

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

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.471/Hyd/2023		
Assessment Year: 2012-13		
Sri Venkateswara Cooperative House Building Society Ltd, Hyderabad PAN:AAEAS7809L	Vs.	Income Tax Officer Ward 14(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	N O N E	
Revenue by:	Smt. Sheetal Sarin, DR	
Date of hearing:	21/12/2023	
Date of pronouncement:	21/12/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the ex-parte order dated 3.08.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2012-13.

2. This appeal was fixed for hearing on 6.11.2023 for which notice was duly served on the assessee through RPAD and the acknowledgment is placed on record. However, none appeared on behalf of the assessee at the time of hearing nor any

adjournment application has been filed. It was further seen that before the learned CIT (A) NFAC also there was non-appearance for which the learned CIT (A) NFAC has passed the order ex-parte. Under these circumstances, we deem it proper to dispose of the appeal on the basis of material available on record after hearing the learned DR.

3. Facts of the case, in brief, are that the assessee is an individual and filed its return of income for the impugned A.Y on 31.5.2019 declaring total income of Rs.3,12,050/-. The Assessing Officer, on the basis of information available from Form 26AS pertaining to the assessee noted that Andhra Bank has made payment of Rs.8,10,600/- to the assessee towards rent and deducted TDS during the financial year 2011-12 relevant to A.Y 2012-13. He further noticed that the assessee sold the property at MLA Colony, Road No.12, Banjara Hills, Hyderabad admeasuring 150 Sq. Yards for Rs.7,50,000/-. However, the value adopted by the SRO for charging stamp duty was Rs.60,00,000/-. According to the Assessing Officer although the assessee filed return of income for the A.Y 2012-13, however, the assessee has not offered the income from capital gain to tax. He therefore, reopened the assessment by recording reasons u/s 147 of the I.T. Act and notice u/s 148 was issued and served on the assessee on

25.3.2019. Subsequently, on the basis of the submissions made by the assessee from time to time, the Assessing Officer, applying the provisions of section 50C of the Act, determined the capital gain at Rs.60.00 lakhs by observing as under:

Though the transaction is in courts as stated by the assessee, the assessee is liable to pay capital gains tax on the sale of this plot, since the registration has done by the managing committee of the society and there was a capital gain on the sale of this plot. Moreover, the plot is not part of the land allotted by the Government and this cannot be considered as a sale on behalf of the Government, as stated by the assessee. It is an adjacent land to the land actually allotted, which is not part and parcel of the allotted land and hence the cost of acquisition is taken at NIL. The sale consideration as per the SRO i.e. Rs.60 lakhs, is taken as capital gains to the Housing Society. Accordingly, the assessment is completed by adopting the market value of the SRO as sale consideration as per provisions of sec.50C of the I.T.Act.

4. The Assessing Officer accordingly completed the assessment on a total income of Rs.63,12,050/-.

5. Since the assessee did not appear before the learned CIT (A) NFAC, despite number of opportunities granted, the learned CIT (A) NFAC dismissed the appeal filed by the assessee.

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1. On the facts and circumstances of the case, the order passed by the Learned CIT(A), NFAC, Delhi is bad both in eyes of law and facts.

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on both facts and in law in not considering the contention of the assessee that the A.O has failed to consider that there was no transfer of property in the hands of the assessee society, being the land allotted to the society on behalf of its members, by the State Government and therefore the provisions of section 45 of the I.T. Act, 1961 are not applicable.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on both facts and in law in not considering the Contention of the assessee that the A.O has failed to consider that the deemed provisions of section 50C of the not applicable when the provisions of sec 45 of the Act are not applicable.*

4. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on both facts and in law in not considering that the A.O has failed to consider that there was no transfer of immovable property as per the transfer of property Act, 1882 in respect of the property transferred on behalf of the Govt. to, or in favour of any person whomsoever and therefore provisions of sec 45 of the I.T Act are not applicable.*

5. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on both facts and in law in not considering the contention of the assessee that there was no transfer of property in the hands of the assessee and therefore the provisions of section 147 of the Act are not applicable and as such the notice issued u/s 148 on 25-03-2019 is invalid and is without jurisdiction.*

6. *On the facts and circumstances of the case, the Ld. CIT(A) has erred on both facts and in law in not allowing proper opportunity of being heard to the appellant, which is against to the principles of natural Justice.*

7. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in passing the order basing only on dictum of law "VIGILANTI BUS", NO DORMENTI BUs, JURA SUBVENIUNT", but without considering the submissions that sec 50 was not applicable as there was no transfer of property in between the Co-operative Hosing Society and to its members.*

8. *On the facts and circumstances of the case, the Ld. GIT(A) has erred on both facts and in law in dismissing the appeal as per the observations at para 5 of page no 6 of his order u/s 250 Dated 03-08-2023, which is against to the principles of natural Justice.*

9. The appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

5. We have heard the learned DR and perused the record. It is an admitted fact that the assessee during the impugned A.Y has sold a property admeasuring 150 sq. yards at MLA Colony, Road No.12, Banjara Hills, Hyderabad admeasuring 150 Sq. Yards for Rs.7,50,000/- whereas the value adopted by the SRO for charging stamp duty was Rs.60,00,000/-. We find the Assessing Officer invoking the provisions of section 50C of the Act, determined the capital gain at Rs.60.00 lakhs which has been upheld by the learned CIT (A) NFAC. Since nothing has been brought either before the learned CIT (A) NFAC or before us to controvert the finding given by the Assessing Officer as to why the provisions of section 50C are not applicable to the facts of the case and that the cost of acquisition is not to be taken at Nil, we do not find any infirmity in the order of the learned CIT (A) NFAC dismissing the appeal filed by the assessee. We therefore, uphold the order of the learned CIT (A) NFAC on this issue and the grounds raised by the assessee are dismissed.

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court at the time of hearing itself

i.e. on 21st December, 2023.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 21st December, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Venkateswara Coop House Building Society Ltd, Road No.12, Exten. Society Office, MLA Colony, Khairatabad, Hyderabad 500034
2	Income Tax Officer Ward 14(2) IT Towrs, AC Guarda, Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order