

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.519/Hyd/2019		
Assessment Year: 2009-10		
Smt.Mamatha Divakar Shetty, Hyderabad PAN:ABNPS7395G (Appellant)	Vs.	Income Tax Officer Ward 4(2) Hyderabad (Respondent)
Assessee by:	Sri Pawan Kumar Chakrapani	
Revenue by:	Sri D.J.P. Anand, DR	
Date of hearing:	15/06/2021	
Date of pronouncement:	18/06/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2009-10 against the order of the CIT (A)-1, Hyderabad, dated 11.01.2019.

2. Brief facts of the case are that the assessee individual filed her return of income on 28.3.2011 by declaring income of Rs.8,27,280/- after claiming exemption u/s 54F of the Act by depositing the capital gain (arising out of a sale of property) into Syndicate Bank, Kacheguda Branch. The case was reopened u/s 147 of the Act to apply the provisions of section 50C of the Act and accordingly the assessment u/s 147 was completed by accepting the income returned by the assessee.

3. Subsequently, the CIT perused the assessment record under the powers vested in him u/s 263 of the Act and observed that though the assessee has received net sale consideration of Rs.1,72,39,500/- as per the sale deed dated 31.07.2008, she has deposited only a sum of Rs.1,34,00,000/- into the capital gain scheme account before the due date of filing of the return of income and the balance of Rs.38,39,500/- remained with the assessee and was not utilized for purchase of new asset till the due date of filing of the return of income. He therefore, directed the Assessing Officer to bring the unutilized sum of Rs.38,39,500/- to tax.

4. Consequential order was passed by the Assessing Officer on 5.5.2017 against the which the assessee filed an appeal before the CIT (A). However, the CIT (A) dismissed the appeal holding that the appeal is against the assessment order passed as per the direction of the Pr. CIT u/s 263 of the Act and therefore, it could not be decided by the CIT (A). Against this order of the CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The order of the authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The learned Commissioner of Income-tax (Appeals) - 1, Hyderabad, ought to have given the Appellant an opportunity before dismissing the appeal, under the facts and circumstances of the case.

3. The Appellant denies himself liable to be assessed on the total income of Rs. 54,22,7801-, as against the income declared in the return of income of Rs. 8,27,2801-, under the facts and circumstances of the case.

4. The learned Authorities below are not justified in adding the amount of Rs. 7,56,0001-, to the long term capital gain, under the facts and circumstances of the case.

5. The learned Authorities below are not correct in adding the amount of Rs. 38,39,500/-, as unutilised sale consideration, under the facts and circumstances of the case.

6. The learned Authorities below ought to have appreciated the fact that the Appellant has invested a total amount of Rs. 1,83,54,514/-, towards purchase of residential flat, under the facts and circumstances of the case.

7. The Appellant denies himself liable to be assessed to interest under section 234A, 234B & 234C of the Act, under the facts and circumstances of the case.

8. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

9. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity”.

5. At the time of hearing, the learned Counsel for the assessee submitted that the assessee has challenged the order u/s 263 of the Act before the Tribunal and the same is pending adjudication. Further, he also prayed that the appeal may be set aside to the file of the CIT (A) as the order of the CIT (A) is ex-parte the assessee.

6. The learned DR, on the other hand, supported the orders of the authorities below.

7. Having regard to the rival contentions and the material on record and also the fact that the assessee has already challenged the order of the CIT u/s 263 of the Act and that such an appeal is pending adjudication before the Tribunal, we deem it fit and proper to set aside this appeal to the file of the CIT (A) with a direction to adjudicate the appeal on merits subject to the

decision of the ITAT on the 263 order in accordance with law after giving the assessee a fair opportunity of hearing.

8. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 18th June, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 18th June, 2021.

Vinodan/sps

Copy to:

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3	CIT (A)- 1, Hyderabad
4	Pr. CIT -1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order