

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

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

आयकर अपील सं. / ITA No. 1471/PUN/2013

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Vinit Krishnakumar Goyal,  
Shop No. 7 & 8, Prestige Plaza,  
Phase-II, Pune Mumbai Road,  
Akurdi, Pune-411 035.  
PAN : AEMPG4196B.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-9, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo  
Revenue by : Shri Sandip Garg

सुनवाई की तारीख / Date of Hearing : 31.07.2019

घोषणा की तारीख / Date of Pronouncement : 31.07.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeals)-V, Pune dated 31.05.2013 for the assessment year 2009-10  
as per the following grounds of appeal on record:

*“1. Commissioner of Income Tax (Appeals) has erred in confirming Assessing Officer's action of assessing Rs.6,34,30,268/- as business income against appellant's claim of exemption being surplus on sale of Agricultural Land at Waki and Jaidwadi near Pune, which is held by assessee as Investment and is not within definition of "Capital Asset". Appellant prays for exclusion of the same from Computation of Income.*

*2. Commissioner of Income Tax (Appeals) has erred in confirming Assessing Officer's action of disallowing Rs.8,06,268/- as 10% of Development Expenses without bringing on record any specific instances that the vouchers are not related to the business of the Assessee. Such ad- hoc disallowance based on estimate basis without bringing on record any cogent reasons, is not justified and is invalid, and the said addition be deleted.*

*3. Commissioner of Income Tax (Appeals) has erred in charging interest u/s. 234B. Appellant prays for just and equitable relief.*

*4. Appellant prays to add, alter, amend and /or withdraw the grounds, during the appellate proceedings, as the occasion may arise.”*

2. The brief facts in this case are that the assessee is doing trading in land and return of income for assessment year 2009-10 was filed on 01.10.2009, declaring total income Rs.12,86,57,220/-. Subsequently, the return was revised on 21.06.2010 at the total income of Rs.12,86,57,220/-. The case was selected for scrutiny and the assessment was completed on 14.12.2011 u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) at the total income of Rs.19,29,01,090/-, after making various additions/disallowances as appearing in the assessment order.

3. With regard to **ground No.1** in the appeal of assessee, the detailed written submission was filed before the Assessing Officer. It was stated therein that land at Waki was sold to TATA International DLT P. Ltd. and the land at Jaidwadi was sold to Riddhi Siddhi Trexim P. Ltd. Copy of the sale deeds of both these lands had been submitted before the Assessing Officer on 04.10.2011. It is further stated that these lands were agricultural land at the time of sale. There is a certificate of Deputy Director, Town Planning, Pune

certifying the same is forming part of sale deed and a copy of the same has been submitted separately to the Revenue Authority. Further, in Clause No.A(f) on page No.4 and 5 of the sale deed of land at Waki wherein it is written as follows:

*“Transferors having being carrying on agricultural activities on the lands described in Schedule First to Fifth and sharing the revenue there from in proportion to their holdings. Since the income from agricultural activities are meager and it was not possible to get labourers to work on the farms on account of developments in the nearby vicinity, the owners decided to sell the said lands to prospective purchasers however, the prospective purchasers is interested in buying 50% of the land.”*

This itself explained that the assessee carrying on agricultural activities at the time, the land was sold. The Assessing Officer observed that during the year, the assessee had sold two agricultural lands i.e.

i) Land at Jaidwadi, Gat No. 158/4

Sale proceeds: Rs.1,60,00,000/-

Cost of land : Rs.75,85,120/-

Rs. 84,14,880/-

ii) Land at Waki, Gat No.1100 and 1102

Sale Proceeds: Rs.6,81,50,000/-

Cost of land: Rs.1,31,34,612/-

Rs.5,50,15,388/-

Therefore, total surplus on sale of agricultural land is Rs.6,34,30,268/- ( Rs.84,14,880/- + 5,50,15,388/-). The Assessing Officer was of the view that these lands in question have assumed the character of a land that is far from being agricultural. The exorbitant sale prices of the said pieces of land were in themselves testimony to the fact that the capital cost in such type of land will

be thousand times more than the annual return from the land in term of agricultural proceeds. In view of the detailed observation by the Assessing Officer as appearing in his order, he held that the land sold by the assessee during the year as non-agricultural land and surplus of Rs.6,34,30,268/- on sale of agricultural land were held as profits of the assessee from land dealing business and added to the total income of the assessee.

4. That before the Ld. CIT(Appeals) detailed submissions were again placed by the assessee. The Ld. CIT(Appeals) after considering the submissions of the assessee, facts of the case and assessment order upheld the addition made by the Assessing Officer by making specific observation. As regards the surrounding circumstances associated with the land it was observed by the Ld. CIT(Appeals) that land in question in Waki was purchased from one Shri Sachin Agarwal and he is in no way related to the assessee, however, normal practice is that the agricultural land were not purchased from unrelated persons for carrying out agricultural activity. Further, land in question was sold within a short span of two years which suggest intention of the assessee was not to carry out agricultural activities but to sale the same at a profit. Though, the 7/12 extracts has shown that the land is agricultural land, the Ld. CIT(Appeals) did not place any reliance on this revenue document since in the return for the current assessment year, no agricultural income was shown by the assessee. That even, the agricultural income of Rs.20,000/- shown in assessment years 2007-08 and 2008-09, whether they represents agricultural income from the said land as the assessee was holding many plots of land during the concerned assessment years and therefore, it was not clear that the agricultural income as reflected

in the earlier returns of income, were the agricultural income from the said land in question.

5. At the time of hearing, the Ld. AR of the assessee submitted that lands in question at Waki purchased from Shri Sachin Agarwal is a close relative of the assessee and therefore, assertion by the Revenue that Mr. Agarwal is not related to the assessee, is not correct. Furthermore, the Ld. AR vehemently contended that they have provided three concrete pieces of evidences in order to prove that the land was agricultural land.

- i) The 7/12 extracts i.e. revenue record;
- ii) Certificate from Deputy Director, Town Planning, Pune certifying that lands were agricultural land at the time of sale;
- iii) Clause A(f) Page 4 and 5 of the Sale Deed of the land at Waki

The Revenue on the other hand, has simply disbelieved the character of land and the transactions pertaining thereto without bringing any evidence on record. There were no specific enquiries conducted by the Revenue and even the Assessing Officer could have conducted cross examination of the assessee as regards the nature and character of land and transactions in relation thereto. In absence of this exercise, the Revenue has summarily disbelieved and dismissed the case of the assessee while making additions in the hands of the assessee. The Ld. AR placed reliance on the following judicial pronouncements:

- i) Commissioner of Income Tax Vs. Smt Debbie Alemeo, (2011) 331 ITR 0059 ( Bom.)
- ii) Fort Properties Pvt. Ltd. Vs. Commissioner of Income-Tax, (1994) 208 ITR 232( Bom.)

6. Per contra, the Ld. DR submitted that no agricultural income was shown during the relevant year in the return of income filed by the assessee. The period of holding of land by assessee is not distinctive and ascertaining in nature and transactions reflects profit motive of the assessee.

7. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed on record. It is an undisputed fact that the 7/12 extracts were provided to the Revenue Authorities wherein clearly it is stated that the land in question was agricultural land. Even, there is certificate from Deputy Director, Town Planning, Pune stating that at the time of transfer the lands were agricultural land. Similarly, in the Sale Deed itself it is clear that the lands in question were agricultural land. On the contrary, though the Revenue is taking the transaction as business income they have not brought in any evidence on record neither they have conducted any specific enquiry to show that it is business transaction. The assessee through his Ld. AR claims that he was never cross examined by the Assessing Officer.

8. We find that the Hon'ble Bombay High Court in the case of **Commissioner of Income Tax Vs. Smt Debbie Alemeo (supra.)** has held that *“land shown as agricultural land in revenue records, admittedly the land was shown in the revenue records as agricultural land and no permission was ever obtained for non agricultural use by the assessee. Permission for non agricultural use was obtained for the first time by the purchaser after it purchased the land. As regards the contention of the Revenue that no agricultural income was shown from this land, it was explained by the assessee that the agricultural income derived by sale of coconut grown on the*

*land was just enough to maintain the land and there was no surplus. Therefore, land which was shown as agricultural land in the revenue records and never sought to be used for non agricultural purposes by the assessee till it was sold has to be treated as agricultural land, even though no agricultural income was shown by the assessee from this land and therefore, no capital gain was taxable on the sale of the said land.”*

Reverting to the facts of the present case, in the 7/12 extracts, it is clearly mentioned that the land in question is agricultural land. It is true that in the return of income, no agricultural income was shown by the assessee again since there was no surplus. Further, the assessee never obtained any permission regarding changing of agricultural land to non agricultural land. It was only for the first time after the land was sold by the assessee, it was converted from agricultural to non agricultural land on the basis of application made by the purchaser i.e. TATA International DLT P. Ltd. This permission was granted by Deputy Director, Town Planning, Junnar, Khed, Pune on 02.06.2010.

9. In the case of **Commissioner of Income Tax Vs. Dhable, Bobde, Parose, Kale, Lute & Chowdhari, (1992) 202 ITR 98 (Bom.)**, the Hon'ble Bombay High Court has observed that *“the case of the Revenue mainly appears that the intention of the assessee is to do business. However, no materials was brought in on record by the Revenue in support of this stand except the allegation that some of the members of the assessee AOP, had also entered into similar deals in their individual capacity and that the land in question was sold by the assessee within three months from the date of purchase. The Hon'ble Jurisdictional High Court further held that “the onus*

*of proving that the land formed part of the business assets of the assessee is on the Department and in the absence of any evidence to that effect the presumption will be that the land was held as a capital asset by the assessee and the income from transfer thereof was not income from business.”*

In view of the matter and judicial pronouncements as referred hereinabove, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the addition from the hands of the assessee on this issue. Thus, **ground No.1 raised in appeal by the assessee is allowed.**

10. **Ground No.2** relates to the disallowance of Rs.8,03,268/- being 10% of development expenses.

11. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had shown land purchase amounting to Rs.3,79,08,456/-. In connection with the said land purchase, development expenses of Rs.1,22,59,608/- was incurred which was debited to land purchase account. These expenses pertained to land excavation, removing stores, soiling, cutting, murrum filling for approach road work at site, JCB charges etc. as well as expenses for general improvement of land. The Assessing Officer noticed that the vouchers of the expenses were not fully supported by payees acknowledgement or signature. The Ld. AR of the assessee submitted that the expenditure had been incurred in connection with purchase of land only. After considering the mandatory expenses, the Assessing Officer noticed that an amount of Rs.80,36,028/- represents the amount for which proper receipts/ signatures are not available. Accordingly, the Assessing Officer made disallowance @10% of the expenditure which was calculated at Rs.8,03,602/- in order to cover leakages to the revenue.

12. The Ld. CIT(Appeals) as per detailed reasons and observations as appearing in his order upheld the said disallowance of 10% of the total expenditure as made by the Assessing Officer.

13. We have perused the case records and analyzed the facts and circumstances on the issue. The assessee has provided all the details of development work that he has undertaken before the Revenue Authorities. The Revenue Authorities did not raise any doubt regarding development activities taken place. That on verification of the relevant documentary evidences, it was found that certain receipts were not available or they were sans any signature. The Revenue Authorities disallowed 10% of the expenses only on the ground that proper vouchers and documents were not maintained/signed and in order to prevent any leakages of revenue.

Taking the totality of facts and circumstances into consideration, we are of the considered view that this 10% disallowance of the expenses is definitely on the higher side. To meet the ends of justice, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to restrict the disallowance to Rs.1,50,000/- under this head while providing appeal effect to this order. Thus, **ground No.2 raised in appeal by the assessee is partly allowed.**

14. **Ground No.3** relates to charging of interest u/s.234B of the Act. Since charging of interest u/s.234B of the Act is consequential and mandatory, hence, **ground No. 3 raised in appeal by assessee is dismissed being devoid of any merit.**

15. In the result, **appeal of the assessee is partly allowed.**

Order pronounced on 31<sup>st</sup> day of July, 2019.

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

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

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> July, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-V, Pune.
4. The CIT-V, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	31.07.2019	Sr.PS/PS
2	Draft placed before author	31.07.2019	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		