

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

BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER

AND

SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No. 363/Hyd/2018		
AY: 2010-11		
Dr. Mumtaz Ali Khan Afzal, Hyderabad. PAN: AEUPK 2328 H (Appellant)	VS.	Income Tax Officer, Ward-4(2), Hyderabad. (Respondent)
Assessee by:	Shri A.V. Raghuram	
Revenue by:	Shri Rohit Mujumdar, DR	
Date of hearing:	08/03/2021	
Date of pronouncement:	14/06/2021	

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. 0090/CIT(A)(-1/Hyd/2016-17/2017-18, dated 23/10/2017 passed U/s. 143(3) r.w.s 147 of the Act for the AY 2010-11.

The assessee has raised three grounds in his appeal however, they are extracted herein below for reference:-

- "1. The order of the Ld. CIT (A) confirming the action of the AO adopting value by invoking provisions of section 50C for computation of capital gains is not only erroneous both on facts and in law but is contrary to the principles laid down by the judicial forums.*

2. *The Ld. CIT (A) erred in not appreciating the facts that are presented relating to the arguments entered into in 2006 and not considering the subsequent events and thereby erred in upholding the rate as per SRO of 2009 of Rs. 5,15,88,000/- though it is held by the Tribunals that only the rate at the time of agreement should be considered even U/s. 50C and thereby erred in confirming the order of the AO.*
3. *Any other ground or grounds that may be urged at the time of hearing.”*

3. At the outset, the Ld. AR submitted before us that there is a delay of 11 days in filing the appeal before the Tribunal. In this regard, the assessee's Counsel had submitted a petition for condonation of delay wherein the reasons for filing the appeal beyond the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below: -

*“2.....It is submitted that though the appeal was kept ready for filing on 5/2/2018, since the challan was not depicting that the institution fee was paid under the sub-head “others”, I have kept the filing of appeal pending to file the same along with Form 26AS for the relevant Asst. Year which would show the head under which the payment was made. However, as the matter is relatively new and as I was preoccupied with the stay matters before departmental Authorities, I lost sight of the fact that the appeal has to be filed along with Form 26AS as the file got mixed up with other batch files. It was only on 21/2/2018 when the assessee requested to send the acknowledgement of the appeal filed, I realized that the same was not filed and immediately on 22/2/2018 the appeal was filed before the Hon'ble Tribunal. However, by the time the appeal was filed there was a delay of 11 days in filing the appeal before the Hon'ble Tribunal.”*

4. On perusal of the affidavit filed by the assessee's Counsel We find that the delay of 11 days in filing of the assessee's appeal before the Tribunal has occurred due to the oversight of the assessee's Counsel for which the assessee should not be panelised. Therefore, in the interest

of justice, We hereby condone the delay of 11 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

5. The brief facts of the case are that the assessee is an individual who had failed to furnish his return of income for the AY 2010-11. Subsequently it was revealed that the assessee has sold a property on 19/10/2009 wherein the provisions of Section 50C of the Act is attracted. Thereafter, notice u/s. 148 was issued to the assessee on 9/2/2015 and served on the assessee on 24/2/2015. However, the assessee did not respond to notice. Further the assessee did not respond to the notice on four other occasions and therefore the assessment was reopened and order was passed U/s. 144 r.w.s 147 of the Act wherein the Ld. AO assessed the LTCGs of the assessee at Rs. 1,66,20,794/-. When the matter cropped up before the Ld. CIT (A) the assessee made elaborate submissions before him however, the Ld. CIT (A) dismissed the case of the assessee by observing as follows:-

*“6.4. The submissions of the appellant have been carefully considered. Only issue before me is regarding, the application of section 50C i.e., Capital Gains worked out as per the SRO valuation. Appellant has not brought any material to show that the SRO valuation is on the higher side. Only submission is that there had been a series of changes in making the sale. However, it is pertinent to note that the appellant has registered sale of the property only in the FY 2009-10. However, an agreement is made on 12/5/2006 where the appellant had received Rs. 2.60 Crs, as advance. During the sale in the FY 2009-10, Rs. 3,16,82,500/- was received, totalling to Rs. 5,76,82,500/-. This is closer to the actual valuation of Rs. 5,15,88,000/- as per the SRO. Hence, in light of this discussion, I find the Assessing Officer is correct in taking the SRO Value of Rs. 5,15,88,000/- in light of Rs. 2.60 Crs advance was not offered to tax.”*

6. The Ld. AR pleaded before us stating that the assessee could not gather the details required for completing the assessment before the Ld. AO due to the permanent illness of his wife and her subsequent demise on 29/1/2016. It was further submitted that the assessee is a senior citizen undergoing lots of stress due to which he could not properly assisted his Counsel even during the appellate proceedings. It was therefore requested that one more opportunity may be provided to the assessee to pursue his case as he has fairly a good chance to succeed. The Ld. DR on the other hand strongly opposed to the submission of the Ld. AR and requested for confirming the order of the Ld. Revenue Authorities.

7. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it appears that the assessee did not properly co-operate before the Ld. AO. However, considering the explanation rendered by the Ld. AR regarding the hardship faced by the assessee and since the assessee is a senior citizen, we are of the view that in the interest of justice one more opportunity should be provided to the assessee to pursue his case. Accordingly, we hereby remit the entire matter back to the file of Ld. AO for de novo consideration.

8. In the result, appeal of the assessee is allowed for statistical purposes.

9. 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, we 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, we 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.

Pronounced in the open Court on the 14<sup>th</sup> June, 2021.

Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 14<sup>th</sup> June, 2021.

OKK

Copy to:-

1.	Dr. Mumtaz Ali Khan Afzal, C/o. K. Vasantkumar, A.V. Raghuram & P. Vinod, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad – 500 001.
2.	Income Tax Officer, Ward-4(2), IT Towers, AC Guards, Masabtank, Hyderabad.
3.	The CIT (A)-1, Hyderabad.
4.	The Pr. CIT-1, Hyderabad.
5.	The D.R., ITAT, Hyderabad.
6.	Guard File.