

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

**BEFORE**

**SHRI R.K. PANDA, VICE PRESIDENT**

*AND*

**SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.567/Hyd/2023		
Assessment Year: 2015-16		
Prakash Lal Potluri, Hyderabad.  PAN : GNKPP1085B.	Vs.	The Income Tax Officer, (International Taxation)-2, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	None	
Revenue by:	Sri M. Vijay Kumar – CIT-DR	
Date of hearing:	29.02.2024	
Date of pronouncement:	29.02.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2015-16 arises from the order of the Income Tax Officer (International Taxation) – 2, Hyderabad, (hereinafter referred as “Assessing Officer”), dt.21.09.2023 invoking proceedings under section 144 r.w.s. 144C(13) of the Act (in short, “the Act”),

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

“1. Both in law and in Facts of the case, the order made by the Ld. Income Tax Officer, Hyderabad, is bad in law, arbitrary, contrary to the provisions of law and against the principles of natural justice.

2. On the facts and circumstances of the case and in law the Ld. Income Tax Officer, Hyderabad, erred in computing Long Term Capital Gain taking into account sale consideration of Rs.1,20,00,000/- which is not received by the assessee.

3. The Ld. Income Tax Officer, Hyderabad, has erred in law in assessing the income under head Long Term Capital Gains stating that the assessee has not made any request regarding cancellation of sale deeds which is arbitrary and contrary to provisions of the law.

4. The Ld. Income Tax Officer, Hyderabad, assessed the income under the head Long Term Capital Gains without taking into consideration the provisions of section 48 and 49 in deducting cost/ indexed cost of the property from the sale proceeds.

5. On merits, the Ld. Income Tax Officer, Hyderabad, has erred on facts and in law as material placed on record, relating to the disputes in respect of the land sold, was not considered in its proper perspective leading to erroneous conclusion.

6. The Ld. Income Tax Officer, Hyderabad, has erred in law and on facts by not appreciating that the assessee has not been informed of the sale of plots by GPA Holders and by not appreciating the confirmation given by the buyer P. Nishit Kumar that he has paid the consideration of Rs.60,00,000/- to the GPA Holder Sri. G. Anil Kumar in instalment over many years.

7. The Ld. Income Tax Officer, Hyderabad, has erred in law and on facts in assessing the income under the head Long Term Capital Gains without having any material on record that the assessee received the sale consideration.

8. The Ld. Income Tax Officer, Hyderabad, should have taken into consideration that the objections raised by the assessee before Hon’ble Directors Resolution Panel-1, BLR only for the reason that objections were not filed in time.

9. *The Ld. Income Tax Officer, Hyderabad, is wrong in assessing the income without taking into consideration compliant against the fraudulent sale lodged by the assessee before SHO Ameenpur Police Station.*

3. The brief facts of the case are that the assessee, an NRI, sold a land measuring 0-30 Gts in Ameenpur village, Patancheru Mandal, for a total of Rs. 1,20,00,000/- in May 2014 through his GPA holder, Shri G. Anil Kumar. The assessee did not file any return of income for A.Y. 2015-16. Hence, proceedings u/s 147 of the Act were initiated. Accordingly, a notice u/s 148 of the Act was issued to the assessee on 27.03.2021. Subsequently, notices u/s 142(1) of the Act were issued on 25.02.2022 and 29.06.2022, to which the assessee responded.

3.1 In the submissions, the assessee mentioned that his brother had fraudulently sold a portion of this land earlier, leading to legal battles resulting in the cancellation of the fraudulent sale. Additionally, it was found that the GPA holders, empowered by the assessee, had executed multiple unauthorized sale deeds without his knowledge, making the assessee to cancel these GPAs in 2019 and file complaints with the police. After verifying the information submitted by the assessee, the Assessing Officer noticed that the assessee had concealed income from this sale, leading to penalty proceedings under sections 271(1)(c) and 271F. Despite the assessee's explanations, the Assessing Officer did not accept, as the assessee failed to prove that he had not received the sale consideration from said Anil Kumar and added the income from the sale of land to the return of income, totaling Rs.1,20,00,000/-.

Accordingly, the Assessing Officer passed draft assessment order and served it to the assessee as per sec.144C(15) of the Act.

3.2 Aggrieved by the draft assessment order, the assessee opted to file objections before the Dispute Resolution Panel, Bangalore, on 31.03.2023, requesting consideration of his pleas regarding the addition made on long-term capital gains of Rs.1,20,000/-. However, after hearing the objections raised by the assessee, the DRP issued directions on 20.09.2023. As per the DRP's directions, the assessee was required to file objections to the draft assessment order within 30 days before the DRP, but the assessee had filed after the prescribed time limit. Consequently, the objections filed by the assessee were dismissed, and the assessment was completed, interalia making an addition of Rs.1,20,00,000/-.

4. Feeling aggrieved with the assessment order dt.21.09.2023 passed u/s 144 r.w.s. 144C(13), assessee is in appeal before us for the grounds mentioned hereinabove.

5. On the date of hearing, none appeared on behalf of the assessee. The notices issued and sent through RPAD were returned unserved by the postal authorities on two occasions. Under these circumstances, we proceed to hear the appeal on the basis of information available on record and after hearing the ld. DR.

6. Per contra, the ld. DR relied upon the orders of lower authorities.

7           We have heard the ld. DR and perused the material available on record. In the present case, the draft assessment order was passed on 04.02.2023 and the assessee was required to file the objections to the draft assessment order within 30 days from the receipt of the draft assessment order as per Section 144C(5) r.w. 144C(2) of the Income Tax Act. On perusal of the record, it is clear that assessee has failed to file the objections before the DRP and had only filed objections on 31.03.2023 i.e., after the prescribed time limit. Hence, the DRP has dismissed the objections filed after statutory time limit provided under the Act. As per Section 144C(2) and (3), in case, the assessee fails to file objections to the draft assessment order, then the issue shall be decided by the DRP in accordance with the law. No power is given to the DRP to condone the delay in filing the objections for draft assessment order.

7.1.           In the absence of specific provision in the statute, the DRP voluntarily on application cannot exercise power to condone the delay in filing objections. Our above said view is also fortified by the decision of Hon'ble Madras High Court in the case of Inno Estates Private Limited Vs. DRP reported in (2015) 96 taxmann.com 646, and also by the decisions of Tribunals in the case of TDK Electronics ag formerly known as EPCOS Vs. ACIT reported in 144 ITAT 2020 (Pune) and Lam Research (India) Pvt. Ltd Vs. ACIT reported in 431 ITAT 2021 (Bangalore). In view of the above, we do not find any merit in the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

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

Order pronounced in the Open Court on 29<sup>th</sup> February, 2024.

<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE PRESIDENT</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 29<sup>th</sup> February, 2024.

**TYNM/sps**

Copy to:

S.No	Addresses
1	Prakash Lal Potluri, Hyderabad, Block D-2, Unit 506, 9 <sup>th</sup> Floor, Sankruti Township, Pocharam, Hyderabad, Telangana – 500088.
2	The Income Tax Officer, (International Taxation) – 2, Hyderabad
3	ITO (OSD) & Secretary (DRP-1), Bengaluru.
4	DCIT, Transfer Pricing Officer – 3, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*