

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 डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.511/PUN/2012
निर्धारण वर्ष / Assessment Year : 2007-08

ACIT, Circle-11(2),
Pune

.... अपीलार्थी/Appellant

Vs.

Smt. Kalpana Abhay Mutha,
S.No.692, Plot No. 4,
Ruturaj Co-op. Society,
Near City Pride,
Bibwewadi, Pune – 411 037
PAN : AFDPM3429B

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Ajay Modi, JCIT
प्रत्यर्थी की ओर से / Respondent by : Shri Hari Krishan

सुनवाई की तारीख / Date of Hearing : 19.03.2018	घोषणा की तारीख / Date of Pronouncement: 21.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Revenue against the order of CIT(A)-I, Pune, dated 29-09-2011 for the Assessment Year 2007-08.

2. Grounds raised by the Revenue read as under :

“1. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in relying upon the **additional evidence** produced by the assessee of Voluntary Disclosure of Income Scheme, 1997 certificate of Rs.50 lakhs treating the same as the source for investment in purchase of land at Karve Nagar even though the same was not produced before the AO during the assessment proceedings. The tax effect of the same is Rs.11,70,559/-.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in relying upon the **additional evidence** produced by the assessee of bills and vouchers relating to the cost of improvement of the land at Karve Nagar even though the same was not produced before the AO during the assessment proceedings. The tax effect of the same is Rs.14,91,680/-.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) grossly erred in not calling for report from the AO when **additional evidence** was produced before the CIT(A).

4. *The appellant craves to leave, add, amend or alter any ground(s) of appeal.”*

3. Briefly stated relevant facts are that the assessee is an individual and is engaged in the business of trading in garments, dress material etc. Assessee derives income from business, income from capital gains and income from other sources. Assessee filed the return of income on 18-09-2008 declaring total income of Rs.97,22,014/-. In the return of income for the year under consideration, assessee disclosed the long term capital gains on sale of vacant land situated at Sr.No.10/15, Karve Nagar, Pune. Assessee entered into a development agreement with M/s. Shree Balaji Developers and Mr. Abhay Bansilal Mutha, Mr. Kapil Abhay Mutha for a sale consideration of Rs.3.51 crores. The said land was originally purchased by the assessee on 07-12-1998 for a consideration of Rs.37.88 lakhs (which includes stamp duty, registration and other legal expenses). In the return, assessee computed the long term capital gain at Rs.1,29,30,566/-. Details mentioned at Para No.3.2 of the assessment order are relevant and the same are extracted here as under for the sake of completeness :

<i>Sale consideration</i>		<i>3,51,00,000</i>
<i>Cost of Selling</i>	<i>3,51,000</i>	
<i>Net Sale Consideration</i>		<i>3,47,49,000</i>
<i>Indexed cost of Improvement</i>		
<i>FY 1998-99</i>	<i>20,85,335</i>	
<i>FY 1999-00</i>	<i>19,10,690</i>	
<i>FY 2000-01</i>	<i>10,81,850</i>	
<i>FY 2001-02</i>	<i>27,412</i>	
<i>FY 2002-03</i>	<i>1,45,134</i>	
<i>FY 2003-04</i>	<i>28,77,444</i>	
<i>FY 2004-05</i>	<i>17,08,921</i>	
<i>FY 2005-06</i>	<i>5,16,053</i>	
<i>FY 2006-07</i>	<i>5,20,361</i>	
<i>Total</i>		<i>1,08,73,206</i>
<i>Balance</i>		<i>2,38,75,794</i>
<i>Less : Investment in purchase of Residential property u/s.54</i>		<i>(-)1,09,45,228</i>
<i>Long Term Capital Gain</i>		<i>1,29,30,566</i>

The table given above shows that the assessee claimed the indexed cost of improvement of Rs.1,08,73,206/-. There is no claim of deduction on account of cost of purchase of asset. Further, assessee invested the part of the capital gains in a residential property and claimed the deduction u/s.54 of the Act to the extent of Rs.1,09,45,228/-.

4. During the assessment proceedings, AO denied the benefit of indexed cost of improvement for want of evidences and only allowed the claim of deduction u/s.54 of the Act. According to the AO, the taxable long term capital gains work out to Rs.2,35,21,850/-. Details of computation of capital gains by the AO are given in Para 3.4 of the assessment order and the same are extracted as under :

<i>Sale consideration</i>		<i>3,51,00,000</i>
<i>Less : Exemption u/s.54</i>		<i>(-)1,15,78,150</i>
<i>Long Term Capital Gain</i>		<i>2,35,21,850</i>

5. During the First Appellate proceedings, assessee made various written submissions. The source of funds for purchase of asset was also the issue for scrutiny by the AO. In this regard, the assessee furnished the evidences for cost of acquisition of Rs.37.88 lakhs for the said land. Assessee furnished the details of disclosure of cash of Rs.50 lakhs under Voluntary Disclosure of Income Scheme, 1997 (in short 'VDIS') and filed a copy of the VDIS Certificate No.308/73, dated 18-12-1997. The said details were furnished in the context of evidencing the source for purchase of the said lands. At the end of the proceedings, CIT(A) not only granted the deduction towards cost of acquisition but also allowed the cost of improvement without calling for requisite remand report from the AO on the said additional evidences. Eventually, the appeal of the assessee was partly allowed.

6. Aggrieved with the said relief granted by the CIT(A) to the assessee, the Revenue is in appeal before us with the grounds raised above.

7. From the above grounds raised by the Revenue, the core issue raised by the Revenue relate to admitting the additional evidences at the back of the AO and CIT(A)'s failure to call for a remand report from the AO in contravention to the provisions of Rule 46A of the Income Tax Rules, 1962. It is the case of the Revenue before us that the CIT(A) admitted the additional evidences at the back of the AO and not called for any remand report which constitutes procedural irregularity. Revenue therefore desires that the matter should be remanded to the file of AO for meeting the set principles of natural justice.

8. Per Contra, Ld. AR for the assessee fairly submitted that the powers of the CIT(A) are co-terminus with that of the AO. In that sense, the order of CIT(A) and the procedure followed by him is well within the scope of CIT(A). Therefore, the order of CIT(A) does not call for any interference.

9. We heard both the parties on this issue relating to the violation of Rule 46A of the Income Tax Rules, 1962. It is an admitted fact that the evidences furnished by the assessee before the CIT(A) relating to cost of acquisition of land, source for investment in the said land, VDIS related documents/certificates (supra), evidences for cost of improvement, etc., were not furnished to the AO during the assessment proceedings.

Considering the same, we are of the view that there is failure on part of CIT(A) in not granting an opportunity to the AO before admitting the said additional evidences and the same constitutes contravention to Rule 46A of the Income Tax Rules, 1962. Therefore, we direct the AO to consider and examine the said evidences before making fresh assessment on this issue. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Therefore, in our opinion, the grounds raised by the Revenue are justified on technicalities.

Accordingly, they are allowed for statistical purposes.

10. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced on this 21st day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 21st March, 2018.
Satish

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

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

आदेशानुसार/ BY ORDER,स

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune