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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.540/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2015-16)

Ms. R. Neelima Reddy, Hyderabad. PAN:ABSPR3663H (Appellant)	Vs.	Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad. (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri P. Murali Mohan Rao, C.A.	
राजस्व द्वारा / Revenue by::	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख / Date of hearing:	27/11/2024	
घोषणा की तारीख / Pronouncement:	30/12/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by Ms. R. Neelima Reddy (“the assessee”), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad (“Ld. CIT(A)”), dated 04.02.2020 for the A.Y. 2015-16.

2. At the outset, it is seen that there is a delay of 1309 days in filing of appeal before us. The assessee has filed petition for condonation of delay along with an Affidavit explaining the

reasons for such delay. The Learned Authorised Representative (“Ld. AR”) submitted that the order of the Ld. CIT(A) was served on the assessee on 04.02.2020 and the assessee had to file the appeal before the ITAT on or before 04.04.2020. He further submitted that the assessee has filed the appeal on 04.11.2023 with a delay of 1,309 days. The Ld. AR also submitted that the assessee could not file the appeal due to Covid ’19 pandemic and post Covid ’19 pandemic, the assessee was on bed rest. The assessee has also filed the medical certificate in support of her claim towards bed rest. Therefore, the Ld. AR submitted that the delay caused in filing the appeal before the ITAT was not intentional and was out of control of the assessee. Accordingly, he prayed before the bench to condone the delay.

2.1 Per contra, the Learned Department Representative (“Ld. DR”) submitted that there is inordinate delay in filing the appeal by the assessee and it should not be condoned.

2.2 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We found that the earlier part of the delay on the part of the assessee is covered by the order of Hon'ble Supreme Court in the suo moto proceedings in the case of M.A. No.21/2022 in M.A.

No.665 of 2021 in SMW(C) No.3 of 2020 dated 10.01.2022 and the later part of the delay is caused by the bed rest of the assessee due to her illness, for which she had furnished the medical certificate. Therefore, we are of the considered opinion that there was reasonable cause behind the delay in filing the appeal. Accordingly, we condone the delay in filing of the appeal and admit the appeal for adjudication.

3. The assessee has raised the following grounds of appeal :

“ 1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) -11, Hyderabad is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in not considering that no search warrant u/s 132 in Form No. 45 was not executed in the name of the assessee and therefore the AO has no jurisdiction to issue Notice u/s 153A of the Act.

3. On the facts and circumstances of the case, the Ld. CIT(Appeals) erred in not considering that the AO erred in raising the wrongful demand relating to Capital Gain in AY 2015-16 which will tantamount to double taxation without appreciating the fact that the assessee has already offered the same in the ROI in the Asst. year 2018-19 where transfer took place.

4. On the facts and circumstances of the case, the Ld. CIT(Appeals) ought to have appreciated the fact that the AO erred in making addition to the concluded assessment, where there is no incriminating material found during the course u/s 132 of the Act.

5. On the facts and circumstances of the case, the Ld. CIT(Appeals) erred in upholding the decision of the AO that there was a transfer of property wherein there was no transfer of property as per the provisions of Sec 45 of the IT Act, 1961

6. On the facts and circumstances of the case, the Ld. CIT(Appeals) erred in considering the observations of the AO that there was transfer of property u/s 45 basing on the statement u/s 132(4), without there being any corroborative material evidence.

7. The Assessee may add, alter or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the case.”

4. The brief facts of the case are that, the assessee is an individual, filed her original Return of Income (“ROI”) u/s.139(1) of the Income Tax Act, 1961 (“the Act”) on 31.10.2015 declaring total income at Rs.15,07,360/- consisting of income from house property and business income. A search and seizure operation u/s.132 of the Act was carried out on 02.11.2016 in the group case of M/s. Western Constructions, Hyderabad (“WC”) and the assessee was also covered u/s.132 of the Act. In response to notice issued u/s.153A of the Act, the assessee filed her ROI on 01.06.2017 admitting the same income as declared in her original ROI filed u/s.139(1) of the Act. The Ld. AO completed the assessment u/s.143(3) r.w.s. 153A of the Act on 28.12.2018 by making addition of Rs.98,26,717/- under the head ‘Long Term Capital Gains’ (“LT CG”) and assessed the total income at Rs.1,16,34,077/-.

5. At the outset, out of various grounds raised in the appeal, the Learned Authorised Representative (“Ld. AR”) only pressed the grounds relating to solitary issue with regard to treatment of LTCG of Rs.98,26,717/- by the revenue authority as income for A.Y. 2015-16, instead of assessee's claim of income for A.Y. 2018-19. The Ld. AR submitted that during the A.Y. 2015-16, the assessee along with other owners of co-adjacent land entered into a Joint Development Agreement (“JDA”) with M/s. YNS Infra Projects Private Limited (“M/s. YNS”) and received two flats from M/s. YNS as consideration in A.Y. 2018-19. The assessee sold both the flats in A.Y. 2018-19. However, during search operation u/s.132 of the Act, the husband of the assessee in his statement recorded u/s.132(4) of the Act, accepted the taxability of LTCG in the hands of the assessee in A.Y. 2015-16 i.e. the year of JDA. Relying on such statement of husband of the assessee, the Ld. AO assessed the LTCG in the hands of the assessee in A.Y. 2015-16.

7. Aggrieved by the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). Ld. CIT(A) upheld the order of Ld. AO.

7. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us. The Ld. AR submitted that, the assessee had made only JDA on 20.05.2014. Neither the assessee received any consideration from M/s. YNS nor did she transferred the possession of the land to M/s. YNS, hence no capital gain arises to the assessee in A.Y. 2015-16 i.e. the year of JDA. The assessee received two flats from M/s. YNS on account of JDA and sold the flats in A.Y. 2018-19. Accordingly, the assessee offered the capital gain in her ROI for A.Y. 2018-19. The Ld. AR further submitted that, as the assessee has already paid her taxes of capital gain in A.Y. 2018-19, the addition made by the Ld. AO in A.Y. 2015-16 leads to double taxation in the hands of the assessee. Therefore, the Ld. AR prayed for deletion of the addition made by the Ld. AO.

8. On the other hand, the Learned Department Representative ("Ld. DR") relied on the order of revenue authority and submitted that the capital gain is triggered in the year of execution of JDA. He further submitted that, the assessee also did not disclose the facts before the Ld. AO that she had already offered capital gain and paid the taxes in A.Y. 2018-19. Finally, he prayed before the bench to dismiss the appeal of the assessee.

9. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. There is no dispute about the fact that, there is a capital gain in the hands of the assessee on account of transfer of land to M/s. YNS. The only dispute before us is the year of taxability of the same. The Ld. AO made it taxable in A.Y. 2015-16 i.e. the year in which the assessee entered into JDA with M/s. YNS. However, the assessee has offered the amount of capital gain and paid the taxes in A.Y. 2018-19 i.e. the year in which she actually realised the sale consideration by sale of two flats received in consideration of JDA. Similar issue was came before the Hon'ble Supreme Court in the case of M/s. Excel Industries Limited 358 ITR 295 (SC) in which the Hon'ble Supreme Court has decided the issue in favour of the assessee holding that the revenue has not been deprived of any tax as the rate of tax remain same in both the years. In the case before us also, there is no quarrel of the revenue that, there is any difference in the rate of tax involved in both the years. Therefore, respectfully following the decision of Hon'ble Supreme Court in the case of M/s. Excel Industries Limited (supra), we hold that, the assessee has already offered the amount of capital gain in A.Y. 2018-19

and the same has been accepted by the Ld. Assessing Officer and no instance of any difference in the amount of tax has been brought to our notice. Therefore, we direct the Ld. AO to delete the addition. Accordingly, the appeal of the assessee is allowed. Otherwise also, the assessee only entered into JDA during A.Y. 2015-16. In A.Y. 2015-16, the assessee neither accepted any consideration from M/s. YNS nor handed over the possession to the developer. Hence in our considered opinion, there is no transfer of property in A.Y. 2015-16 in accordance with the provisions of section 45 of the Act and therefore no capital gain arises in the hands of the assessee in A.Y. 2015-16. Therefore, on this count also, we are of the considered opinion that, the assessee is not liable for capital gain in A.Y. 2015-16 and accordingly we direct the Ld. AO to delete the addition. Accordingly, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.
Order pronounced in the open Court on 30th Dec., 2024.

Sd/-

(VIJAY PAL RAO)
VICE PRESIDENT

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 30.12.2024.

* Reddy gp

Copy of the Order forwarded to :

1. Ms. R.Neelima Reddy, C/o P. Murali & Co., C.As, 6-3-655/2/3, Somajiguda, Hyderabad-500082
2. ACIT, Central Circle 3(2), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,