

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'SMC-B', HYDERABAD**

**SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 2030/Hyd/2017  
Assessment Year: 2006-07

Aruna Kommuri,  
Hyderabad.

vs. Asst. Commissioner of  
Income-tax, Circle –  
4(1), Hyderabad.

PAN – ACVPK 3291 Q

Appellant

Respondent

Assessee by: Shri G. Kalyandas  
Revenue by: Shri Sunil Kumar Pandey

Date of hearing: 03/03/2020  
Date of pronouncement: 23 /07/2020

**ORDER**

This appeal is filed by the assessee against the order of the Ld. CIT (A)-1, Hyderabad in appeal No. 0448/CIT(A)-1, Hyd/2014-15/2017-18 dated 11/07/2017 passed U/s250(6) r.w.s. 143(3) of the Act for the AY 2006-07.

2. The assessee has raised several grounds in her appeal however, the cruxes of the issues are that: -

*“(i) the Ld.CIT (A) had erred in upholding the order of the Ld. AO who had adopted the sale consideration of the immovable property sold by the assessee at Rs. 16,55,000/- as against the actual sale considered received by the assessee Rs. 7,56,250/- invoking the provisions of section 50C of the Act.*

*(ii) The Ld.CIT (A) had erred in upholding the order of the Ld. AO who had denied the benefit of deduction U/s. 54F of*

*the Act with respect to the investment made for the construction of her residential house for Rs. 27,50,000/-.”*

3. Brief facts of the case are that the assessee is an individual filed her return of income for the AY 2006-07 on 28/03/2007 declaring total income of Rs. 12, 83,434/- and agricultural income of Rs. 50,000/-. Initially, return of income was processed U/s. 143(1) of the Act on 18/7/2007. Subsequently the case of the assessee was reopened because it was revealed that the sale consideration disclosed in the return of income towards the sale of her immovable property was lesser than the SRO value.

4. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had sold her land consisting of 359.16 sq. yds. and 1153.33 sq. yds. in Survey No. 25, Medipalli Village, for an amount aggregating to Rs. 7,56,250/- . It was further revealed that the value adopted for the purpose of stamp duty toward the registration of the property was Rs. 16,52,000/-. On query assessee submitted as follows:

*"2. In our case assessment was reopened on a presumption that the sale consideration received by the assessee is higher than the amount actually received. Reopening of assessment based on presumption and on a deeming provision without placing on record any conclusive evidence that actually consideration was received. In the circumstances we submit. that the assessee under stated the consideration is totally not approved by law. Reopening proceedings on change of opinion therefore are required to be dropped.*

*3. Further the Hon'ble Supreme Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer(1994) SCC 595 categorily laid down the law that basic valuation register prepared and maintained for the purpose of collecting Stamp Duty could not from the foundation to determine the market value of . the land and burden squarely lays on the revenue in this regard to establish that the sale was for an additional sale consideration not mentioned in the sale deed. It may also be stated that the Supreme Court in the case of CP Gautham Vs. Union of India 199 ITR 530 has held that the*

*difference of market value and sale consideration actually received may vary upto 15% tolerance.*

*4. I had executed two sale Deeds in respect of undivided share of land admeasuring 718.33 Sq. yards. Both Sale Deeds here executed by me in December 2005 in favour of Sri Jukku Satyanarayana Reddy, Sri Jukku Lakshminarayana Reddy and Sri Jukku Veerananarayana Reddy all sons of Sri Jukku Ranga Reddy. The first Sale Deed Document No.468 was made in respect of 359.16 sq. yards for a consideration of Rs.3.78 lakhs and the second Sale Deed in respect of back portion of land vide doc No.12832 for 1153.33 sq. yards. the land is situated at Medipally village in Ghatkesar Mandai. Sale consideration in respect of both the Sale Deeds worked out to Rs.7.56 lakhs and the value on which stamp duty was paid Rs.16,54,500/-.*

*5. We submit that the property sold under Sale Deeds originally purchased in the year 1992 vide two separate Sale Deeds dt.14.5.1992 & 17.12.1992 and the Sale Deeds were executed by GPA on behalf of original vendors. At the time of sale, it was represented on behalf of the original vendors had clear title. Subsequently, it had come to the knowledge that the land purchased is not free from litigation. The original owners did not have clear title and therefore the issue became legal and disputed. In the meantime, with the intervention of elders it was decided to transfer sale the land to our relatives and accordingly both the sale deeds were executed in December. The land purchased by me suffered infirmity and therefore the Sale Deeds came to be executed in favour of relatives for agreed consideration mentioned in the sale deed after long negotiations.*

*6. Further the impugned land did not command the value for which the stamp duty was paid. The land originally was forming part of agriculture land and the value of lands in the above area have been revised by the government. Sale Deeds executed by others in respect of the above gram panchayat area also disclose lesser market value than the value for which stamp duty is paid. This had become a common factor for the land area for which no's of Sale Deeds came to be executed in the year 2005. We submit there was no further amount received over 'and above the value mentioned in the Sale Deeds. Correspondence of Advocate notices in the matter of litigation on the land are being obtained and they will be filed shortly. In the circumstances, we request you to accept the value mentioned in the Sale Deeds which was real value of land located at the above gram panachayat area."*

4.1 However, the Ld. AO rejected the submission of the assessee by stating that, there was no scope to adopt the actual sale value received by her by virtue of section 50C of the Act because the assessee has not challenged the valuation before the

Stamp Valuation Officer while registering the property. Accordingly, the Ld. AO invoked the provisions of section 50C of the Act and adopted the SRO value as the sale consideration viz., Rs. 16,54,500/- for the purpose of computing the capital gain in the hands of the assessee. Further, the Ld. AO denied the claim of exemption U/s 54F of the Act because the assessee had failed to furnish evidence for the investment made in the acquisition of another residential house property. On appeal, the Ld.CIT (A) confirmed the order of the Ld. AO by agreeing with his view.

5. Before us, the Ld. AR reiterated the submissions made before the Ld. Revenue Authorities on the earlier instances which are extracted herein above and argued that invoking the provisions of section 50C in the hands of the assessee is not warranted. The Ld. AR further requested that the benefit of section 54F of the Act may be granted. The Ld. DR on the other hand argued in support of the orders of the Ld. Revenue Authorities and prayed for confirming the same.

6. I have heard the rival submissions and carefully perused the materials available on record. From the submissions made by the Ld. AR it is quite evident that there was some litigation with respect to the property sold by the assessee. This fact is also not disputed by the Ld. Revenue Authorities. It is quite obvious that if the title of the immovable property is defective then the market value of the immovable property will be considerably reduced. In this situation, it would have been appropriate on the part of the Ld. AO to obtain a valuation report from the Ld. DVO in

accordance with the provisions of section 50C of the Act as the assessee has challenged the same before him and thereafter adopted the value determined by the Ld. DVO for the purpose of computing the capital gains in the hands of the assessee. However, the Ld. AO has failed to do so. In the present circumstances, I also do not find it appropriate to remit the matter back to the Ld. AO in order to obtain the valuation report from the Ld. DVO as it will cause great inconvenience to the assessee. Further, from the facts of the case it is apparent that the sale value declared by the assessee is only 46% of the SRO value of Rs. 16,54,500/- (Rs. 7,56,250 X 100 / 16,54,500). Since the property sold by the assessee is a litigated property, I am of the considered view that the market value of the property cannot exceed the actual sale consideration received by the assessee of Rs. 7,56,250/-. Hence, I do not find it appropriate to adopt the SRO value for the purpose of computation of the capital gains in the hands of the assessee, rather it would be appropriate to adopt the actual market value of the property taking into consideration of the litigation involved in the property, which is nothing but the actual sale consideration received by the assessee. Therefore, I hereby direct the Ld. AO to compute the capital gains in the hands of the assessee based on the actual sale consideration received by the assessee of Rs. 7,56,250/-.

7. As regards the claim of deduction U/s. 54F of the Act, even before me, at this stage, the assessee has not produced any evidence to prove that she had invested in another residential house property. The claim of the assessee that she had invested in residential house property for Rs. 27,50,000/- by way of

payment through cheque to her spouse alone will not establish that she has actually acquired the residential house by complying with all the other provisions of the Act. Therefore, I do not find any merit on this ground raised by the assessee. Hence, I hereby confirm the order of the Ld. Revenue authorities on the issue.

8. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT Vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

9. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on 23<sup>rd</sup> July, 2020.

Sd/-  
(A.MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, dated 23<sup>rd</sup> July, 2020.

okk

Copy forwarded to:

1. *Smt. Aruna Kommuri, C/o M/s Kalyandas & co.,  
CAs. 15, Venkateshwara Colony, Narayanaguda,  
Hyderabad – 500 029.*
2. *ACIT, Circle – 4(1), Hyderabad*
3. *CIT(A) - 1, Hyderabad.*
4. *Pr. CIT – 1, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*