

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD ' S.M.C.' BENCH, HYDERABAD.**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
(Through Virtual Hearing)**

**I.T.A. No.184/Hyd/2020  
(Assessment Year : 2008-09)**

Smt. Rupa Rani Mahankali,  
Hyderabad.  
PAN AMBPM 6948C

....Appellant.

Vs.

Income Tax Officer,  
Ward 15(2), Hyderabad.

.....Respondent.

Appellant By : Shri K.K. Gupta.

Respondent By : Shri Swaroop Mannard.

Date of Hearing : 20.07.2021.

Date of Pronouncement : 26.07.2021.

**ORDER**

This is assessee's appeal for the Assessment Year 2008-09 against the order of Commissioner of Income Tax (Appeals)-8, Hyderabad Dt.15.11.2019 confirming the addition made by the Assessing Officer.

2. The brief facts of the case are that the assessee, an individual, filed her Return of Income for the Assessment Year

2008-09 electronically on 4.12.2008 declaring an income of Rs.1,52,650. A notice u/s.148 of the Income Tax Act, 1961 ('the Act') was issued to the assessee on 4.3.2015 and served on 10.3.2015. However, the assessee did not file any Return of Income in response to the notice u/s.148 of the Act but filed documents consequent to show cause notice dt.16.3.2016. The Assessing Officer therefore completed the assessment u/s.144 r.w.s. 147 of the Act.

3. The Assessing Officer observed that the assessee, along with her sister and 6 brothers, sold 12 plots of land and the assessee's 1/8<sup>th</sup> share in S.R.O. value (after applying the provisions of section 50C of the Act) come to Rs.21,08,500. He, therefore, called for information from the vendee who submitted that the plots were actually purchased from the assessee's father, late Shri G Sattaiah (the vendor) and the land was actually in their possession, but for the sake of gentleman agreement, the sale deed to purchase the land was executed for which no amount was paid to the vendor's legal heirs. The assessee's brothers were also examined who confirmed that there was no payment

received from the vendees nor was any payment made to their sister i.e. the assessee herein. The assessee, in her statement recorded on 1.3.2014, also confirmed it. However, she stated that as per the gentleman agreement, her brothers have received 500 square yards of land and have constructed house thereon and were living therein. She stated that just because she was a legal heir, she had signed the sale deeds but she had not received any sale consideration from the vendees nor from the family members.

4. The Assessing Officer held that the legal heirs of the vendor Sri G Sattaiah, including the assessee, have received 500 square yards of land through gentleman agreement and therefore, the provisions of section 2(47)(ii) of the Act are attracted. He held that the assessee has relinquished her right over the said land in favour of her brothers and therefore, relinquishment of right is also a transfer and is chargeable to tax. He accordingly computed the Long Term Capital Gains (LTCG) of Rs.4,52,250 as falling to the share of the assessee and brought it to tax. The assessee preferred an appeal before the CIT(A), stating that

assessee's father late Sri Sattaiah had purchased the land and after conversion of the same into plots, had sold part of the land to vendees and that he had retained a plot of 500 square yards on which the assessee's brothers have constructed a house and were living therein. She argued that since there was no transfer of property during the assessment year under consideration except the execution of the registered sale deed, and particularly since the vendees have not paid anything to the executors of the sale deed, there was no transfer of any property nor was any relinquishment of any right in any property. However, the CIT(A) was not convinced and accordingly has confirmed the assessment order. Aggrieved by the order of CIT(A), the assessee is in second appeal before the tribunal raising the following grounds of appeal :-

*“ 1. The facts of the case do not support the assumption that ‘transfer’ has taken place to attract long term capital gains tax. The relinquishment of right in the property as stated by the appellant, in favour of her brothers did not amount to taxable transfer.*

*2. There is no document evidencing the relinquishment of right in favour of brothers/sisters of the appellant.*

*3. On the above and other grounds that may arise during the appeal – the appellant requests the honourable Tribunal for an order to delete the capital gains in the assessment.”*

5. The learned counsel for the assessee reiterated the submissions made before the CIT(A) and filed written submissions stating that there was no transfer of land by the assessee nor any relinquishment of her right. Without prejudice to his argument that there is no transfer, he further argued that the relinquishment of right in the property, if any, by the assessee is not evidenced by any document. He therefore prayed for deleting the addition of capital gains to the returned income of the assessee.

6. The learned Departmental Representative, on the other hand, supported the orders of the authorities below and submitted that the assessee and herbrothers and sister, together have received 500 square yards plot as per the gentleman agreement and since the assessee has not claimed any right over the same, it is to be presumed that she has relinquished her right thereon and therefore capital gain is liable to be brought to tax.

7. Having regard to the rival contentions and the material on record, I find that the undisputed facts are that the assessee's father, late Sri G. Sattaiah during his lifetime had sold certain piece of land to various vendees and some of the vendees have also passed away and at the request of the vendees and the legal heirs of deceased vendees, the LRs of the vendor, late Sri Sattaiah, have executed registered documents in their favour. In the light of such circumstances, the assessee and her brothers have executed the sale deed, in respect of properties, whose possession of the property was already given. In view of provisions of section 53A of the Transfer of Property Act, the properties have already been transferred in favour of the vendees except for the execution of the registered sale deeds. As rightly contended by the learned counsel for the assessee, the transfer has taken place in the earlier assessment years when late Sri G. Sattiah was alive. As regards the finding of the Assessing Officer that LTCG has arisen out of retention of 500 square yards by assessee's brothers, I find that the assessee has stated before the CIT(A) that 500 square yards vested with late

Sri G. Sattiah and after his demise, his sons received the property and constructed house thereon and that it was not received by assessee's brothers by virtue of gentleman agreement. The CIT(A) has not verified this fact but has merely gone by the presumption that the assessee had relinquished her right over the 500 sq. yards plot retained by assessee's brothers. Since the land retained by the assessee's brothers cannot be treated as transfer in their favour, there cannot be any relinquishment or right by the assessee in such property. Therefore, there is no incidence of any LTCG in favour of the assessee during the alleged assessment year when the registered sale deed was executed by the legal heirs of late Sri G. Sattiah, with regard to the transaction which had taken place during the earlier assessment year. Thus, the assessee's grounds of appeal are allowed.

8. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 26th July, 2021.

Sd/-

**(SMT. P. MADHAVI DEVI)**

Judicial Member

Hyderabad, Dt.26th July, 2021.

\* Reddy gp

Copy to :

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2.	ITO, Ward 15(2), Hyderabad.
3.	Pr. C I T-7, Hyderabad.
4.	CIT(Appeals)-8, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.