

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स। / ITA No.1652/PUN/2017

निर्धारण वर्ष / Assessment year : 2012-13

The Dy. Commissioner of Income Tax,
Circle – 6, Pune.

..... अपीलार्थी /
Appellant.

बनाम v/s

Mr. Abhay Sadashiv Gadgil,
Plot No.77, Natraj Society,
S.No.34/7, Hingne,
Pune – 411005.

..... प्रत्यर्थी /
Respondent

PAN : ADQPG9351H.

Assessee by : Shri M.R. Bhagwat.

Revenue by : Shri Shashank Deogadkar.

सुनवाई की तारीख / Date of Hearing : 05.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
---	---

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 3, Pune dated 08.02.2017 for the assessment year 2012-13.

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

Assessee is an individual who is stated to be a partner in M/s. P.N. Gadgil & Co., (Silver) and two other firms. Assessee electronically filed his return of income for A.Y. 2012-13 on 27.09.2014 declaring

total income at Rs.1,25,15,913/-. The return was revised on 29.03.2014 by revising the total income to Rs.9,58,983/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.03.2015 and the total income was determined at Rs.1,30,58,980/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 08.02.2017 (in appeal No.PN/CIT(A)-3/Wd 2(1), Pn/122/2015-16) decided the appeal in favour of the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

"1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 1,21,00,000/- made by the Assessing Officer under the head Long Term Capital Gain as per the provisions of section 45(1) of the IT Act, 1961, without appreciating the facts that amount of Rs. 1,21,00,000/- was received by the assessee on account of retirement from firm M/s P N Gadgil & Sons is over and above his Capital Contribution and taxable under the head Long Term Capital Gain.

2. For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.

3. Both the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that there was a change in constitution of M/s. P.N. Gadgil & Co., (Silver) and assessee had retired from the firm on 31.03.2012 and had received Rs.1,21,00,000/- towards his accumulated capital plus his share on re-valuation of assets. The assessee had initially offered the amount to tax as long term capital gains in the original return of income but in the revised return, he had claimed it as capital receipt by placing reliance on certain decisions which are noted by the AO in his order. AO did not agree with the contentions of assessee. AO was of the view that the

decision of Mumbai Tribunal in the case of Sudhakar M. Shetty Vs. ACIT reported in 130 ITD 197 (2011) was applicable to the facts of assessee. He accordingly held the amount of Rs.1,21,00,000/- received by the assessee to be transfer within the meaning of Sec.2(47) of the Act which attracts capital gains as per Sec.45 of the Act. He accordingly brought the said amount to tax on account of long term capital gains. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who allowed the appeal of assessee by observing as under :

“5.3. I have perused the assessment order and the submission made by the appellant as above carefully. It is seen from the assessment order that the AO had treated the one time retirement amount received by the appellant of Rs.1,21,00,000/- for AY 2012-13 from the firm M/s. PN Gadgil & Co. (Silver) wherein he was a partner since 1998, as income from long term capital gains following the decisions of the Hon'ble Mumbai Tribunal in the case of Sudhakar M Shetty Vs. ACIT , 130 ITD 197 [2011], denying the appellant's claim that such retirement amount was his share in the notional appreciation in the value of the immovable properties belonging to the said firm as on 31.03.2012. The appellant had claimed the same as exempt relying on the decisions of the Mumbai High Court in the case of Prashant S Joshi Vs. CIT (supra) and Riyaz A Shaikh of the same High Court of order dated 26.02.2013 and the Pune ITAT decision in the case of Rajnath Manilal Bhandari. The AO treated the same amount received as transfer within the provisions of section 2(47) of the Act and also had applied the charging section of section 45 for treating the said amount as appellant's income from capital gains.

5.3.1. The appellant, on the other hand, contended that the AO had committed a patent mistake in judging the facts of the appellant's case and applying the case of Mumbai Tribunal viz. Sudhakar M Shetty (supra) which was clearly mis-ceived. It was contended by the appellant that the crucial test propounded by the Hon'ble Bench in the said case was that there should be no basis of notional sale in the extra amount agreed to be paid to the retiring partner over and above his capital but only a lump sum payment in discharge of his bundle of rights in the firm. However, in the case appellant, the appellant had produced the working in support of the amount of Rs.1,21,00,000/- received by him and which was the notional appreciation in the value of the immovable properties belonging to the Firm. It was not an ad-hoc or lump sum payment to the appellant but it had a definite basis which was the assumption of notional sale on the date of retirement. It was further contended that the Assessing Officer had totally misapplied that judgment to the facts of the assessee's case and he had not made out any legal case excepting his reliance on the said judgment in the case of Sudhakar Shetty(supra). The appellant thereafter, cited a number of decisions in the submission quoted above inter-alia contended that after the decision of Sudhakar Shetty (supra), Hon'ble Supreme Court in the case of CIT Vs. Lingmallu Raghukumar, 247 ITR 801 had ruled that amount received by a partner on retirement is not taxable under the head of taxable. The appellant also referred to the Pune Tribunal decision in the case of

Riyaz A Shaikh (supra) which was decided in favour of the said assessee but Department went in appeal before the Hon'ble Bombay High Court in another judgment in the case of Rajnish M Bhandari Vs. ITO. It was also contended that Hon.ble Pune Tribunal had considered the issue in the case of NA Mody and concluded that the amount received on retirement by partner is not taxable. Discussion the facts of the cases and the facts in appellant's case, the appellant submitted that the addition made of Rs.1,21,00,000/- as income from long term capital gains by the AO be deleted.

5.3.2. I am inclined to agree with the submission and contention of the appellant. For the detailed facts stated by the appellant relying on the number of decisions, I hold that the AO was not justified in making the addition of Rs.1,21,00,000/- holding the retirement benefit received by the appellant on account of notional appreciation value of the immovable properties belonging to the firm as on date of retirement, in which he was a partner only relying on the decision in the case of Sudhakar Shetty (supra). I hold the similar view as of the appellant that the said case was wrongly applied by the AO without proper appreciation of the facts in appellant's case under consideration. I on the other hand, found that the case of Prashant S Joshi Vs. CIT, 324 ITR 154 (Bom) was squarely applicable in the case of the appellant. Therefore, the addition made of Rs.1,21,00,000/- on account of long term capital gains is hereby deleted. Ground Nos.1 to 4 raised by the appellant are accordingly allowed."

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further relied on the decision of Pune Tribunal in the case of ITO Vs. Shri Rajnish M. Bhandari (in ITA No.469/PN/2011 order dated 17.07.2012). He also placed on record the copy of the aforesaid order. Ld.A.R. further submitted that while deciding the issue in the case of Rajnish M. Bhandari (supra), the Co-ordinate Bench of the Tribunal has relied on the decision of Pune Tribunal in the case of Mr. Riyaz A Shaikh Vs. ITO in ITA No.352/PN/2016 dated 29.10.2010 wherein it was held that the amount received by the partner on his retirement is exempt. He submitted that against the order of the Tribunal in the case of Riyaz A Shaikh (supra), Revenue had preferred appeal before the Hon'ble Bombay High Court and the Bombay High Court in ITA No.1969 of 2011

dated 26.02.2013 had dismissed the appeal of the Revenue. He placed on record the copy of the aforesaid decision. He therefore submitted that in the above facts and circumstances, no interference to the order of Ld.CIT(A), is called for.

6. We have heard the rival submission and perused the material on record. The issue in the present ground is with respect to taxability of the amounts received by the assessee on his retirement from the partnership firm. It is Revenue's contention that the amount is liable to tax whereas on the other hand, it is assessee's submission that the amount is not taxable. We find that Ld.CIT(A) while deciding the issue had noted that the decision of Hon'ble Mumbai High Court in the case of Prashant S Joshi Vs. CIT was applicable to the case of the assessee and accordingly deleted the addition. We further find that before Ld.CIT(A) assessee had relied on the decision of Pune Tribunal in the case of Rajnish M. Bhandari (supra) which in turn had relied on the decision of Pune Bench of the Tribunal in the case of Riyaz A. Shaikh Vs. ITO (supra). We find that against the order in the case of Riyaz A. Shaikh (supra), appeal was preferred by the Revenue before the Hon'ble Bombay High Court and the same was dismissed by the Hon'ble Bombay High Court. Before us, Revenue has not pointed out any fallacy in the findings of Ld.CIT(A) nor has placed any contrary binding decision in its support. In such a situation, we find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds of the Revenue are dismissed.**

7. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 12th day of September, 2019.

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

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

पुणे Pune; दिनांक Dated : 12th September, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Pune.
4. Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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