

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No. 110/Hyd/2023		
Assessment Year: 2008-09		
Shri Vuchuru Anil Prem Reddy, London PAN:AKHPR4950P (Appellant)	Vs.	Income Tax Officer (International Taxation) Nellore (Respondent)
Assessee by:	Shri Pawan Kumar Chakrapani, CA	
Revenue by:	Shri M. Vijay Kumar, CIT(DR)	
Date of hearing:	20/07/2023	
Date of pronouncement:	21/07/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the ex-parte order dated 16.09.2022 of the learned CIT (A)-, Delhi relating to A.Y.2008-09.

2. There is a delay of 87 days in filing of this appeal by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation petition filed along with the affidavit and after hearing the learned DR, the delay in filing of this appeal by the assessee is condoned and the appeal is admitted for adjudication.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte order of the learned CIT (A) in upholding the re-assessment proceedings and confirming the addition of Rs.24,82,744/- made by the Assessing Officer as Long-Term Capital Gain.

4. Facts of the case, in brief, are that the assessee is a Non-Resident Indian. During the financial year 2007-08 relevant to the impugned A.Y, the assessee had sold 3 immovable properties on 6.10.2007 in the capacity of General Power of Attorney holder of Sri/Smt. Vuchuru Sadhana Reddy, 32, Copt Royd Grove, Yeadon, Leeds, LS197HQ, UK. Since the assessee had acted as a GPA Holder on behalf of Sri/Smt. Vuchuru Sadhana Reddy, UK and executed the sale document, the Assessing Officer issued a show-cause letter dated 27.3.2015 asking the assessee to explain as to why he should not be treated as representative assessee u/s 163(1)(c) of the Income Tax Act, 1961 as Sri/Smt. Vuchuru Sadhana Reddy, UK was in receipt of her share of sale consideration through the assessee. Since the assessee did not respond to the notice issued by the Assessing Officer, the Assessing Officer completed the assessment u/s 144 of the I.T. Act and determined the Long-Term Capital Gain at Rs.24,82,744/- in the hands of the assessee by observing as under:

As the assessee has not complied with any of the notices and also show cause letters issued from time to time even though every notice and letter was acknowledged the delivery, there is no other way except to complete the assessment ex-parte and the long term capital gains resulted in the hands of Sri/Smt. Vuchuru Anila Prem Reddy, UK are brought to tax in the hands of the assessee. Accordingly, the long term capital gains for each document are arrived and the assessment is completed as under:

Document No.56/2007

Sale consideration as per document	..Rs.89,12,000/-
Less:Cost of acquisition	
Rs.17,185x551/100	..Rs.94,689
Long term capital gains..	..Rs.88,17,310

Document No.57/2007

Sale consideration as per document	..Rs.8,26000/-
Less:Cost of acquisition	
Rs.12,845x551/100	..Rs.70,775
Long term capital gains..	..Rs.7,55,224

Document No.649/2007

Sale consideration as per document	..Rs.3,92,000/-
Less:Cost of acquisition	
Rs.6090x551/100	..Rs.33,555
Long term capital gains..	..Rs.3,58,444

Total long term capital gains ..Rs.99,30,978/-

As the assessee has sold the above immovable property along with her two sons and one daughter and also signed all the above three sale deeds in the capacity of Individual as well as GPA holder, the long term capital gains resulted in the hands of Sri/Smt. Vuchuru Anila Prem Reddy, NRI is assessed in the hands of assessee. In the absence of any mention of percentage of assessee share in the immovable property in the document, the long term capital gains are divided equally among Smt.Vuchuru Krupamayi Reddy, Sri Vuchuru Ashok Reddy, NRI; Sri/Smt. Vuchuru Sadhana Reddy, NRI; and Sri/Smt. Vuchuru Anila Prem Reddy,UK.

Long Term Capital Gains in the hands of the assessee:Rs.24,82,744”.

5. Before the learned CIT (A), the assessee filed an appeal. However, due to non-appearance of the assessee despite number of opportunities granted, the learned CIT (A) in the ex-parte order passed by him confirmed the order of the Assessing Officer.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee submitted that the assessee is an NRI and due to non-receipt of the statutory notices and due to lack of proper legal advice, he could not pursue the matter either before the Assessing Officer or before the learned CIT (A). The learned Counsel for the assessee submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case before the Assessing Officer.

8. The learned DR, on the other hand, strongly opposed the arguments advanced by the learned Counsel for the assessee. He submitted that a perusal of the orders of the Assessing Officer and the CIT (A) shows that the assessee has scant regard for the statutory notices issued by the Assessing Officer as well as the CIT (A). He accordingly submitted that the order of the CIT (A) should be confirmed. In his alternate argument he submitted that some cost should be levied on the assessee.

9. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that due to non-compliance of the assessee to the statutory notices issued by the Assessing Officer, the Assessing Officer passed the order u/s 144 r.w.s. 144C determining the Long-Term Capital Gain in the

hands of the assessee at Rs.24,82,744/-. We find despite three opportunities granted by the learned CIT (A), the assessee did not appear before the learned CIT (A) for which the learned CIT (A) was constrained to pass ex-parte order dismissing the appeal filed by the assessee. It is the submission of the learned Counsel for the assessee that since the assessee was an NRI and was staying abroad he could not receive the notices and due to lack of proper legal advice, could not pursue the matter before the lower authorities. It is his argument that given an opportunity, the assessee is in a position to substantiate his case by producing the relevant details to the satisfaction of the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer on the appointed day without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 21st July, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 21st July, 2023

Vinodan/SPS

Copy to:

S.No	Addresses
1	Sri/Smt. Vuchuru Anila Prem Reddy, No.101, Wheatsheaf Close, ISLE of Dogs Longon E 1494Y UK London
2	Income Tax Officer (International Taxation), Nellore 524003
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order