

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A-SMC' BENCH : Hyderabad**

(Through Video Conference)

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 1323/Hyd./2019
Assessment Year: 2014-15**

Sri Gangadhar Sirpa
Nizamabad

vs. ITO, Ward - 2
Nizamabad

[PAN: GGOPS1093F]

(Appellant)

(Respondent)

For Assessee: Sri A.V. Raghuram, C.A.

For Revenue: Sri A. Sita Rama Rao, D.R.

Date of Hearing : 06/07/2021

Date of Pronouncement 16/07/2021

ORDER

This is assessee's appeal for AY 2014-15 against the order of the CIT(A)-5, Hyderabad dated 14.06.2019.

2. Brief facts of the case are that the assessee is an individual. It came to the notice of the department that assessee has purchased an open land to the extent of Ac. 0-20 guntas bearing survey no.1070, Shivar, Nizamabad in the FY 2013-14 for a consideration of Rs.29,04,000/- as against the market value of Rs.36,30,000/-. On verification, the department found that the assessee has not filed return of income for A.Y. 2014-15 and since the purchase of immovable property was for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000/-, the Assessing officer was of the opinion that the sum of Rs. 7,26,000/- being difference between the consideration received and market value has escaped assessment. Therefore, he issued a notice u/s 148 and during the

assessment proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961, assessee was asked to show cause as to why the same shall not be brought to tax u/s 56(2)(vii)(b) of the Act. The assessee was also asked to explain the sources of the investment.

2.1. Assessee submitted the required details. On perusal of the same the AO was of the opinion that the income of the assessee in the earlier years was very meagre and the house hold expenses shown in receipts and payments a/c was also very low. Therefore, he restricted 30% of the income of the earlier years as accumulated savings i.e. Rs. 5,49,000/- as a source of investment and the balance of Rs.25,79,900/- was treated as unexplained investment and brought to tax. Further, holding that the provision of sec.56(2)(vii)(b)(iii) is a mandatory provision, he brought the difference of the consideration paid by the assessee and the market price being Rs.7,26,000/- to tax as income from other sources. He also made a disallowance of Rs.18,200/- on the ground that the assessee has not submitted evidence in support of his claim under Chapter VI of the Act.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who granted partial relief to assessee by accepting 50% of the sources for investments in the property and confirmed the addition of Rs. 5,00,000/-. Aggrieved, the assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

"1. On the facts and in the circumstances of the case, the order passed by the ld. Commissioner of Income Tax (Appeals)-5, Hyderabad, allowing the appeal only in part is erroneous and unsustainable in law. The ld. CIT(A) ought to have allowed the appeal in entirety.

2. The ld. CIT(A) erred in sustaining the addition of Rs.7,26,000 made under section 56(2)(vii)(b)(ii) of the Act being the difference of SRO rate and the value for which the property was bought by the Appellant.

3. On the facts and circumstances, both the authorities failed to appreciate that as the SRO rate at Rs.36,30,000 is being disputed by the Appellant, the same should be referred to the Valuation officer for valuing the fair market value of the property.

4. The findings of the authorities below that the provision is automatic and that the Appellant has to give valid objections for reference of the property in question for valuation is erroneous and unsustainable in law. The authorities below failed to appreciate that it is not the requirement of law.

5. The ld. CIT(A) erred in not accepting the sources offered by the Appellant in its entirety, for purchasing the property at Rs.29,04,000 besides stamp duty of Rs.2,17,900. The ld, CIT(A) was not justified in scaling down the availability of sources for purchase of funds in spite of detailed explanation submitted by the Appellant.”

4. As regards ground nos. 2, 3 and 4, I find that before the Assessing officer, the assessee did not file any objections to the application of the provisions of sec.56(2)(vii)(b)(iii) of the Act, but before the CIT(A), the assessee filed detailed objections stating that though SRO value adopted is at Rs.36,30,000/-, the assessee had paid only Rs 29,04,000/- since the land purchased by the assessee was 20 guntas of agricultural land and therefore weightage has to be given for the land to be converted into open site after formation of roads, drains etc and, therefore, net area has to be reduced by 20% which would be 19 sq yards and if the same is taken into consideration, the SRO rate would work out to Rs.29,04,000/- only as against the stamp duty paid by the assessee on the consideration of Rs.36,30,000/-. He further submitted that though the assessee has not taken any objection before the AO, he had raised detailed objections before the CIT(A), and when assessee takes certain objections, the AO or the CIT(A) ought to have referred the matter to the Departmental Valuation Officer to verify the acceptability or otherwise of the assessee's contentions as provided under the third proviso to sec.56(2)(vii)(c). In view of the same, I deem it fit and proper to remand the issue back to the file of AO with a direction to refer the matter to departmental Valuation officer for valuation of the property and thereafter to complete the assessment in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing.

5. As regards ground no.5 relating to sources for investment for purchasing the property at Rs.29,04,000/- and the stamp duty of Rs. 2,79,900/- paid thereon, I find that the CIT(A) has accepted 50% of the investment as explained by the assessee. The ld.counsel for the assessee prayed for deletion of the entire addition whereas ld.DR supported the orders of the authorities below.

6. Having regard to rival contentions and material placed on record, in the interest of justice, I am inclined to accept 70% of the investment as explained.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in Open Court on 16/07/2021.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 16th July, 2021

- *gmv*

Copy of Order forwarded to:

1. Sri Gangadhar Sirpa, C/o AV Raghuram and P Vinod, Advocates, Flat no.610, Babukhan Estate, Basheerbagh, Hyderabad 500 001, Telangana
2. ITO, Ward 2, Nizamabad.
3. ACIT, Nizamabad Range, Nizamabad
4. CIT(A)-5, Hyderabad
5. Pr.CIT-5, Hyderabad.
6. D.R. ITAT Hyderabad
7. Guard File