

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.24/Hyd/2024		
Assessment Year: 2009-10		
Khairunnisa, R/o.8-5-85, Road No.1, Mallikarjuna Colony, Bowenpally, Secunderabad. PAN : ANVPK4801B.	Vs.	The Income Tax Officer, Ward 11(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Ms. Sandhya, Advocate, appeared through virtual mode.
Revenue by:		Shri Rohit Mujumdar, Sr.A.R, appeared through virtual mode.
Date of hearing:		24/01/2024
Date of pronouncement:		24/01/2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2009-10 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.15.11.2023 invoking proceedings under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. The order of the learned CIT (Appeals) is erroneous both on facts and in law.

2. The learned CIT (Appeals) erred in deciding the appeal *ex parte* when the appellant filed written submissions and also a petition for reference of the property to the valuation cell.

3. The order of the learned CIT (Appeals) is erroneous as the learned CIT (Appeals) did not consider the submissions made before him.

4. The learned CIT (Appeals) erred in confirming the adoption of the sale consideration at Rs.32,78,400/- as against the actual sale consideration of Rs.9,11,000/-.

5. The learned CIT (Appeals) erred in confirming the action of the Assessing officer in determining the Long Term Capital gain at Rs.29,04,364/-.

6. The learned CIT (Appeals) erred in confirming the action of the Assessing officer in not allowing the deduction u/s 54F of the I.T. Act.

7. The learned CIT (Appeals) erred in confirming levy of interest u/s 234A and u/s 234B of the I.T. Act.

8. Any other ground that may be urged at the time of hearing.”

3. The brief facts of the case are that the assessee, who is an individual, has sold her house bearing MCH No.8-2-602/22, admeasuring 100 Sq.yards situated at Zehra Nagar, Road No.10, Banjara Hills, Hyderabad for a total consideration of Rs.9,11,000/- on 23.06.2008 during the assessment year under consideration. However, the market value of the said property was Rs.32,78,400/-. The Department has noticed that assessee not filed the return of income for A.Y. 2009-10 admitting the capital gains. Hence, notice

u/s 148 of the Act dt.16.03.2016 was issued and served on 17.03.2016. As there was no response from the assessee, again notices u/s 142(1) of the Act were issued from time to time. As the assessment was getting barred by limitation of time by 31.12.2016 and due to assessee's non-compliance, Assessing Officer finally completed the assessment exparte and passed order on 28.12.2016 u/s 144 r.w.s. 147 of the Act determining the total income at Rs.27,24,364/-.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, the Id. AR has submitted that in the present case, assessee had sold her property bearing MCH No.8-2-602/22, admeasuring 100 Sq.yards situated at Zehra Nagar, Road No.10, Banjara Hills, Hyderabad for a total consideration of Rs.9,11,000/- on 23.06.2008. The Id. AR further submitted that its market value at Rs.32,78,400/- was wrongly determined by the Assessing Officer. The assessee in the proceedings before the Assessing Officer and before the Id.CIT(A) has requested for referring the matter to the Assistant Valuation Officer, Hyderabad ("hereinafter referred to "AVO"). It is the case of the assessee that on the request of the assessee, the Id.CIT(A) has referred the matter to the AVO, Hyderabad on 03.05.2019. Pursuant thereto, the assessee had received notices from the AVO on 09.05.2019 and 20.05.2019 calling certain documents. It is the case of the assessee that the said documents as called for were already available in the appeal and

therefore, no fresh documents were available with the assessee. Despite that, the AVO has not given any report about the valuation of the property. The Id.CIT(A) in the appellate proceedings has called for the remand report from the Assessing Officer. To that Assessing Officer has given remand report stating that no additional information was furnished by the assessee, the market value of the assessee's property was determined as full value consideration as discussed in the assessment order. It was the case of the Id.AR that the matter may kindly be remitted back to the file of Id.CIT(A) for passing afresh order after calling for the report from the AVO. In support of her case, Id. AR relied upon the decision passed by this Tribunal in the case of M/s.Jagadamba Hospitals Pvt. Ltd, Hyderabad Vs. DCIT in ITA 1469/Hyd/2018 dt.15.03.2022.

6. On the other hand, Id. DR had supported the orders of lower authorities. Further, the Id.DR has relied upon Para 5.2. of the order of Id.CIT(A), which is to the following effect :

"5.2 Notices were issued to the appellant on 13/12/2018, 02/04/2019, 26/09/2019, 04/07/2023 and 18/10/2023. However the appellant have not submitted any certificate related to land sale, purchase deed, construction details, improvement cost and other documents supporting her written submissions. This appeal is pending since 2017. Till date the appellant could not submit any details or documents to substantiate her grounds of appeal against addition made by the Assessing Officer. Hence, it is presumed that either the appellant is not getting notices or not interested to pursue the appeal. In the absence of any response there is no way to adjudicate this appeal. Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) has held as under: "if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference." Similarly, Hon'ble Punjab & Haryana

High Court in the case of New Diwan Oil Mills vs. CIT(2008) 296 ITR 495) returned the reference unanswered since the assessee remained absent and there was not any assistance from the assessee. Supreme Court in the case of CIT vs. B. Bhattachargee & Another(118 ITR 461 at page 477-478) has held that the appeal does not mean mere filing of the memo of appeal but effectively pursuing the same. However, the Income Tax Act requires CIT(Appeals) to apply mind and decide on merit all the issues which arise from the impugned order whether or not the same has been pursued by the appellant. But in this case, the appellant has not submitted any details related to sale of land and hence the appeal cannot be decided on merits. In this scenario there is no way in front of the undersigned other than to dismiss the appeal for non-prosecution on the part of the appellant.”

7. I have heard the rival submissions and perused the material on record. Admittedly, the Revenue had referred the matter to the AVO for determining the correct Fair Market Value of the assessee's property. Unfortunately, the AVO has not given any report agreeing or disagreeing with the contentions of the assessee that the value of the property was not Rs.32,78,400/- and it was Rs.9,11,000/- only or otherwise. In my view, it is incumbent upon the AVO to give a categorical report based on the various factors including municipal value, the construction of the property, location of the property i.e., in slum area or posh area. There may be numerous other factors which are to be considered by the AVO before giving his report. Unfortunately, the AVO for the reasons best known to him has not given report on valuation of the property which could have been considered by the ld.CIT(A) while passing the appellate order. Since the action of ld.CIT(A) while passing the appellate order is not based on valuation report as per Section 142A of the Act, therefore, the order of ld.CIT(A) cannot be sustainable. Hence, I deem it appropriate to remand back the matter to the file of ld.CIT(A) to call for the remand report from the AVO. Accordingly,

the appeal of the assessee is remanded back to the file of the Id.CIT(A) to call for the remand report from the AVO and estimate the correct value of the property. Needless to say that the assessee shall file all the documents as called for and all the documents available with the assessee so as to help the AVO to come to the correct conclusion. Further, the Id.CIT(A) shall examine the report to be given by the AVO, submissions of the assessee and the documentary evidence, if any, filed by her and thereafter pass afresh order dealing with the contentions of the assessee after following the principles of natural justice. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 24th January, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 24th January, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Khairunnisa, R/o.8-5-85, Road No.1, Mallikarjuna Colony, Bowenpally, Secunderabad.
2	The Income Tax Officer, Ward 11(3), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order