

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, 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.1521/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shantaram V. Tapkir,
Near Sandvik Colony,
Dighi Road,
Near Sant Tuka Ram Nagar,
Bhosari, Pune-411 039.
PAN : ABYPT9032G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-8(4), Pune.

.....प्रत्यर्थी / Respondent

S.A. No. 23/PUN/2018

(Arising out of ITA No. 1521/PUN/2017)

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shantaram V Tapkir,
Near Sandvik Colony,
Dighi Road,
Near Sant Tuka Ram Nagar,
Bhosari, Pune-411 039.
PAN : ABYPT9032G

..... आवेदक/Applicant

बनाम / V/s.

The Income Tax Officer,
Ward-8(4), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. N. Doshi

Revenue by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 20.03.2018	घोषणा की तारीख / Date of Pronouncement : 27.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal filed by assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Pune dated 10.03.2017 for assessment year 2011-12.

2. The assessee has raised following grounds in appeal:

“1. On the facts and in the circumstances of the case the ld. CIT(A) has erred in sustaining the addition of Rs.1,00,00,000/- on account of long term capital gain arose on transfer of ownership of adversary possession with respect to the agricultural land sold during the year.

2. On the facts and in the circumstances of the case and without prejudice to ground No.1 the long term capital gain arose on agricultural land sold by the appellant is otherwise also not taxable since the said amount is utilized for purchase of agricultural lands within the stipulated period u/s.54B of the I. T. Act 1961.

3. On the facts and in the circumstances of the case the ld. CIT(A) has erred in sustaining the following additions:-

- i. Cash deposits in various banks totaling to Rs.1,17,87,010/-, the source for which is explainable and without prejudice the addition if warranted could have been of the peak deposits.*
- ii. Time deposit made in Cosmos Co-op Bank Ltd. of Rs. 75,00,000/-, the source of which stands explained.*

4. On the facts and in the circumstances of the case the ld. CIT(A) has erred in sustaining the addition of investment made in purchase of agricultural lands totaling to Rs.1,02,24,000/- overlooking the fact that sources stand explained.

5. The above grounds of appeal may kindly be allowed to be amended, altered, modified etc. in the interest of natural justice.”

3. Briefly stated relevant facts of the case are that the assessee is an individual and engaged in the business of builders and developers. The assessee filed return of income declaring total income Rs.2,79,419/-. In the assessment proceedings, the

Assessing Officer assessed income of Rs.3,97,90,500/-. The Assessing Officer made addition of Rs.1,00,00,000/- on account of long term capital gain, Rs.1,17,87,010/- on account of unexplained cash deposits, Rs.75,00,000/- on account of unexplained term deposits in the bank accounts and Rs.1,02,24,000/- on account of purchase of immovable properties. During the First Appellate proceedings, all these issues were agitated by the assessee and appeal of the assessee was dismissed. The Commissioner of Income Tax (Appeals) confirmed the additions made by the Assessing Officer.

4. Aggrieved with the order of Commissioner of Income Tax (Appeals), the assessee is in appeal before us.

5. At the outset, the Ld. Counsel for the assessee brought our attention to his prayer dated 20.03.2018 and brought our attention to the enclosed various documents (i.e. sale deed dated 25.01.2011, deed of acquiring adversary rights dated 25.01.2011, purchase deed dated 16.03.2011 and sale deed dated 16.12.2010 etc) and informed the same constitutes of additional evidences. The Ld. AR prayed for admitting the same and remanding the papers and the issues raised in the ground of appeal to the file of Assessing Officer for fresh adjudication.

6. Per contra, Ld. DR opposed the above preliminary issue dutifully.

7. On hearing both the parties on preliminary issue, we examine the prayer made by assessee in this regard and the same is extracted herein below:

“In accordance with the Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 the appellant produces additional evidences enclosed herewith as enumerated below :

i. Suit filed before the Hon'ble Civil Judge, Pune for acquiring adversary possession- Flag No. 1

ii. Sale Deed dated 25.01.2011 of agricultural land as consenting party-Flag No. 2

iii. Deed entered for acquisition of adversary possession in respect of land at Haveli, Pune dated 25.01.2011. Flag No. 3

iv. Purchase Deed of land at Parner dated 16.03.2011- Flag No. 4

v. Sale Deed dated 16.12.2010 of land acquired under adversary passion- Flag No. 5

These evidences could not be filed before the lower authorities for the reasons stated in affidavit filed before the Hon'ble Tribunal during the stay proceedings. Copy enclosed herewith.

These additional evidences go to the root of the issue involved in the appeal and therefore, it is prayed that the same be accepted and adjudicated on merit.”

We find these documents filed by assessee are required for adjudication of the issues as they go to the root of the matter. Hence, the same are admitted. Accordingly, all the issues raised in appeal are remitted back to the file of Assessing Officer for fresh adjudication after considering the said additional evidences. Thus, we direct the Assessing Officer to adjudicate the issue afresh after granting reasonable opportunity of being heard to the assessee in accordance with set principles of natural justice. **Accordingly, grounds raised in appeal by assessee are allowed for statistical purposes.**

S.A. No.23/PUN/2018 (A.Y. 2011-12)

8. In the preceding paragraphs of this order, we have discussed the issues and the additions made by the Assessing Officer. The Assessing Officer issued the demand notice u/s.156 of the Act asking assessee to pay demand of Rs.1,93,49,638/-. The assessee filed Stay Application before us requesting to stay of entire demand. In this regard, in the light of the prayer for admitting of additional evidences and consequential remand of the issue, both the parties submitted that Stay Application could be heard along with main appeal i.e. ITA No.1521/PUN/2017. Accordingly, the appeal came up for adjudication today.

9. As per discussion given in the aforementioned paragraphs up to para 7, we have decided to admit the additional evidences and to remand all the issues raised in the appeal on merits to the file of Assessing Officer for fresh adjudication. Considering the same, we are of the opinion that adjudication of stay application becomes merely an academic exercise in view of our decision of setting aside the entire order of Commissioner of Income Tax (Appeal). Thus, stay application moved by the applicant is dismissed.

10. To sum up, appeal of the assessee is allowed for statistical purposes and stay application moved by the applicant is dismissed.

Order pronounced on 27th day of March, 2018.

Sd/-

(सुषमा चावला / Sushma Chowla)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th March, 2018.

SB

Sd/-

(डी.करुणाकरा राव/D. Karunakara Rao)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-9, Pune.
4. The Pr.CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फाइल / Guard File.

// True Copy//

आदेशानुसार / BY ORDER,

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