

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 के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

**आयकर अपील सं. / ITA No.2390/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 2012-13**

Vita Urban Credit Co-op. Society Ltd.,  
A/p Vita, Tal. Khanapur,  
Sangli

.... अपीलार्थी/Appellant

PAN: AAAAV0239K

Vs.

The Income Tax Officer,  
Ward 1 (2), Sangli

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.H. Naniwadekar  
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / <b>Date of Hearing : 18.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-1, Kolhapur, dated 22.08.2016 relating to assessment year 2012-13 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

1. *The learned CIT(A) erred on facts and in law in upholding addition of Rs.16,19,220 made by the AO as 'capital gains' on sale of property in the course of settlement of a debt due from a borrower of the assessee-society. He failed to appreciate the substance of the transaction. In any case, he ought to have appreciated that the surplus did not belong to the assessee-society and has been credited to the borrower's account, and he ought to have given deduction for the same. He also ought to have appreciated the concept of 'diversion by overriding title' in this regard.*
2. *The learned CIT(A) ought to have appreciated that the said sale was effected in the regular course of business of the assessee-society and as such the resultant surplus was business income of the assessee and not 'capital gains'. As such, he ought to have allowed deduction u/s 37 and / or sec.80P in respect of the surplus credited to the borrower's account.*

3. The issue raised in the present appeal is against addition of ₹ 16,19,220/-.

4. Briefly, in the facts of the case, the assessee society was engaged in the business of providing credit facilities to its members. The assessee was claiming deduction under section 80P of the Act. The case of assessee was picked up for scrutiny. The first issue which was raised in the case of assessee was the claim of aforesaid deduction under section 80P(2)(a)(i) of the Act on account of bank interest earned by the assessee. The said issue is not disputed before the Tribunal. The second issue which was adjudicated by the Assessing Officer was regarding taxation of income earned under the head 'capital gains'. The Assessing Officer vide para 6 notes that as per CIB information, it was seen that the assessee had sold immovable property during the year for ₹ 25 lakhs. The assessee was asked to furnish the details of sale of property. In response thereto, it was submitted that the assessee society had sold property belonging to one of its borrower member Mr. Vilas Maruti Nimbalkar and Mahesh Maruti Nimbalkar. The said property was taken over for

the purpose of recovery of loan from the borrower and to accommodate, since the borrower himself was not in a position to sell the property in his own name in the market, the said property was transferred in the name of assessee society and it was sold in the market. The Assessing Officer asked the assessee to furnish the details of purchase and sale of property along with supporting documents and also to explain why capital gains arising on the said transaction should not be taxed in the hands of assessee. In response thereto, the assessee pointed out that the said property was sold for ₹ 25 lakhs on 08.02.2012. It was further explained that the total purchase cost of property through two sale deeds was ₹ 8,80,780/- including stamp duty, registration and other expenses. The entire property was sold on behalf of borrower for ₹ 25 lakhs which was credited to the borrower's loan account. The assessee further pointed out that since the sale of property was effected on behalf of the borrower, hence there was no profit or loss to the assessee society. However, in order to recover old outstanding, doubtful debts and in order to force the borrower to sell the said property, the assessee had entered into the said transaction, in order to recover the loan amount. It was further pointed out that capital gains should not be considered in the hands of assessee society. The Assessing Officer however, noted that the assessee had purchased the said property from the two borrowers at total consideration of ₹ 8,80,780/-, which was then sold for total consideration of ₹ 25 lakhs as per registered sale deed dated 08.02.2012. The Assessing Officer was of the view that in view of the provisions of section 2(14) and 45 of the Act, where the property was held by the assessee physically, actually and constructively, then on transfer of said property, the profit earned of ₹ 16,19,220/- is to be assessed as income from

short term capital gains. Hence, the same was added in the hands of assessee.

5. The CIT(A) upheld the order of Assessing Officer since the assessee chose to purchase the mortgaged property vide registered purchase deed. The CIT(A) notes that purchase of property itself points to the fact that the same was done in settlement of debt and hence, the debt ceased to exist. The mortgaged property became capital asset of assessee and on its sale again, any capital gain arising had to be assessed as income from capital gains in the hands of assessee.

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee pointed out that the said parties in 2005 had borrowed loan of ₹ 17,50,000/-. There was suit for recovery of same against non-performing party and in the process, the assessee society acquired the property in 2009. The total consideration paid was ₹ 3,50,000/- and ₹ 4,70,000/- each for two different portions. The assessee sold the property in 2011 and recovered ₹ 25 lakhs and balance sum of ₹ 10 lakhs on account of interest was waived off. The learned Authorized Representative for the assessee pointed out that the said transaction was business transaction carried out in the course of doing banking business. He further pointed out that under section 6(g) of Banking Regulation Act, in case any excess money was received on sale of property, then the same had to go to the owners i.e. diversion by overriding title. He placed reliance on the ratio laid down by the Hon'ble Bombay High Court L M Devare, Liquidator of Bank of Karad Ltd. (1998) 234 ITR 813 (Bom).

8. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below and pointed out that property was not auctioned by the assessee but was purchased in the first instance and then, sold in the market. Hence, the Assessing Officer taxed the same as capital gains.

9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which arises in the present appeal is against treatment of gain arising in the hands of assessee on transfer of property which was acquired by the assessee society against recovery of loan outstanding. The assessee had advanced sum of ₹ 17,50,000/- to two loan debtors as part of its business activity way back in 2005. However, the said loan became NPA and its recovery proceedings were initiated. As part of said recovery, the assessee acquired the property in 2009, against which purchase deeds were registered. The total consideration mentioned in the deeds was ₹ 8,80,780/- including registration charges and stamp duty. The said properties were sold on 08.02.2012 for sum of ₹ 25 lakhs. The assessee claims that the said consideration received by the assessee was to be set off against loan outstanding in the name of two borrowers from whom the said asset was purchased. Further, plea of assessee in this regard was that it had not able to recover the total outstanding due from the said parties and about sum of ₹ 10 lakhs due on account of interest was waived off and written off by the assessee in its books of account. The assessee claims it to be a business transaction, which was carried out in the course of carrying on of its business of banking. The case of Revenue on the other hand, is that once the asset has been acquired by the assessee from borrowers and then sold in open market, then

the said asset was sold by the assessee as its owner and since the asset belonged to assessee, the provisions of section 2(14) and 45 of the Act were attracted and gain arising therefrom was to be assessed as income from capital gains in the hands of assessee.

10. The aspect which needs consideration is whether the act of acquisition of property by the assessee society and its sale was its business decision or was it a decision taken for investment in the said asset. The plot of land was owned by two borrowers, who failed to repay the amount of loan borrowed by them from the assessee society. The total borrowal made by the said persons of ₹ 17,50,000/- way back in 2005. The interest due on the said loan was over and above the said amount. The said borrowers were not in a position to sell the property in market and hence, the same was acquired by assessee society with the aim to liquidate its outstanding loan amount. The cost of acquisition of property undoubtedly, was low i.e. ₹ 8,80,780/-, wherein part of it was acquired on 10.08.2009 for ₹ 3,50,000/- plus expenses and the second part on 14.01.2011 for ₹ 4,70,000/- plus expenses. Both these portions of land were sold on 08.02.2012 for ₹ 25 lakhs. The underlying idea for acquisition and sale of said property was not to make profit / gain on the said asset but to liquidate the outstanding amount, which had become NPA in the case of two borrowers. One of the terms of purchase deed was that in case acquisition resulted in excess money being realized on its sale, then the same had to be transferred to the account of owners. Such proposition would not be accepted by a person who is the owner of asset. However, since the assessee's aim was only to recover its outstanding amount, the proposition was accepted, though deal did not result into any excess money being realized and the assessee had to write

off the interest due from the said party. Accordingly, the transaction entered into by the assessee is in the course of carrying on of its business activity and is not to be taxed as capital gains in the hands of assessee. Accordingly, the same is not to be assessed in the hands of assessee as the funds had been adjusted against the loan amount due i.e. principal of ₹ 14,73,598/- and interest thereon. Thus, the addition made by Assessing Officer is hereby deleted. The grounds of appeal raised by the assessee are thus, allowed.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 27<sup>th</sup> day of April, 2018.

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

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.

*GCVSR*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', 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