

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1030/H/2017		
Assessment Year: 2007-08		
Minoo M. Siganporia, Hyderabad. PAN: AUHPS 8523 P (Appellant)	Vs.	Income Tax Officer, Ward-4(2), Hyderabad. (Respondent)
Assessee by:	Smt. S. Sandhya	
Revenue by:	Sri Sunil Kumar Pandey, DR	
Date of hearing:	17/02/2020	
Date of pronouncement:	08/07/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-1, Hyderabad in appeal no. 0020/CIT(A)-1/Hyd/2015-16/2016-17, dated 14/2/2017 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the assessment year 2007-08.

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

- (i) *The Ld. CIT (A) has erred in confirming the action initiated by the Ld. AO U/s. 147 & 148 of the Act after the period of four years from the end of the relevant assessment year.*

(ii) *The Ld. CIT (A) has erred in invoking the provisions of section 50C of the Act without considering the fact that the property was sold on 23/1/2004, though the sale deed was executed during the relevant assessment year.*

3. The brief facts of the case are that the assessee is an individual engaged in Bakery business, filed his return of income on 3/4/2008 declaring income of Rs. 1,83,805/- for the relevant AY 2007-08. Thereafter it was revealed that the assessee has sold his residential house admeasuring 137 sq yds bearing No. 1-10-104/27, situated at Allamothota Bavi, Begumpet, Secunderabad vide Registered Sale deed No.2384/2006 dated 20/11/2006 for a sale consideration of Rs. 5 lakhs as against the fair market value of the property of Rs. 16,72,000/-. Therefore, the case was taken up for scrutiny.

4. On perusing the facts of the case and submission of both the parties I do not find any fault with the Ld.AO for re-opening of the assessment after four years because fresh materials has surfaced during the relevant assessment year that the assessee had executed a sale deed for sale of his immovable property and had not declared the same in his return of income. Hence the ground raised by the assessee on this count is devoid of merits.

5. During the course of scrutiny assessment proceedings it was explained by the Ld.AR of the assessee that the property was acquired

by the assessee from his father vide Gift Deed executed on 1/5/2003 Registered as Doc No. 1370/2003 before the SRO, Secunderabad. It was further submitted that the property was sold to Smt. Arutla Malathi by executing an unregistered sale deed but duly notarised dated 23/01/2004 and received the entire sale consideration of Rs. 5 lakhs vide Cheque No. 453931, dated 26/12/2003 drawn on Andhra Bank, Prakash Nagar Branch and the possession of the property was also handed over to the vendee on the very same day. It was further submitted that in order to perfect the title of the property the purchaser had requested the assessee to execute proper sale deed and accordingly the same was registered on 20/11/2006 vide Doc No.2384/2006 before the SRO, Secunderabad. The Ld. AR had further submitted that the market value of the property had escalated subsequently to Rs. 16,72,000/- when the property was registered on 20/11/2006. The Ld. AR therefore pleaded before the Ld.AO that since the actual transfer of the property had taken place during the AY 2004-05 capital gain tax cannot be assessed in the hands of the assessee for the relevant AY 2007-08 and if at all it is required to be assessed in the relevant assessment year then the sale value of the property should be taken as Rs. 5 lakhs being the actual sale consideration received by the assessee during the assessment year 2004-05. However, the Ld. AO opined that since the assessee had not declared capital gain from the sale of the property for the AY 2004-05 the same has to be brought to tax for the

relevant AY 2007-08. He further opined that in the case of the assessee the provisions of section 50C of the Act will not be applicable. Accordingly, the Ld. AO computed the LTCG in the hands of the assessee at Rs. 4,14,676/- vide his order dated 23/3/2015.

6. The assessee carried the matter before the Ld. CIT (A). The Ld. CIT (A) after examining the issue was of the view that the transfer of the property has taken place during the financial year 2006-07 and therefore in the case of the assessee provisions of section 50C of the Act will be applicable and the capital gains is required to be assessed in the hands of the assessee for the relevant AY 2007-08 for the following reasons:-

- (i) The assessee's contention that the purchaser of the property did not come forward for registration of the property on 26/12/2003 or at least on 23/01/2004 (i.e., instead of executing unregistered Notarized sale deed) is not acceptable because the assessee has not adduced any evidence to support the same.
- (ii) if the assessee was of the view that the capital gain has to be assessed in his hands for the AY 2004-05, then he ought to have filed his return of income for the AY 2004-05,

however, he has failed to do so and the capital gain tax has remained unpaid till date.

- (iii) In the notarised sale deed 23/1/2004 the vendee's name is stated to be Smt. D. Malathy W/o. Sri A.R. Devender Rao D/o Sri D. Ellaiah Aged about 33 years, occupation-Business, resident of H.No. 1-10-104/6, Allamthota Bhavi, Begumpet, Hyderabad, AP while as in the sale deed registered before the Sub-Registrar Office, Secunderabad the name of the vendee is stated as Smt. Arutla Malathi, W/o. Sri A.R. Devender Rao, D/o. Sri D. Ellaiah, Aged about 36 years, Occupation-Business, R/o. H.No.1-10-104/27, Allamthota bhavi, Mayur Marg, Begumpet, Hyderabad. Therefore, it is very clear that the registered sale deed is in favour of a different individual.
- (iv) In para No.3 of the Registered Sale Deed dated 20/11/2006 the date of possession was specified as 20/11/2006.
- (v) In the Registered Sale Deed there is no mention of the unregistered Notarized sale deed dated 23/1/2004.

- (vi) There are many discrepancies in the unregistered Notarized sale deed dated 23/1/2004 with respect to the particulars of the property and the description of the adjoining properties.
- (vii) In the notarized sale deed the extent of land sold was mentioned as 80 sq yds while as in the sale deed dated 20/11/2006 the extent of land sold was stated as 137 sq yds. This shows that additional extent of land was sold vide the sale deed executed on 20/11/2006.
- (viii) The notarized agreement to sale is not equivalent to a registered sale deed. As per Transfer of Property Act a registered sale deed alone has legal sanctity with respect to transfer of immovable property. Therefore, in the case of the assessee the date of transfer of the property shall be considered as the date mentioned in the registered sale deed and that falls in the relevant assessment year 2007-08.
- (ix) The value of the property determined by the SRO for the AY 2007-08 is Rs. 16,72,000/-. Since the difference of price is more than 10%, the value of the sale consideration has to

be adopted at Rs. 16,72,000/- as per the provisions of section 50C of the Act.

7. With the above finding the Ld. CIT (A) held that the Ld. AO had not correctly computed the capital gain and accordingly directed the Ld. AO to compute the correct capital gain based on the SRO value of Rs. 16,72,000/-.

8. Before me the Ld. AR submitted that the assessee had received the amount of Rs. 5 lakhs on 27/12/2003 vide cheque no. 0453931 with respect to his sale of the property to Smt. Arutla Malathi. It was further submitted that possession of the property was handed over to Smt. Arutla Malathi on 27/12/2003 and an unregistered sale deed was executed on 23/01/2004 which was duly notarized. It was further argued stating that Smt. Arutla Malathi requested for executing the registered sale deed during the relevant assessment year in order to perfect her title and as per her directions the sale deed was executed on 20/11/2006. It was further clarified that certain mistakes committed in the unregistered notarized sale deed were corrected while registering the sale deed with the SRO. The Ld. AR also pointed out to the bank statement enclosed in page no.5 of the paper book to establish the fact that the assessee has received Rs. 5 lakhs on 27/12/2003 from the vendee. It was further explained that as the assessee and Smt. Arutla

Malathi had maintained their savings bank account in the same bank and the same branch therefore cheque deposited in the bank was instantly credited to the assessee's account. The Ld. AR thereafter argued stating that since the transfer of the property had taken place on 27/12/2003 the assessee is assessable to capital gain tax only for the AY 2004-05 and not in the relevant AY 2007-08. It was therefore pleaded that the capital gains assessed in the hands of the assessee in the relevant AY 2007-08 may be deleted. The Ld. DR though could not successfully controvert to the submissions of the Ld. AR, vehemently argued in support of the order of the Ld. CIT (A) and prayed for confirming the same.

9. I have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent from the bank statement of the assessee that he had received Rs. 5 lakhs from Smt. Arutla Malathi on 27/12/2003. Further, it is also apparent that an unregistered notarized sale deed was executed by the assessee on 23/01/2004 stating that he has received the amount of Rs. 5 lakhs from the vendee towards the sale of his immovable property and the possession of the property was also handed over to the vendee. Just because there were few mistakes committed on the unregistered notarized sale deed, the fact that the amount received by the assessee towards the sale consideration of the property and the handing over the

possession of the property cannot be disputed. Section 2(47)(v) of the Act clearly stipulates that transfer of the immovable property comes into effect when possession of the property is handed over coupled with part performance of the contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. In the instant case, it is apparent that on 27/12/2003 the assessee had received the part consideration of Rs. 5 lakhs and the possession of the property was also handed over as evident from the bank statement of the assessee and the unregistered notarized sale deed. Hence, the assessee would be exigible towards capital gain tax only for the AY 2004-05 and not for the relevant AY 2007-08. It is also pertinent to mention that just because capital gain accrued to the assessee has escaped tax in the AY 2004-05, the same cannot be brought to tax subsequently in the AY 2007-08 as per the provisions of the Act. therefore, I hereby set aside the order of the Ld. CIT (A) and further direct the Ld. AO to delete the addition made and enhanced in the hands of the assessee towards LTCG. Accordingly the second ground raised by the assessee is held in his favour.

10. 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.

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

Pronounced in the open Court on 08th July, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 08th July, 2020.

OKK

Copy to:-

- 1) Minoo M. Siganpooria, 3-6-237, Ground Floor, Shop No.7 & 8, Amrutha Estate, Himayat Nagar, Hyderabad – 500 029.
- 2) Income Tax Officer, Ward-4(2), Income Tax Towers, AC Guards, Hyderabad.
- 3) The CIT (A)-1, Hyderabad.
- 4) The Pr. CIT-1, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File