

Charging capital gains in hands of general power of attorney holder held as incorrect by ITAT

Summary – The Hyderabad ITAT in a recent case of Veerannagiri Gopal Reddy., (the Assessee) held that Charging capital gains in hands of general power of attorney holder is incorrect

Facts

- The assessee did not file any return of income for the assessment year while the Assessing Officer received information that the assessee was holding GPA for certain persons and he had sold the immovable property during the said assessment year. Hence the assessment was reopened under section 148.
- The Assessing Officer also issued a notice under section 142(1) along with a questionnaire, requiring the assessee to furnish the details in connection with the assessment proceedings since no return was furnished.
- In reply the assessee stated that he had executed the sale deed as a GPA holder only; and that he had not received any amount from the transaction.
- The Assessing Officer held that the assessee had sold the plot to his daughter not only as a GPA holder, but also as a owner of the property and had earned the capital gain therefrom. He accordingly brought the capital gains to tax.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.

Held

- The ITAT stated that while the assessee was given an irrevocable GPA by the owners there is no mention about the receipt of any sale consideration from whomsoever. The GPA shows that the assessee is not the owner of the property but has only been granted authority to convey the property to third party. Therefore, it cannot be considered that the assessee became the owner of the property by virtue of the irrevocable GPA.
- Thus, the capital gain would arise in the hands of the owners of the property and not the GPA holder and since the assessee is not the owner of the property, the capital gain cannot be brought to tax in his hands.