

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

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1019/Hyd/16	2007-08	Dr. M. Muniprasad, Hanmakonda, WARANGAL [PAN: ABMPM7478F]	Asst. Commissioner of Income Tax, Circle-1, WARANGAL
1020/Hyd/16	2007-08	Dr. K. Vanaja, Hanmakonda, WARANGAL [PAN: ACTPK1377M]	

For Assessee : Shri K.V. Chalamaiah, AR
For Revenue : Shri Prabhat Kumar Gupta, DR

Date of Hearing : 02-01-2018
Date of Pronouncement : 10-01-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

These are appeals by two assessees against the orders of the Commissioner of Income Tax (Appeals)-10, Hyderabad, dated 28-03-2016, on the issue of computation of the capital gains.

2. Briefly stated, assessees herein being wife and husband and having the profession of doctors, sold property at Tirupathi being residential house on 22-03-2007 for a consideration of

Rs. 26 Lakhs and offered Short Term Capital Gain, taking the cost of purchase on 17-11-2005 at about Rs. 24 Lakhs. The capital gains offered was Rs. 88,565/- in each case. In the course of scrutiny proceedings, the Assessing Officer (AO) issued a show cause notice on the capital gains why it cannot be re-worked out by invoking the provisions of Section 50C of the Income Tax Act [Act], wherein market value was considered at Rs. 55,12,000/-. In the course of assessment proceedings, assessee had indeed filed a revised return on 22-12-2009, admitting the Short Term Capital Gain as worked out by the AO, accepting the deemed sale consideration u/s. 50C of the Act. However, for the reasons best known to the AO, he rejected the revised return filed as it was filed after the due date, but computed the income considering the deemed sale consideration at Rs. 27,56,000/- in each case and allowing purchase cost of Rs. 12,11,435/-.

3. Before the Ld.CIT(A), assessees contended that even at the time of purchase also the market value of the property was higher at Rs. 47,54,500/-, though assessees purchased the property for a lesser consideration of Rs. 20 Lakhs [excluding registration charges]. Ld.CIT(A), however, did not agree with assessees' contentions and rejected the contentions stating as under:

"7.3 Though he raised various grounds of appeal the conduct of the assessee during the assessment proceedings shows that he did not object to the adoption of fair market value as per the provisions of Sec. 50C of the I.T. Act, 1961 for computation of short term capital gains on the sale of property. Section 50C reads as under:

"50C: Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value

adopted or assessed [or assessable] by any authority of a State Government [hereafter in this section referred to as the "stamp valuation authority"] for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48 be deemed to be the full value of the consideration received or accruing as a result of such transfer"

7.4 The contention of the assessee that the value as per sec. 50C is to be taken even at the time of purchase is not valid as the assessee claimed that he paid only Rs. 12,11,435/- towards his share. There is no evidence that I he has paid more than that for acquiring this property. The provisions of Sec. 50C are only applicable to the seller of the property and the provisions of sec. 48 are applicable for working out the computation of capital gains. In sec. 48 nowhere it is mentioned that the cost of acquisition shall be taken as per the provisions of Sec. 50C of the I.T. Act, 1961. Therefore, the alternate contention of the assessee is rejected. Therefore the grounds raised of this appeal are dismissed as they lack merit”.

3.1. Aggrieved by the order of Ld.CIT(A), assessees are in appeal before this forum and raised the grounds originally as under:

“1. The learned CIT(Appeals)-10, erred in adopting the S.R.O. value for sale consideration only by ignoring the S.R.O. value for purchase of the property for calculation of Short Term Capital Gain.

2. The learned CIT(Appeals)-10 should have considered the submissions of the Appellant in adopting the S.R.O. value in arriving the cost of the property”.

Ground No. 3 is general in nature.

3.2. In the course of appellate proceedings, assessee filed additional grounds of appeal as under:

“1. The ld. CIT(A) erred in law and on facts while confirming the action of the Assessing Officer in adopting the SRO value as deemed sale consideration for purposes of working out taxable capital gains ignoring the deemed value of purchase consideration of the property in question as adopted by the SRO at the time of acquiring the said property.

2. *The ld. CIT(A) ought to have referred the matter back to the Assessing Officer to determine the correct value of deemed sale consideration u/s. 50C of the Income-tax Act 1961 under section 142A of the Act to meet the ends of justice in view of the fact that both purchase and sale consideration of the property values are far below the SRO values”.*

Ground No. 3 is general in nature.

4. It was the contention of Ld. Counsel that Ld.CIT(A) should have remitted the matter to DVO for finding out the market value when assessee has not accepted the SRO valuation. It was the prayer that matter may be referred to DVO for arriving at the sale consideration.

5. Ld.DR, however, relied on the orders of CIT(A) and submitted that the provisions of Section 48 does not allow adopting a higher value other than the actual cost while computing the capital gains.

6. We have considered the rival contentions and perused the orders of the authorities and documents placed along with the appeal (i.e., Form No.35). As per the provisions of Section 50C, AO is competent to adopt the Sub-Registrar value u/s. 50C. However, these provisions are subject to certain restrictions and if assessee objects the value, then AO is bound to refer the issue to the Departmental Valuation Officer for fixing the market value for the purpose of Section 50C. Even though assessee has not furnished any valuation report nor given any explanation why the property was sold for less value than the value as per SRO. The grounds raised before the CIT(A) gives an indication that the property is being demolished in the Master Plan notified by the Government

for Tirupathi and has sold the property as a distress sale. Assessee being residents of Warangal, sold the property in Tirupathi within three years of purchase of property. The variation in the market value as per the SRO, between the purchase time and sale time indicate that the general appreciation shown is the gain obtained by assessee. However, there is no provision to adopt the SRO value at the time of purchase, as purchase consideration as only the 'actual cost' to be allowed to assessee. In this case, at the time of purchase, neither assessee have claimed the higher purchase consideration nor the department considered the payment as 'unexplained investment'. Therefore, assessee's contention that SRO value shown in the document at the time of purchase cannot be considered as 'actual cost' for the purpose of computing capital gains. Therefore, we are of the opinion that Ld.CIT(A) is correct in rejecting the contentions and the grounds raised on this originally are to be rejected.

6.1. However, Ld.CIT(A) has not considered the grounds fully while disposing of the appeals. Assessee have raised the contentions that AO should have given opportunity to file the valuation report or to have referred the matter to the Valuation Cell as laid down u/s. 50C of the Act. These contentions before the CIT(A) have not been disposed of by the CIT(A). Assessee have raised the additional grounds before this forum as these grounds were not taken originally at the time of filing the appeals even though they are raised before the CIT(A). Therefore, considering the additional grounds, we direct the AO to refer the market value at the time of sale to the DVO for valuation as per the provisions of

Section 50C r.w.s. 142A and re-compute the capital gains after giving due opportunity to assesseees in this matter.

6.2. Therefore, while rejecting the original grounds raised, we allow the additional grounds raised and restore the issue(s) to the file(s) of AO for considering the sale consideration in view of the provisions of Section 50C, after referring the matter to Valuation Cell as requested by assesseees. Needless to state that assesseees should be given due opportunity in this matter.

7. In the result, both the appeals are considered allowed for statistical purposes.

Order pronounced in the open court on 10th January, 2018

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 10th January, 2018

TNMM

Copy to :

- 1. Dr. M. Muniprasad, #3-2-72, New Raipura, Hanmakonda, Telangana State.*
- 2. Dr. K. Vanaja, #3-2-72, New Raipura, Hanmakonda, Telangana State.*
- 3. The Asst. Commissioner of Income Tax, Circle-1, Warangal.*
- 4. CIT (Appeals)-10, Hyderabad.*
- 5. CIT-(IT & TP), Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*