acquisition. He had drawn my attention to the order passed by the learned Assessing Officer where the learned Assessing Officer has mentioned the indexation cost of improvement as 'Nil'.

4. Per contra, the learned DR had submitted that the indexation cost of the property has been taken as Rs.48000/- as on 1.4.1993, on that the Assessing Officer has granted the indexation to the assessee. However, as the assessee failed to furnish any evidence/document regarding the cost of improvement, therefore, the case has been decided on the basis of the material available. Further that it is the case of the learned DR that the assessee has not allotted the land to its original members and instead assessee has sold the plots for a meagre consideration of Rs.32,000/- each as against the stamp value of Rs.5,12,000/- to Mr.P.V.S. Sudhakar and Mr. P.K. Rama Krishna. This act of selling land vide document dated 28.10.2009 cannot be considered as an act of restitution by the assessee.

5. I have heard the rival arguments made by both the sides and perused the available material on record. Admittedly, the assessee has sold the property to its member on 26.7.1982 and thereafter, by virtue of the order of the Hon'ble Supreme Court/High Court, the sale transaction entered between the

assessee and vendor was held to be void being in violation of the A.P. Land Reforms Act 1973. However, the act on the assessee to retribute to its member/subsequent member cannot be denied as it is the duty of every person to retribute any person who had suffered a loss on account of his. In the present case, the land was available with the assessee therefore, the assessee has allotted the land to Mr. P.V.S. Sudhakar and Mr. P.K. Ramakrishna @ Rs.32,000/- After the original allotment was held as void. In my view, the allotment/sale of land to the same person cannot be disputed by Revenue and only the dispute before me is whether the valuation of the land is to be taken as Rs.32,000/- or the stamp value taken by the Assessing Officer. In my view the reading of section 50C make it abundantly clear that in the absence of any corroborative cogent evidence, the stamp value of the property determined by SRO is required to be adopted. In view of the above, I do not find any merit in the contention that the value of the property should be taken as Rs.32,000/-. In view of the above, I hold that the value of the property should be taken as Rs.5,12,000/-. Having decided the issue against the assessee, now the question as to whether the assessee is entitled to the benefit of cost of improvement or not. It was fairly submitted by the learned AR for the assessee that the evidence/document showing cost of the improvement being old, the assessee was not able to lay it and therefore, the assessee has failed to produce evidence/document before the lower authorities. The learned AR requested for grant of one more opportunity.

6. The learned DR had vehemently opposed the grant of second inning to the assessee society.

7. Having heard rival arguments and perused the available material on record. In my view and in the interest of justice, the assessee should be granted one more opportunity to prove the 'cost of improvement' of the land, from the date of its acquisition till its transfer to the present purchaser Mr. P.V.S. Sudhakar and Mr. P.K. Rama Krishna. In view of the above, I remand back this issue of 'cost of improvement' to the file of the Assessing Officer with a direction to the Assessing Officer to decide this issue afresh after affording an opportunity of hearing to the assessee. The assessee is also directed to produce all the relevant documents/evidence etc, before the Assessing Officer.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 16th January, 2023.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 16th January, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sree Ramana Coop. Housing Society Ltd, Plot No.E-59, Satyanarayanapuram, Parvathapur, Peerzadiguda, Ghatkeswar Mandal, Ranga Reddy 501301, Telangana
2	ACIT Circle 15(1) IT Towers, AC Guards, Mabas Tank Hyderabad 500004
3	CIT (A)-NFAC Delhi
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order