

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1028/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Chandravadan V Bhandari (HUF),  
A/3 Abhimanshree Society,  
Pashan, Pune-411 008.  
PAN : AAAHB7240P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 8(1), Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1029/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Jaikumar Babulal Bhandari,  
A/3 Abhimanshree Society,  
Pashan, Pune-411 008  
PAN : AARPB9110B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-8, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain

Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 06.03.2019

घोषणा की तारीख / Date of Pronouncement : 07.03.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

These two appeals preferred by different assessee emanates from the common order of Ld. CIT(Appeals)-9, Pune dated 07.02.2017 for the assessment year 2008-09 as per grounds of appeal on record.

2. These cases relates to two partners of a partnership firm and it is the grievance of the assessee herein that when sale consideration is received by partnership firm and the same is reflected in the books of account of the partnership firm and has been offered to tax then whether the same amount can be assessed in the hands of the individual partners for the purpose of taxation.

These cases were heard together. Since facts are similar and issues are common, these appeals are being disposed of vide this consolidated order. For the sake of convenience, we would refer to the facts appearing in ITA No.1028/PUN/2017.

3. The brief facts in this case are that the assessee filed return of income for assessment year 2008-09 on 30.07.2008 showing return income at Rs.2,70,271/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') accepting the returned income. Thereafter, search and seizure action u/s.132 of the Act along with survey u/s.133A of the Act was conducted in the case of M/s. Pooja Exports group, Mumbai. Various documents were seized under relevant provisions of the Income Tax Act, wherein it was observed that Shri Sunil Kothari of M/s. Pooja Exports who was a Director in the M/s. Cornerstone Estates Pvt. Ltd. has paid cash of Rs.7,88,63,213/- for the purchase of land situated at village Wakad

Plot 143 R ( 153868 Sq. ft.) over and above the agreement value of Rs.5,94,00,000/- to M/s. B.U. Bhandari Real Estate Development Corporation which was the seller of above mentioned land. Mr. Sunil Kothari, in his statement recorded on oath during the course of search/survey proceedings accepted to have paid Rs.7,88,63,213/- to M/s. B.U. Bhandari Real Estate Development Corporation. He disclosed this set of fact on the basis of seized documents.

4. After perusing the facts, the Assessing Officer took a view that Rs.7,88,63,213 was the cash component received by M/s. B.U. Bhandari Real Estate Development Group towards the sale of land situated at Wakad, Plot No.143R from M/s. Cornetstone Estate Pvt. Ltd. of M/s. Pooja Export Group. The Assessing Officer formed an opinion that since Shri C.U Bhandari (HUF) is the partner in M/s. B.U. Bhandari Real Estate Corporation and along with 8 others as per agreement dated 29.11.2007 received the cash of Rs.7,88,63,213/- and not shown his share of cash receipt in his return of income and therefore, notice u/s.148 of the Act was issued to the assessee. The assessee in his submissions stated that Shri Sunil Kothari in his statement nowhere asserted that he paid the cash amount to the assessee and other. The statement only stated that cash has been paid to the vendors. The assessee further stated that the transaction of sale of property has been carried out by B.U Bhandari Real Estate Corporation. The assessee submitted that no cash has been received by the assessee. The contention of the assessee did not find favour with the Assessing Officer. It was observed by the Assessing Officer that assessee is one of the beneficiary of cash received in this land transaction. Since the assessee is the partner in M/s. B.U. Bhandari Real Estate Corporation and as per agreement dated 29.11.2011, there are 9 individual persons. Hence, there are total 10 beneficiaries in this transaction in which

cash of Rs.7,88,63,213/- has been received out of which the assessee's share is 10% i.e. Rs.78,86,321/- which he has not shown in his return of income and therefore, same was added to the total income of the assessee u/s.68 of the Act.

5. During First Appellate proceedings, the Ld. CIT(Appeals) also has upheld the findings of the Assessing Officer. According to the Ld. CIT(Appeals) in the entire land transaction done by the partnership firm, there were 10 beneficiaries and accordingly, their share of income should have been reflected in their individual return of income which they have not done. It was explained before the Ld. CIT(A) that as per books of accounts, the land that was sold belongs to the partnership firm and that the entire consideration received was received in the books of account of the partnership firm. The income from the said transaction was also offered to tax in the hands of the partnership firm.

6. That being further aggrieved, the assessee preferred appeal before us.

7. The Ld. AR of the assessee at the time of hearing demonstrated that the transactions pertain to the firm M/s. B.U. Bhandari Real Estate Corporation in which the assessee is a partner. This is evident from statement of the account of the said firm annexed in the paper book as Annexure-6. The transaction is duly reflected in the books of account of the firm having received money from M/s. Cornerstone Estates Pvt. Ltd. The land at village Wakad which has been sold by the partnership firm is already reflected in the books of account of the partnership firm and the sale consideration that has been received at Rs.5,94,00,000/- and that income has already been offered to tax in the hands of the partnership firm. The Ld. AR further contended that when the transaction being done by partnership firm, the amount received by

partnership firm and it has been offered to tax in the return of income of the partnership firm, then in no possible manner, the amount could be made taxable in the hands of the assessee. The Ld. AR of the assessee has placed reliance on the decision of the Hon'ble Supreme Court of India in the case of ITO Vs. Ch. Atchiaiah reported at 218 ITR 239 (SC) and decision of the Hon'ble Karnataka High Court in the case of ACIT Vs. Prabhakar Kamath and 3 others reported as 68 taxmann.com 359 (Kar.) wherein the proposition of law laid down by these judgments is that assessment has to be done in the right hands.

8. On the other hand, the Ld. DR has placed reliance on the orders of the Sub-ordinate Authorities.

9. We have perused the case records and heard the rival contentions. We have also analyzed the judicial pronouncements placed before us and gone through the books of account of the assessee as well as partnership firm. It is demonstrated that cash payment was made by the M/s. Pooja Export and credited to the firm M/s. B.U. Bhandari Real Estate Corporation. Transaction of the amount was assessed in the hands of the M/s. B.U. Bhandari Real Estate Corporation. In such scenario, terming the assessee as ultimate beneficiary is not appropriate as evident through the facts on record. That the Hon'ble Supreme Court in the case of ITO Vs. Ch. Atchiaiah (supra.) has clearly held that assessment has to be done in the right hands. Therefore, in the present case, when sale of land transaction has been done by the partnership firm, addition cannot be made in the hands of the individual assessee even though he is a partner of the firm.

In view of the matter, we set aside the order of the Ld. CIT(Appeals) and allow the appeal of the assessee.

10. In the result, appeal of the assessee in ITA No.1028/PUN/2017 is allowed.

11. In other appeal filed by the assessee in ITA No.1029/PUN/2017, the facts and circumstances of the case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.1028/PUN/2017 shall apply *mutatis-mutandis* to other appeal herein also. Therefore, for this case also, we set aside the order of Ld. CIT(Appeals) and allow the appeal of the assessee on the same examination of facts and circumstances.

12. In the combined result, appeals of the assessees in ITA Nos.1028 & 1029/PUN/2017 are allowed.

Order pronounced on 07<sup>th</sup> day of March, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> March, 2019.

SB

**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, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	06.03.2019	Sr.PS/PS
2	Draft placed before author	07.03.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		