

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

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| ITA No.159/Hyd/2019 | | |
| Assessment Year: 2010-11 | | |
| Late Smt. Rafat Ghani (Rep.by L/R Smt.Farheen Ghani, Hyderabad PAN:ATHPG4766H (Appellant) | Vs. | Asstt. Commissioner of Income Tax, Circle 7(1) Hyderabad (Respondent) |
| Assessee by: | Sri S.Rama Rao | |
| Revenue by: | Sri Subramanyam Tota,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 2010-11 against the order of the CIT (A)-3, Hyderabad, dated 19.11.2018. It is noticed that the assessee has expired on 18.01.2020 and her legal heir has been brought on record.

2. Brief facts of the case are that the assessee individual had entered into a development agreement with one Shri Syed Aqil Faiq to develop the property of the assessee situated at Red Hills, Hyderabad for construction of a complex consisting of residential flats. She agreed to relinquish the rights of ownership over 50% of the built-up area in favour of the developer in exchange for developing the property of the assessee at the cost

and expenses of the developer. The agreement was entered into vide registered sale deed No.128/2010 on 29.12.2009 wherein the SRO value of the developed property was determined at Rs.1,15,47,000/- on which stamp duty was paid.

3. Since this information was received by the Assessing Officer and it was found that the assessee has not filed any return of income for the relevant A.Y declaring capital gains on the consideration received towards her share (50%) as per the joint development agreement, the Assessing Officer reopened the assessment and after examining the assessee's contention about the exemption u/s 54F of the Act, the Assessing Officer held that since the assessee has not filed her return of income for the relevant A.Y and has not claimed the exemption u/s 54F of the Act, the same is not allowable to the assessee. He accordingly computed the long term capital gain of Rs.56,62,800/- and brought it to tax.

4. Aggrieved, the assessee preferred an appeal before the CIT (A). The CIT (A) observed that the assessee has not filed the return of income nor has given any reason as to why the assessee did not file the ROI and has not paid the advance tax payable by the assessee as is required to admit an appeal under the provisions of section 249(4)(b) of the Act. Therefore, he held that the appeal of the assessee is not admissible and dismissed it in limini. Aggrieved, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

"1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2. The learned Commissioner of Income-Tax (Appeals) erred in holding that the appeal filed by the appellant is not maintainable. The learned Commissioner of Income-Ta x

(Appeals) ought to have seen that according to the appellant no tax is payable by him and that, therefore, no advance tax liability arises and in view of the same, the provisions contained in Sec.249(4)(b) have no application.

3. The learned Commissioner of Income-Tax (Appeals) erred in holding that the appellant is liable to pay any advance tax and that there was failure as mentioned in Sec.249(4)(b) of the LT. Act. As an alternate the learned Commissioner of Income-Tax (Appeals) ought to have provided property opportunity.

4. The learned Commissioner of Income-Tax (Appeals) ought to have considered each of the grounds agitated before him and decided the appeal on merits.

5. The learned Commissioner of Income-Tax (Appeals) ought to have considered that the Assessing officer wrongly worked out the capital gain; did not allow the amount of deduction claimed u/s 54 of the IT Act and if the Assessing officer had correctly worked out the income there would not have been any tax payable.

6. Any other ground that may be urged at the time of hearing”.

5. The learned Counsel for the assessee submitted that before dismissing the appeal of the assessee as not maintainable, the CIT (A) ought to have given the assessee an opportunity to explain her case. Therefore, he prayed that the appeal may be set aside to the file of the CIT (A) for re-adjudication of the issues of both the applicability of the provisions of section 249(4)(b) and also on merits of the addition.

6. The learned DR, however, relied upon the orders of the authorities below and submitted that since the assessee did not file the return of income, her appeal would fall under the proviso to section 249(4)(b) of the Act and since the assessee has not filed any application under the proviso, the CIT (A) had no choice but to dismiss the assessee's appeal. At this juncture, the learned Counsel for the assessee submitted that the assessee would file the application under the proviso to section 249(4)(b) of the Act

and the CIT (A) may be directed to dispose of such an application and also the merits of the appeal.

7. Having regard to the rival contentions and the material on record, we find that the provisions of section 249(4)(b) are applicable to the case on hand since the assessee has not filed the return of income, nor has paid the advance tax payable by her. Therefore, she ought to have filed an application under the proviso to section 249(4)(b) of the Act for exemption from the application of section 249(4)(b) of the Act. In such circumstances, The CIT (A) had no choice but to dismiss the appeal as it was defective. However, purely in the interest of justice and taking the prayer of the assessee into consideration, we set aside the issue to the file of the CIT (A) with a direction to the assessee to file the application under the proviso to section 249(4)(b) of the Act within a period of one month from the date of receipt of this order and thereafter, the CIT (A) shall dispose of such application of the assessee and decide on the issue of exemption from the application of the provisions of section 249(4)(b) and thereafter, the CIT (A) shall also decide the appeal on merits. Needless to mention that the assessee shall be given 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.

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

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Sri Rafat Ghani, H.No.11-5-132, Red Hills, Hyderabad 500004 |
| 2 | ACIT, Circle 7(1) IT Towers, AC Guards, Hyderabad 500004 |
| 3 | CIT (A)-3, Hyderabad |
| 4 | Pr. CIT -3,Hyderabad |
| 5 | DR, ITAT Hyderabad Benches |
| 6 | Guard File |

By Order