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

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT

आ.अपी.सं /**ITA No.1546/Hyd./2025**
Assessment Year 2012-2013

Basetti Sadguna Hyderabad – 500 050. Telangana. PAN AJIPB5254C	vs.	The Income Tax Officer, Ward-1, SANGA REDDY–502001. Telangana.
(Appellant)		(Respondent)
निर्धारिती द्वारा /Assessee by:	Sri C Maheshwar Reddy, CA	
राजस्व द्वारा /Revenue by:	Sri Suresh Babu KN, Sr. AR	

सुनवाई की तारीख/Date of hearing:	25.02.2026
घोषणा की तारीख/Pronouncement:	27.02.2026

आदेश/ORDER

This appeal by the assessee is directed against the Order dated 31.07.2025 of the learned Addl./JCIT(A)-12, Mumbai, for the assessment year 2012-2013.

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

1. ***"****The order of the Ld. CIT(A) in upholding the order of the Ld. AO is erroneous in law as well as in facts of the case.*

2. *The Ld. CIT(A) ought to have observed that the Ld. AO should have considered the fact that the Appellant has not received any sale consideration as she is only a consenting party, which is evident from the sale deed itself.*

3. *The Ld. CIT(A) ought to have considered the fact that the Appellant has submitted a letter where it is categorically mentioned that the Appellant has not received any sale consideration, and is also supported by the affidavit of her brother (another vendor): then the order of the Ld. AO is infructuous as he already has knowledge that there is no consideration received by the Appellant.*

4. *The Ld. CIT(A) ought to have considered the affidavit of her brother (one of the vendor), where he has confirmed that there is no sale consideration received by the Appellant, and the order passed by the Ld. AO ignoring this fact is bad in law.*

5. *The Ld. AO should not have made the addition of capital gains of Rs.20,24,170/-in the hands of the Appellant as the same does not belong to the Appellant, since the other two vendors are the parties who got benefited from the said transaction and not the Appellant.*

6. *The Ld. AO erred in considering the market value for calculating capital gains, since the sale consideration itself is not received by the Appellant, as it was only paid by the vendee to other two vendors who are brothers of the Appellant.*

7. *The Appellant craves to add/leave/alter/modify any other ground of appeal at the time of hearing.***"**

3. The assessee is an individual and filed her return of income for the year under consideration on 28.03.2013

declaring an income of Rs.3,53,292/-. The Assessing Officer reopened the assessment by issuing notice u/sec.148 of the Income Tax Act **[**in short "the Act"**]**, 1961 on 27.03.2019 on the basis of the information that the assessee along with two others sold immovable property situated at Chikkadpally, Hyderabad vide sale deed dated 14.12.2011 for a consideration of Rs.50 lakhs and market value of the property as per the stamp duty valuation is Rs.60,72,500/-. The learned Authorised Representative of the Assessee has pointed out that the Assessing Officer has assessed the capital gain in the hand of the assessee whereas the assessee was only a consenting party while signing the sale deed and the entire consideration was paid to two brothers of the assessee. He has referred to the sale deed placed at page no.30 of the paper book and submitted that the particulars of the payment of consideration as per the sale deed show that the entire payment of Rs.50 lakhs was paid to two brothers in 50**:**50 ratio i.e., Rs.25 lakhs each. Thus, the learned Authorised Representative of the Assessee has submitted that when the sale deed itself is showing the entire

sale consideration received by the two brothers and assessee has not received any consideration but simply signed the sale deed to avoid further complications and for the satisfaction of the buyer, then, the capital gain assessed by the Assessing Officer is unjustified and arbitrary in the absence of any real income in the hand of the assessee. He has further contended that the Assessing Officer has also applied the provisions of sec.50C which is a deeming provision cannot be applied when the actual consideration itself is not an income in the hand of the assessee. In support of his contention, he has relied upon the following decisions:

(i) Judgment of Hon'ble Bombay High Court in the case of Dinesh Vazirani vs. PCIT [2022] 445 ITR 110 (Bom.).

(ii) Order of ITAT, Pune in the case of Vasudha Dattatraya Shinde, Pune vs. ITO, Ward-2(2), Pune in ITA.Nos.1565 and 1566/Pun./2025 dated 28.08.2025.

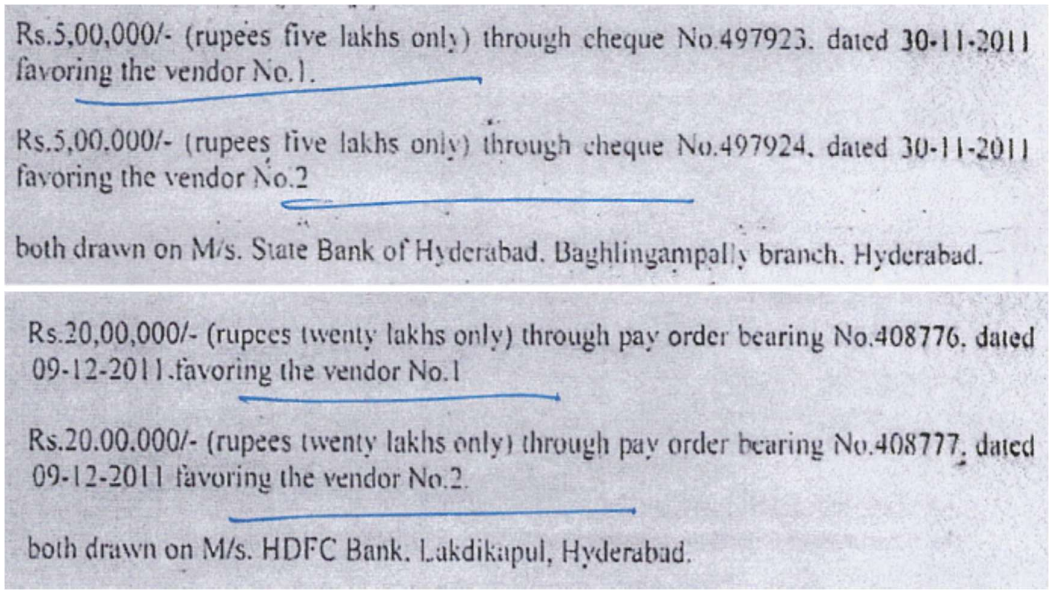
(iii) Order of ITAT, Jaipur in the case of ITO, Ward-3(2), Jaipur vs. Late Smt. Seema Mukharjee through L/H Shri Aook Mukharjee, Jaipur in ITA.No.466/JP/2017, dated 04.01.2018.

3.1. Thus, the learned Authorised Representative of the Assessee has submitted that when the assessee has signed the sale deed as a consenting party and not received any consideration, then, in the absence of any real income, the addition made by the Assessing Officer is liable to be deleted. The learned Authorised Representative of the Assessee has further submitted that the assessee also filed confirmation in the shape of affidavit of the brothers to the effect that they have received the consideration and nothing was received by the assessee. He has also referred to the bank account statement of the assessee to show that the assessee has not received any consideration from this transaction of sale of property.

4. On the other hand, the learned DR has submitted that as per the sale deed the assessee has signed as a vendor and not as a consenting party. Therefore, the 1/3rd share of the assessee has rightly assessed in the hand of the assessee. The learned DR has further submitted that once the assessee is having a legal title and share in the property in question then, the 1/3rd share of the assessee in the property is

assessable to tax in the hand of the assessee. He has relied upon the Orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. There is no dispute that the property bearing H.No.1-1-10/7 at Chikkadpally, Hyderabad was sold by the assessee along with her two brothers vide sale deed dated 14.12.2011. As per the sale deed the total sale consideration of Rs.50 lakhs was paid through cheques to two brothers of the assessee viz., Sri Akula Vishwender and Sri Akula Raju of Rs.25 lakhs each. The said details of the payment are mentioned in the sale deed as under:



Rs.5,00,000/- (rupees five lakhs only) through cheque No.497923, dated 30-11-2011 favoring the vendor No.1.

Rs.5,00,000/- (rupees five lakhs only) through cheque No.497924, dated 30-11-2011 favoring the vendor No.2

both drawn on M/s. State Bank of Hyderabad, Baghlingampally branch, Hyderabad.

Rs.20,00,000/- (rupees twenty lakhs only) through pay order bearing No.408776, dated 09-12-2011 favoring the vendor No.1

Rs.20,00,000/- (rupees twenty lakhs only) through pay order bearing No.408777, dated 09-12-2011 favoring the vendor No.2.

both drawn on M/s. HDFC Bank, Lakdikapul, Hyderabad.

5.1. Thus, it is manifest from the sale deed itself that the entire sale consideration was paid to the two brothers of the assessee and assessee has received no consideration in respect of the said transaction of sale of the property in question. It is clear from the fact that the assessee has signed the sale deed as a consenting party to avoid further complications in future and for the satisfaction of the buyer. Otherwise, in real sense the brothers of the assessee sold the said property to the buyer. The Assessing Officer has reopened the assessment of the assessee based on the sale deed dated 14.12.2011 but failed to consider these facts reflected in the sale deed itself that the entire sale consideration was paid to the brothers in equal share of Rs.25 lakhs each. It is also pertinent to note that once this fact was available with the Department, then, the income in the shape of capital gain ought to have been assessed in the hands of two brothers of the assessee who actually received the sale consideration against the transfer of the property. Further the payment of sale consideration was made by the buyer through banking channel giving the details of cheque

numbers and date which was not in dispute and therefore, once it is clear from the record that the assessee has not received any consideration in respect of the said transfer of the property, then, ignoring this fact as well as the confirmation given by the brothers in the shape of affidavit which was filed by the assessee before the Assessing Officer making an assessment in the hand of the assessee is not justified. Only in the case when the two brothers of the assessee objected to the assessment of the capital gain on account of 50% share of the consideration received by each of them, the Assessing Officer could have assessed the income in the hand of the assessee. It appears that the Department, instead of assessing the income in the hand of the right persons, has taken up the case of the assessee for reopening and assessing the capital gain in the hands of the assessee. The Coordinate Bench of **ITAT, Pune Tribunal in the case of Vasudha Dattatraya Shinde, Pune vs. ITO, Ward-2(2), Pune in ITA.Nos.1565 and 1566/Pun./2025 vide order dated 28.08.2025** has considered an identical issue in Paras-8 to 10 as under:

"8. We have perused the assessment order and the paper book filed by the assessee. It is observed that the impugned property was purchased vide registered Sale Deed dated 06.11.2000. The said property has been purchased by Mr. Dattatraya Pandurang Shinde, the husband of assessee. It is a Bungalow admeasuring 4133 sq.fts. which was purchased by Mr. Dattatraya Pandurang Shinde vide Sale Deed dated 06.11.2000. The details of payments are mentioned in Schedule-II. It has been pleaded by the assessee that entire payment has been made by Mr. Dattatraya Pandurang Shinde. This fact has not been rebutted by ld. DR. It is observed that as per the certificate issued by Pune Municipal Corporation the said Bungalow is in the name of Mr. D.P. Shinde. We have studied the Development Agreement dated 25.01.2014 wherein Mr. Dattatraya Pandurang Shinde has been referred as 'Vendor and M/s. Gokhale Joshi Properties LLP has been referred as 'Developer and Mrs. Vasudha Dattatraya Shinde has been referred as a 'Consenting Party'. It is specifically mentioned at page 19 of the said Development Agreement with the 'Vendor' as under :

> *"The said amount is paid and agreed to be paid to the Vendor/Owner as under :*

9. It is also mentioned at page 21 of the said Development Agreement as under :

> *"The vendor/owner hereby admits, acknowledges, and ratifies the receipt of the amounts paid to him and the amounts paid to Samarth Sahakari Bank Ltd. Solapur, Shivaji Nagar branch, Pune and The Jalgaon Peoples co-operative Bank Ltd, Kothrud Branch, Pune at the instance of the Vendor / Owner and the balance amount shall be paid to the respective banks on or before 31.03.2014."*

*10. Nowhere in the Development Agreement, it is mentioned that 'Consenting Party' has received any amount. Ld. DR has not rebutted this fact. It is not the case of the ITO that a 'Consenting Party' has received any amount. It is a fact that Assessee is not owner of the property and Assessee do not have any rights in the property as per Purchase Deed dated 06.11.2000 and Development Agreement dated 25.01.2014. It is a fact as emanates from the Development Agreement that the assessee has not received any amount out of sale consideration of Rs.10.00 crore. Therefore, no income has accrued to the assessee for A.Y. 2014-15 and hence no addition can be made on account of Long Term Capital Gain in the hands of assessee. Accordingly, the AO is directed to delete the addition of Rs.5.00 crore made in the hands of assessee Mrs. Vasudha Dattatraya Shinde for A.Y. 2014-15.***"***

5.2. Thus, the Tribunal has held that when no consideration was received by the assessee, then, no income has accrued to the assessee and hence, no addition can be made in the hand of the assessee. The concept of real income was also considered by the Hon'ble Bombay High Court in the case of **Dinesh Vazirani vs. PCIT** (supra), in Para nos.11 and 12 as under:

"*11. Respondent No.1 has gone wrong in not appreciating that income or gain is chargeable to tax under the Act on the basis of the real income earned by an assessee, unless specific provisions provide to the contrary. The Apex Court in CIT Vs. Shoorji Vallabhdas and Co.1 has observed as under:*

"Income-Tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book keeping an entry is made about a hypothetical income which does not matrialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

12. In the present case, the real income (capital gain) can be computed only by taking into account the real sale consideration, i.e., sale consideration after reducing the amount withdrawn from the escrow account. Respondent no.1 has proceeded on an erroneous understanding that the arrangement between the seller and buyer which results in some contingent liability that arises subsequently to the transfer, cannot be reduced from the sale consideration as per Section 48 of the Act. We say this because the liability is contemplated in SPA itself and certainly the same should be taken into account to determine the full value of consideration. Therefore, if sale consideration specified in the agreement is along with certain liability, then the full value of consideration for the purpose of computing capital gains under Section 48 of the Act is the consideration specified in the agreement as reduced by the liability. For respondent no.1 to say that from the sale consideration only cost of acquisition, cost of improvement and cost of transfer can be reduced and the subsequent contingent liability does not come within any of the items of the reduction and the same cannot be reduced, is erroneous because full value of consideration under Section 48 would be the amount arrived at after reducing the liabilities from the purchase price mentioned in the agreement. Even if the contingent liability is to be regarded as subsequent

event, then also the same ought to be taken into consideration in determining capital gain chargeable under Section 45 of the Act."

5.3. Accordingly, in the facts and circumstances of the case, when there was no real income received or accrued to the assessee rather the actual income was received by the brothers of the assessee who have confirmed the same, then, the income assessed in the hand of the assessee is not justified and tenable and the same is deleted.

6. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 27.02.2026.

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Hyderabad, Dated 27th February, 2026.
VBP
Copy to :

1.	Basetti Sadguna, Hyderabad – 500 050. C/o. B. Narsing Rao & Co. LLP, Plot No.554, Road No.92, MLA Colony, Jubilee Hills, Hyderabad – 500 096. Telangana.
2.	The Income Tax Officer, Ward-1, SANGA REDDY PIN –502001. Telangana.
3.	The Pr. CIT, Hyderabad.
4.	The DR, ITAT, "SMC" Bench, Hyderabad.
5.	Guard file.

BY ORDER

VADREVU PRASADA RAO

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