

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.428/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer,
Ward – 5, Panvel

.... अपीलार्थी/Appellant

Vs.

Shri Kamlakar Rajaram Patil,
House No.310C, Room No.201,
Murbi Gaon, Kharghar, Navi Mumbai,
Dist. Raigad – 410210

.... प्रत्यर्थी / Respondent

PAN: AKFPP3708B

अपीलार्थी की ओर से / Appellant by : Shri Achal Sharma, Addl.CIT
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / Date of Hearing : 28.02.2018	घोषणा की तारीख / Date of Pronouncement: 28.02.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the Revenue is against the order of CIT(A)-2, Thane, dated 28.12.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has filed the following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in relying upon ITAT, Pune order in the case of M/s. Kancast P Ltd., Pune [ITA No.1265(PN) of 2011]. The Department has not accepted the said order and filed appeal to High Court in the said case.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that Section 50C of the Income Tax Act, 1961 applies only to capital asset being land and building or both and it does not apply to leasehold rights in the land or building, however Section 269UA(d)(i) of the Act makes it clear that land, building or both etc included any rights therein would come in purview of Section 50C of the Act.*
3. *The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*

3. The appeal was fixed for hearing but despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment. The perusal of grounds of appeal itself reflect that the issue raised in the present appeal has been agitated by the Revenue since the Department has not accepted the order of Tribunal on the said issue and has filed an appeal before the Hon'ble High Court. Hence, we proceed to decide the present appeal after hearing learned Departmental Representative for the Revenue.

4. The issue which arises in the present appeal is the application of provisions of section 50C of the Act to leasehold rights in land and building.

5. Briefly, in the facts of the case, the assessee had declared total income of ₹ 4,01,250/-. As per AIR information, the assessee had along with other co-owners sold an immovable property for ₹ 5.01 crores, as per the value determined by the Sub-Registrar, Panvel. The case of assessee was picked up for scrutiny. However, there was total non-compliance and the Assessing Officer called for tripartite agreement executed by the assessee on 11.10.2010 from the office of Sub-Registrar, Panvel. The assessee along with five co-owners had sold the plot situated in Sector-19, Kharghar to M/s. Giriraj Platinum. The agreement did not quantify the sale consideration paid by M/s. Giriraj Platinum, hence fair market value for stamp duty purpose i.e. ₹ 5.01 crores was treated as total consideration in view of provisions of section 50C of

the Act. The Assessing Officer also noted that the assessee along with other co-owners had received the above plot from CIDCO on 22.06.2007 by paying cost of ₹ 43,810/-. Accordingly, the Assessing Officer computed income from long term capital gains in the said property, wherein the assessee had one-eighth share and assessed the same at ₹ 62,62,109/-.

6. Against the said addition, the assessee filed an appeal before the CIT(A). The first plea raised was that the said property was still under construction and the same had not been handed over to the legal owners including the assessee and hence, the long term capital gains could not be calculated. However, during the course of appellate proceedings by way of written submissions, the assessee submitted that as per Development Agreement dated 18.06.2010, at most the total consideration would be ₹ 1 crore, received in lieu of agreement and he submitted the working of taxable LTCG in the hands of legal owners. The CIT(A) observed that in the absence of required details and also because of non-compliance on the part of assessee, it was not possible to verify the correctness of various claims made by assessee. The working was made as per the value received by the assessee. The CIT(A) thus, directed the Assessing Officer to determine the value of long term capital gains after verifying the same from record / details available. In the case of assessee, LTCG was determined at ₹ 9,66,689/-. The CIT(A) also held that long term capital gains had to be determined on total consideration received against the agreement i.e. ₹ 1 crore and not on the value determined for the purpose of stamp duty by the Sub-Registrar. In this view, the CIT(A) held that the provisions of section 50C of the Act were not applicable in the case of assessee being leasehold plot. Reliance in this regard was placed on different decisions of Tribunal.

7. The Revenue is in appeal against the order of CIT(A).
8. Vide ground of appeal No.1, the Revenue has pointed out that the CIT(A) has decided the issue being covered by the orders of Tribunal, however, the Department has filed appeal against the said orders before the Hon'ble High Court and hence, the order of CIT(A) is not accepted.
9. We find that the issue raised in the present appeal has been decided by Pune Bench of Tribunal in M/s. Kancast P. Ltd. Vs. ITO in ITA No.1265/PN/2011, order dated 09.01.2015 and also by the Mumbai Bench of Tribunal in Atul G Puranik Vs. ITO reported in 132 ITD 499 (Mum). The principle which has been laid down is that the provisions of section 50C of the Act are not applicable to leasehold lands. The learned Departmental Representative for the Revenue has failed to bring on record any decision by the higher Forum to the contrary and in the absence of the same, we find no merit in the stand of Department. Accordingly, upholding the order of CIT(A), we dismiss the grounds of appeal raised by the Revenue.
10. In the result, appeal of Revenue is dismissed.

Order pronounced on this 28th day of February, 2018.

Sd/-
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th February, 2018.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Thane;
4. The Pr.CIT-2, Thane;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune