

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos. 321/Hyd/2018		
Assessment Year: 2009-10		
Sri Mohd.Shakeel Quadri Hyderabad PAN:AACPQ9249H	Vs.	Income Tax Officer Ward 4(1) Hyderabad
(Appellant)		(Respondent)
ITA Nos. 322/Hyd/2018		
Assessment Year: 2009-10		
Sri Mohd.Layeeq Hyderabad PAN:ACWPL1994Q	Vs.	Income Tax Officer Ward 4(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri Venkataramana, Advocate	
Revenue by:	Smt. N Swapna, DR	
Date of hearing:	06/07/2022	
Date of pronouncement:	13/07/2022	

ORDER

Per R.K. Panda, A.M

The above two appeals filed by the assessee are directed against the separate orders dated 28.8.2017 of the learned CIT (A)-1, Hyderabad relating to A.Y.2009-10. Since identical grounds have been raised by the respective assesseees in both the appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. These appeals were earlier decided by the Tribunal vide order dated 20.01.2022. Subsequently, the Tribunal vide M.A Nos. 29 & 30/Hyd/2022 order dated 22.4.2022 recalled its earlier orders. Hence these are recalled matters.

ITA No 321/Hyd/2022 (Mohd.Shakeel Quadri)

3. Facts of the case, in brief, are that the assessee is an individual and had sold an immovable property bearing No.2-2-184/1 (Plot No.9) Turab Nagar, Amberpet, Hyderabad for a consideration of Rs.23,50,000/- as per the sale deed document No.3347/2008 registered with Sub-Registrar, Chikkadapally, Hyderabad during the financial year 2008-09 relevant to the A.Y 2009-10. Information was received that the Sub Registrar, Chikkadapally has valued the said property at Rs.34,16,000/- and therefore, there was variation between the market value as determined by the Sub-Registrar and as reflected in the Registration Document pertaining to the said property. The Assessing Officer held that provisions of section 50C are clearly applicable since the PAN No. of the assessee was not available and it was not possible to ascertain as to whether the assessee has declared the capital gains on the above transaction adopting fair market value of the property as determined by the Sub Registrar. The Assessing Officer, therefore, after recording the reasons, reopened the assessment and issued notice u/s 148 on 24.3.2016. Since there was no response to the said notice, the Assessing Officer deputed the Inspector of his charge, who also served notice on the assessee in the presence of two witnesses. Again, there was no response from the side of the assessee. Therefore, the Assessing Officer completed the assessment u/s 144/147 of the Act determining the total income of the assessee

at Rs.9,28,900/-. While doing so, he allowed the indexed cost of acquisition at Rs.12,58,196/-from the sale consideration of Rs.34,16,000/- and determined 50% of the assessee's share in the same.

3. Before the learned CIT (A), the assessee made elaborate arguments. However, the learned CIT (A) was also not satisfied with the arguments advanced by the assessee and dismissed the appeal by observing as under:

"5.4 The submissions of the appellant have been carefully examined.

a) It is seen from the details, that the Agreement of Sale dated 05.10.2000 is not registered hence it is not a valid agreement.

b) The appellant along with his brother Mohammed Layeeq had entered into an Agreement of Sale-cum-General Power Attorney as a GPA holder vide Document No.2691/2006 on 30.06.2006, for the property admeasuring 206.00 sq.yds or 172.23 sq. meters situated at 2-2-184, Turabnagar, Amberpet, Hyderabad for a total consideration of Rs.11,22,000/-, The GPA registered as document No.2691/2.006 dated 10.07,2006 at SRO, Chikkadapully, Hyderabad. The appellant and his brother Mohd Shakeel has sold the above property in the capacity of GPA holder, vide Sale Deed No,3347-2008 dated 13.10.2008 for a consideration of Rs.23,50,000/-.

c) Since the possession of the property does not completed 3 years, the appellant is not eligible to claim the LTCG and it has to be taken as STCG.

d) The appellant has not filed return of income for the A.Y 2009-10 Bank statements were also not submitted before me .

e) The appellant does not raise the question of invoking the provisions of Section 50C by the Assessing Officer.

Only issue is in which year, the sale of property was registered. Appellant has submitted a copy of cancelled application of telephone for the year 2001, as an evidence for taking possession of the sale. I find this is stretching imagination too far and cannot be taken as evidence fer actual sale or possession of property in question. The main issue is that the document on the basis of which the appellant is taking support is unregistered GPA and

Agreement for sale. This cannot be accepted as evidence of sale. A transfer of property cannot be based on unregistered agreement for sale. Hence, the property's registered sale, as per Government rules, has been on 13.10.2008. In view of the above, the Assessing Officer is correct in computing the land in question as Short Term capital gains. I uphold the addition made by the Assessing Officer. Ground Dismissed

6. Ground No.2 : Deduction u/s.54

6.1 Before me, the appellant submitted that after the sale of the property, the appellant submitted he bought a residential property vide Agreement of Sale cum General power of Attorney in the name of Smt. Shamim Begum (Wife of appellant) and Mohammed Saleem vide document No.0605-2009 dated 13.03.2009 from Sri Kaleri Satish Kumar situated at No.2-2-187/1, 2-2-188, 2-2-189 and 2-2-189/A admeasuring 185.00 sq. yds at Borath Nager, Amberpet, A.P. for a consideration of Rs.49,90,000/-. The appellant submitted that after the sale of the above property. The appellant bought a residential property! on 13.03.2009 hence, he is eligible for deduction u/5.54 of the Income Tax Act, 1961.

6.2 The submissions of the appellant have been carefully considered. The appellant did not file ownership rights of the property in question. The sale has been made as GPA holder and not as 'owner'. Hence the question of sale of residential house as per Section 54 does not apply in the appellant's case.

Ground Dismissed”.

4. Aggrieved with such order, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“ 1. The Learned Commissioner of Income Tax (Appeals) hastily concluded that the Agreement of Sale Deed 05.10.2000 is "Not a Valid Agreement" just because it is not registered.

2. The appellant's submissions that he is in possession of the said Residential Property since 2000 as declared by the Vendors vide Para Four of the Agreement of Sale Dt.05.10.2000 is also not accepted by the CIT (A) though the same is also demonstrated by the appellant by admitting Rental Income from the said Property by filing his Return of Income even during the Asst. Year's : 2005-06 up to 200'2-09 the copies of which are located and available on record., The return in response to notice D/s. 148 of the Income Tax Act, 1961 is also filed for Asst. Year: 2009-10 as a compliance.

3. *The transfer of Property in favour of the appellant and his brother together with possession against payment of consideration is a valid and recognized transfer as defined vide Sec.2(47)(v) of the Income Tax Act, 1961 which reads: TRANSFER includes:*

"any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Sec 53 A of the Transfer of Property Act, 1881 (4 of 1882),"

Further Sec. 2(47) (vi) also reads.

"any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property",

4. *The Commissioner of Income Tax (Appeals) instead of allowing the claim made by the appellant to treat the Gain on Sale of the subject property 011 13.10.2008 as Long Term Capital Gain by recognizing the title of the appellant since Feb, 200] (being the date full payment of the Agreed consideration as mentioned in the Agreement of Sale dt. 05.10.2000) denied the same by relying upon the Registered Agreement of Sale cum GPA dt.10.07.2006, which was nothing but an "enabling Document" done at the behest of his brother who returned to India for good.*

5. *The action of the Commissioner of Income Tax (Appeal's refusal to allow the transaction of sale by the appellant as Long Term Capital Gain which is worked out admitting Stamp Duty Value as Deemed Consideration for the purpose of Sec.48 of the I.T. Act., has resulted in denial of relief claimed by the Appellant U/S .54 of the Income Tax Act, 1961 as the Gain is invested in the Purchase of another Residential House.*

6. *Any other Grounds at the time of hearing."*

5. The learned Counsel for the assessee submitted that the Assessing Officer has completed the assessment u/s 144 of the I.T. Act. Referring to page No.7 of the Paper Book, he drew the attention of the Bench to the agreement of sale executed on 5.10.200 for a consideration of Rs.3,70,000/-. Referring to page No.74 of the Paper Book, he drew the attention of the Bench to the copy of the return filed for the A.Y 2006-07 on 31.3.2007

wherein the rental income from the said property has been duly disclosed. He submitted that the tax challan of Rs.1286/- was paid on 27.3.2007 copy of which is placed in page No. 79 of the Paper Book. Similarly for the A.Y 2005-06, the return was filed on 31.3.2007 copy of which is placed at page No.78 of the paper book and the assessee in the return of income has disclosed the rental income from the property in question. He submitted that although these details were filed before the learned CIT (A), however, the learned CIT (A) without going through the details, dismissed the appeal filed by the assessee. He submitted that the assessee in the instant case, has in fact, took possession of the property and let out the same and the rental income earned therefrom was duly declared in the return of income. He submitted that the assessee in the instant case in the return filed in response to the notice u/s 148 had admitted the deemed consideration as gross sale consideration for the purpose of LTCG on which the deduction u/s 54 was claimed. Although these evidences were filed, however, no cognizance of the same was taken by the learned CIT (A). The learned Counsel for the assessee submitted that the following documents filed before the CIT (A) would clearly show that the assessee had a title in the said property and when the property was sold, the income earned from it is LTCG and the assessee is eligible for deduction u/s 54 of the I.T. Act which was denied by the learned CIT (A).

i) Agreement of Sale Dt.05/10/2000

ii) Registered Sale Deed cum GP A Dt. 30/06/2006

*iii) Affidavit from the Original Vendor Dt.01/02/2017
Duly notarized.*

*iv) Sale of the property by the Appellant vide Regd. Sale
Deed Dt. 13/10/2008*

v) Return of Income filed for the Asst. Year: 2009-10 admitting the Deemed Sale Consideration and Claim Relief U/S. 54.

vi) Copies of earlier years Return of Income's from Asst. Year: 2005-06 to Asst. Year: 2008-09 as a proof of evidences of Ownership.

6. He accordingly submitted that he has no objection if the matter is restored to the file of the Assessing Officer with a direction to decide the issue afresh in the light of the documents already filed by giving an opportunity of being heard to the assessee.

7. The learned DR, on the other hand, submitted that the assessee did not file the requisite information before the Assessing Officer for which he was constrained to pass ex-parte order. Further, the assessee did not file the documents properly to substantiate the case for which the learned CIT (A) dismissed the appeal filed by the assessee by giving valid reasons. She accordingly submitted that the order of the learned CIT (A) be upheld.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case, had sold an immovable property for a consideration of Rs.23,50,000/- and the share of the assessee in the said property is 50%. The stamp valuation authority had valued the property at Rs. 34,16,000/-. According to the assessee he had entered into an agreement for sale in the year 2000 and had paid full consideration and was in possession

of the property and therefore, when the property was sold, the gain that arose from the sale of the property was LTCG and the assessee is entitled to deduction u/s 54 of the I.T. Act. However according to the Assessing Officer, the property was purchased on 30.06.2006 and the assessee was in possession of the property for less than 3 years and therefore, the assessee is not eligible to claim LTCG. We find the learned CIT (A) dismissed the appeal filed by the assessee, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that although the purchase of the property was registered on 30.06.2006, however, the assessee was in possession of the property on the basis of agreement of sale dated 5.10.2000 and the assessee was showing rental income from the said property in the return filed for the A.Ys 2005-06 & 2006-07 and therefore, the assessee was in possession of the property. It is the submission of the learned Counsel for the assessee that the lower authorities have not verified the documents properly and therefore, the assessee should be given an opportunity to substantiate his case.

9. We find some force in the above argument of the learned Counsel for the assessee. The paper book filed by the assessee shows that the assessee filed return of income for the A.Ys 2005-06 & 2006-07 and for subsequent years and has disclosed the rental income from the said property. In our opinion, the matter requires a revisit to the file of the Assessing Officer since various documents filed by the assessee including the copy of the return for the A.Ys 2005-06 & 2006-07 disclosing the rental income from the property in question has not been verified by the lower authorities. Considering the totality of the facts of the case and in the interest of justice, we deem it proper

to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law including allowability of deduction u/s 54 of the I.T. Act. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No.322/Hyd/2022 (Mohd.Layeeq)

10. After hearing both the sides we find the grounds raised by the assessee in the instant case are identical to the grounds raised in ITA No321/Hyd/2022. We have already decided the appeal and restored the issue to the file of the Assessing Officer with certain directions. Following similar reasonings, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 13th July, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 13th July, 2022.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 4(1) Hyderabad
3	CIT (A)-1 ,Hyderabad
4	Pr. CIT-1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order