

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, 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. 123/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Indubai Dharmraj Mule,  
At Shiplapur,  
Shiplapur Malwadi,  
Sangamner,  
Ahmednagar-422 605.  
PAN : BJFPM3454D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-4,  
Ahmednagar.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 124/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Dashrath Dharmraj Mule,  
At Shiplapur,  
Shiplapur Malwadi,  
Sangamner,  
Ahmednagar-422 605.  
PAN :BJMPPM9270Q

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-4,  
Ahmednagar.

.....प्रत्यर्थी / Respondent

Appellant by : None

Respondent by : Shri Mukesh Jha.

सुनवाई की तारीख / <b>Date of Hearing : 09.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement : 24.04.2018</b>
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**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM**

1. These two appeals filed by two different Assesseees are emanating out of the separate orders of Commissioner of Income Tax (Appeals)- 2, Pune dated 14.09.2016 and 15.09.2016 for A.Y. 2012-13.

2. Before us, at the outset, Ld.D.R. submitted that though the two appeals filed by two different assesseees are against the separate order of Commissioner of Income Tax (Appeals)-2, Pune but the issue involved in both the appeals are identical except for the amounts and the assesseees and therefore, his arguments will also be common and therefore these two appeals can be heard and disposed of together. We therefore for the sake of convenience proceed to dispose of the two appeals by a consolidated order, but however, proceed with narrating the facts in ITA No.123/PUN/2017 for assessment year 2012-13.

3. The relevant facts as culled out from the material on record are as under:-

Assessee is an individual stated to be having income from capital gains, bank interest and other sources. The Assessing Officer noted that Assessee had sold immovable property on 30.12.2011 (land at Survey No. 203(3), Sangamner, Budruk, Ahmednagar) jointly along with 20 members for Rs.96,00,000/-. Assessing Officer further noticed that assessee had not filed the return of income. The Assessing Officer therefore held that capital gain has escaped assessment and accordingly, notice was issued to the assessee

u/s.148 of the Income Tax Act, 1961 on 11.03.2015 which was duly served on Assessee on 16.03.2015. In response to the notice u/s.148 of the Act, Assessee filed return of income on 04.06.2015 declaring total income as 'Nil'. The case was taken up for scrutiny and thereafter, assessment was framed u/s.143(3) r.w.s. 147 of the Act vide order dated 04.06.2015 and the total income was determined at Rs. 8,64,455/-. Aggrieved by the order of Assessing Officer, Assessee carried the matter before CIT(A) who vide order dated 14.09.2016 (in appeal No.PN/CIT(A)-2/Wd-4/AN/356/2015-16) dismissed the appeal of Assessee by holding as under:

*"5. The facts of the case are that the appellant sold an jointly held immovable property on 30/12/2011 for total sale consideration of Rs.96,00,000/-. However, she did not file return of income for the year in question. Therefore, the case was reopened by issuing notice u/s.148 of the Act. In response to the notice issued u/s.148, the appellant filed return of income on 04.06.2015 electronically declaring total income of Rs. Nil. During the assessment proceedings, the appellant claimed deduction under section 54F of the Act. However, the A.O. disallowed the same stating that the appellant was not entitled for the said deduction as the consideration was invested in the name of his son i.e. not in the name of the appellant. The assessment was completed on 04/06/2015 thereby making proportionate addition of Rs.8,64,455/- on account of long term capital gain, which was agreed by the appellant as well.*

*6. In the first ground of appeal, the appellant has stated the A.O did not consider the cost of acquisition. On perusal of the assessment order, it is noticed that during assessment proceedings the appellant was not prevented from making any such claim before A.O. and he admitted the addition made on account of long term capital gain. In view of this, the additional evidence produced during appellate proceedings is not admissible in the light of provisions of Rule 46A of I. T. Rules, 1962, as his case is not falling under any of the exceptional clauses as mentioned in Rule 46A.*

*7. With regards to the second ground of appeal, it is noticed that the appellant made claim u/s 54F of the Act which not allowed by the A.O. as the 'consideration was invested in the name of the appellant's son. As per the provisions of section 54 F of the Act, for claiming the said deduction the amount of sale consideration should be invested by the assessee in his/her own name. There is nowhere written under this section that the deduction can be claimed if the investment is made in any other's name. Thus the A.O. has rightly disallowed the deduction.*

*8. In view of the aforesaid facts, I hold that the A.O. has rightly made the addition of Rs.8,64,455/- on account of long term capital gain disallowing the deduction claimed by the appellant u/s 54F of the Act. I do not find any reason to interfere with the assessment order passed by the A.O."*

4. Aggrieved by the order of CIT(A), Assessee is now in appeal before us.
5. The grounds raised by the assessee filed along with Form No.36 are argumentative in nature and not in consonance with Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963. However, before us, ld. DR submitted that the solitary issue is with respect to taxing of capital gains.
6. The case file reveals that there was delay of 65 days in filing the present appeal. On perusal of the grounds of appeal which are argumentative in nature, it is Assessee's submission that the assessee is an old lady aged 73 years and is stated to be suffering from serious illness because of which delay has occurred in filing the present appeal and therefore, the delay be condoned. Considering the aforesaid facts and in view of the settled law that when substantial justice and technicalities are pitted against each other, then the cause of substantial justice deserves to be preferred, we in the interest of justice, condone the delay and admit the appeal for hearing.
7. On the date of hearing none appeared on behalf of Assessee nor any adjournment application was filed. We, therefore, proceed to dispose of the appeal ex-parte qua the assessee after considering the material on record and after hearing the Ld.D.R.
8. Before us, Ld. DR supported the order of Assessing Officer.
9. We have heard the submissions made by the Ld. DR and perused the material on record. On perusal of grounds of appeal which are argumentative and descriptive in nature, the factual position that emerges is that assessee held an agricultural land (211 gunthas-5.227 acres) located at Survey No. 203(3), Sangamner, Budruk,, Ahmednagar whichy was held jointly by assessee along with 20 other members. The land was acquired prior to 1981.

Assessee's share in the land was 19 gunthas. The land was sold on 30.12.2011 for Rs.96 lacs and Assessee's share was Rs.8,64,455/-. Assessing Officer considered the entire share of Assessee of Rs.8,64,455/- as capital gains. It is assessee's contention that if the indexation benefit is considered, there would not be any taxable capital gains. On perusing the assessment order, we find that the entire sale consideration has been considered as capital gains and no indexation benefit has been considered while working out the capital gains. The mode and manner of computing capital gains is given in Section 48 of the Act. The 2<sup>nd</sup> proviso to Section 48 provides that where long term capital gains arise from the transfer of a long term capital asset, the cost of acquisition of the asset has to be read as "indexed cost of acquisition". Indexed cost of acquisition has been defined in Clause-(iii) of the Explanation to Section 48 as an amount which bears to the cost of acquisition the same proportion as the cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the Assessee or for the year beginning on the 1<sup>st</sup> day of April, 1981, whichever is later. It is not the case of the Revenue that the asset sold by the Assessee is not a long term capital asset and the gains arising thereto are not long term capital gains. In such a situation, we are of the view that the capital gains have to be computed after considering the indexed cost of acquisition, which has not been done in the present case. At this juncture, it would be relevant to refer to CBDT Circular No.14 (XL-35) dated 11/04/1955 which states that the Officers of the Department must not take advantage of the ignorance of an Assessee as to his rights & it is one of their duties to assist a tax-payer in every way particularly in the matter of claiming and securing relief. It is also a settled law that the Circulars issued by CBDT are binding on the Department.

10. In view of the above facts, we are of the view that in the interest of justice, the matter needs to be remanded to the file of Assessing Officer to

work out the capital gains in accordance with law. We, therefore, without deciding the issue on merits, restore the issue back to the file of Assessing Officer and direct him to decide the issue afresh in accordance with law. Needless to state, the Assessing Officer shall grant adequate opportunity of hearing to the assessee. Accordingly, grounds raised by assessee are allowed in statistical purposes.

11. In the result, appeal of Assessee is allowed for statistical purposes.

12. As far as appeal in the case of ITA No.124/PUN/2017 in the case of Dashrath Dharmraj Mule is concerned, since the facts in the case of Dashrath Dharmraj Mule in ITA No.124/PUN/2017 are similar to the facts of the case of Indubai Dharmraj Mule (in ITA No.123/PUN/2017), we, therefore, for similar reasons stated hereinabove while deciding the issue of Indubai Dharmraj Mule, allow the grounds raised in the case of Dashrath Dharmraj Mule in ITA No.124/PUN/2017 for statistical purpose. Thus, the appeal of Assessee is allowed for statistical purposes.

13. In the result, both appeals of the Assesseees are allowed for statistical purposes.

Order pronounced on this 24th day of April, 2018.

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

Sd/-  
**(ANIL CHATURVEDI)**  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> April, 2018  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच,  
पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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