**IN THE INCOME TAX APPELLATE TRIBUNAL**
**HYDERABAD BENCHES "B": HYDERABAD**
**(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**
**AND**
**SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

| ITA No. 1279 & 1280/H/2017<br>Assessment Year: 2012-13 | | |
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| Kalawathi Bagayath,<br>Hyderabad.<br><br>PAN – AEQPB 7777K | Vs. | Asst. Commissioner of Income-tax,<br>Circle – 4(1), Hyderabad. |
| (Appellant) | | (Respondent) |
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| Assessee by: | Shri P. Murali Mohana Rao |
| Revenue by: | Shri Rohit Mujumdar |
| | |
| Date of hearing: | 17/06/2021 |
| Date of pronouncement: | 30/08/2021 |

## O R D E R

**PER L.P. SAHU, A.M.:**

Both these appeals filed by the assessee are directed against CIT(A) - 1 , Hyderabad's separate orders dated 19/05/2017 for AY 2012-13 involving proceedings u/s 143(3) and 271(1)(c) of the Income- Tax Act, 1961; in short "the Act".

ITA No. 1279/Hyd/2017

2. In this appeal the assessee has raised 11 (1 to 11) grounds of appeal and raised additional grounds off appeal from 12 to 17, the sum and substance of which are against the action of the CIT(A) in upholding the computation of long term capital gains u/s 50C of the Act at Rs. 41,04,732/- by the AO.

3. Briefly the facts of the case are that during the course of the assessment proceedings, the Assessing officer noticed that the assessee claimed Long term capital gain of Rs.12,60,561/-. The Assessing Officer noticed that the assessee had showed receipt of Rs .6,68,50,000/- towards sale consideration of the commercial property located at 1-1-152 to 155, admeasuring 2474 Sq. Yards of Land at S.D. Road Secunderabad to M/s. Yasoda Health Services Pvt ltd on 14.11.2011. On verification of the Sale deed, it was noticed that the Fair Market value of the property fixed by the SRO for the purpose of Stamp Duty is Rs.12,37,00,000/- as against Rs.6,68,50,000/- shown by the assessee. Similarly, the FMV of the property located at Kachiguda fixed by the SRO for the purpose of stamp duty is Rs.13,26,000/- as against Rs.13,12,000/- shown by the assessee. The Assessing Officer asked the assessee as to why the provisions of Section 5OC should not be invoked. The assessee replied as under:

*"a) The Assessee has received Rs.20,92,5OO/- towards her share out of the total sale consideration of Rs.6,68,5O,OOO/- which has been duly admitted in the return of income for the year under consideration.*

*b) Though the value of the impugned property as per the stamp valuation Authority is Rs.12,37,OO,OOO/-, it is only a deemed consideration for the purpose of Section SOC of the Act.*

*c) Section 5OC of the Act only incorporates a rule of presumption. It is rebuttable in the assessee's case for the year under consideration.*

*d) There are several litigations attached to the property bearing No. 1-152 to 155, admeasuring 2474 Sq. Yards of Land at 5,0, Road Secunderabad which has been sold vide Doc. No.0429 of 2012.*

*e) For example, the following are the details of disputes attached to the impugned property:*

*f) The fact that there were certain legal dispute attached to the impugned property is also mentioned at Page No.4 of the impugned sale deed dated 14.11.2011*

*g) As submitted in the foregoing paras, the actual sale consideration is influenced by the said litigations.*

*Under the above, said circumstances, the value as per "Stamp Valuation Authority" cannot be adopted in the assessee's case for the year under consideration.*

3.1 The Assessing Officer did not accept the above submissions of the assessee. The Assessing Officer invoked provisions of Section 5OC and adopted the SRO value as per the Stamp Valuation Authority for calculating me Long

Term capital gains at Rs. 4l,04,732/- as against the assessee's claim at Rs. 12,60,561/-.

4. When the assessee preferred an appeal before the CIT(A), against the order of AO, the CIT(A) upheld the order of AO.

5. Still aggrieved, the assessee is in appeal before the ITAT.

6. Before us, the ld. AR of the assessee submitted that similar issue came up for consideration before the coordinate bench of this Tribunal in the case of Rajitha Dubbaka in ITA No. 1508/Hyd/2017 for AY 2012-13 vide order dated 08/06/2021, a copy of which is placed on record.

7. On the other hand, the ld. DR relied on the orders of revenue authorities and neither controverted the submissions of the assessee nor brought any contrary decision in this regard.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. In the case of Rajitha Dubbaka cited supra, the coordinate bench has held as under:

*"2.The assessee's sole substantive grievance pleaded in the instant appeal challenges correctness of both the lower authorities' action making Long Term Capital Gains addition of Rs.28,42,500/-after invoking section 50C of the Act. We notice at the outset with the able assistance of both the parties that the assessee had sold / executed sale /transfer deed dated 14/2/2011 wherein the subject matter of her right is in favour of vendee as against any land or building component for issuing part therein. We notice in this factual backdrop that although the Revenue has sought to justify the impugned transfer of the assessees's right as an admission of the same being a capital asset, the fact remains that we are dealing with section50C only wherein the twin categories of capital asset(s) is only land and building than such a right.3.We further find that the assessee has placed reliance on (i) Smt. D. Anitha vs. ITO reported in [2015] 55 taxmann.com 538 (Hyd. Trib); (ii) Tummala Vidyapal Reddy vs. ITO (ITA No. 48/Hyd/2018); (iii) ITO vs. V. Tara Chand Jain [2015] 63 Taxmann.com 86 (Jaipur Trib.); (iv) Smt. Devidraben I. Barot Vs. ITO, Ahmedabad [2016] 70 Taxmann.com 235 (Ahmedabad. Trib) and (v) Mrs. Rekha Agarwal vs. ITO, Jaipur [2017] 79 Taxmann.com 290 (Jaipur-Trib.), wherein it was held that such a transfer of the vendor's limited right in respect of land and building than the twin categories of assets, as the case may be, does not come within the purview of application of section.50C of the Act. We, therefore, delete the impugned Long Term Gains addition in issue amounting to Rs. 28,42,500/-for this precise reason alone.*

*All other pleadings on merits are rendered infructuous."*

8.1 Since the issue in dispute is materially identical to that of the said decision, respectfully following the same, we direct the AO to delete the addition of Rs. 41,04,732/- by invoking the provisions of section 50C. Accordingly, the grounds raised by the assessee on this issue are allowed.

9. As regards the appeal in ITA NO. 1280/Hyd/2017, the AO levied penalty of Rs. 10,000/- u/s 271(1)(b) for the reason that the assessee has not complied with the notice u/s 142(1) of the Act, which was confirmed by the CIT(A).

10. The ld. AR submitted that penalty imposed u/s 271(1)(b) of the Act in an arbitrary manner and further submitted that hearing was taken place on various dates and the AR of the assessee attended the office of the AO in most of the times, except in one or two occasions could not present before the AO due to unavoidable circumstances. He, therefore, submitted that there was sufficient reason for not complying with the notices of the AO. Thus, he submitted that penalty is not warranted in assessee's case. He submitted that immunity may be granted to the assessee asper section 273B for imposing penalty u/s 271(1)(b) because there was a sufficient cause for not appearing before the AO.

11. The ld. DR, on the other hand, submitted that lower authorities have carefully considered the case of the assessee and thereafter imposed penalty u/s 271(1)(b). He relied on the orders of the authorities below. He further submitted that the assessee did not comply with the notice dated 19/01/2015 which was duly served upon the assessee on 23/01/2015 before & before imposing the

penalty, the an opportunity was given vide show cause notice dated 29/01/2015.

12. After hearing both the parties and perusing the material on record as well as the orders of authorities below, it is observed that penalty has been imposed by the AO u/s 271(1)(b) for not complying with the notices issued dated 19/01/2015 by the AO u/s 142(1) of the Act. We find from the order of the AO that assessment was completed u/s 143(3) of the Act on 30/03/2015 and in the assessment order, the AO has not recorded any satisfaction for imposing penalty u/s 271(1)(b) of the Act. We find that similar issue has been decided by the ITAT, Delhi Benches in the case of Globus Infocom Ltd Vs. DCIT in ITA No. 738/Del/2014, order dated 29/06/2016. wherein the coordinate bench has held as under:

> *"5. We have heard the rival submissions and perused the material on record. We find that the instant appeal is squarely covered by the decision of the Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5 DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 and 2.5 has held as under:-*
>
> > *"2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon'ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.*
> >
> > *2.5 We also find that finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliance in the assessment proceedings was*

> *considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful."*
>
> *6. As the facts of this case are identical, we hold that the imposition of penalty u/s 271(1)(b) of the Act was patently wrong, specially in view of the fact that the impugned assessment order has been passed u/s 143(3). While setting aside the impugned order, we direct the Assessing Officer to delete the penalty."*

12. As per the above decision, if the assessment order has been passed u/s 143(3) of the Act, penalty cannot be imposed u/s 271(1)(b) of the Act. Respectfully following the above decision, we direct the AO to delete the penalty of Rs. 10,000/- levied u/s 271(1)(b) of the Act. Thus, the grounds raised on this issue are allowed.

13. In the result, both the appeal of the assessee in ITA No. 1279/Hyd/2017 and in ITA No. 1280/Hyd/2017 are allowed.

Pronounced in the open court on 30th August, 2021.

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| **Sd/-** | **Sd/-** |
| **(S.S. GODARA)** | **(L. P. SAHU)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Hyderabad, Dated: 30th August, 2021.

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*Copy to :*

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|---|---|
| *1* | *Kalawathi Bagayath,*<br>*C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st Floor,*<br>*Somajiguda, Hyderabad – 82* |
| *2* | *ACIT, Circle – 4(1), Hyderabad* |
| *3* | *CIT(A) – 1, Hyderabad.* |
| *4* | *Pr. CIT - 1, Hyderabad.* |
| *5* | *ITAT, DR, Hyderabad.* |
| *6* | *Guard File.* |

| S.No. | Details | Date |
|---|---|---|
| 1 | Draft dictated on | |
| 2 | Draft placed before author | |
| 3 | Draft proposed & placed before the Second Member | |
| 4 | Draft discussed/approved by Second Member | |
| 5 | Approved Draft comes to the Sr. PS/PS | |
| 6 | Kept for pronouncement | |
| 7 | File sent to Bench Clerk | |
| 8 | Date on which the file goes to Head Clerk | |
| 9 | Date on which file goes to A.R. | |
| 10 | Date of Dispatch of order | |