

आयकर अपीलिय 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.1472/PUN/2017

निर्धारण वर्ष / Assessment year : 2009-10

The Income Tax Officer,
Ward-5, Nanded.

..... अपीलार्थी /
Appellant

बनाम v/s

Shri Krishna Gangadhar Kashirsagar,
L/H of Smt. Sumanbai Gangadhar
Kshirsagar, Plot No.1, Malegaon Road,
Munjaji Nagar, Nanded.

..... प्रत्यर्थी /
Respondent

PAN: APJPK8604E.

Assessee by : None

Revenue by : Shri Sudhendu Das.

सुनवाई की तारीख / Date of Hearing : 20.08.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) - 1, Aurangabad dated 28.03.2017 for A.Y. 2009-10.

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

In this case a search and seizure action u/s 132 of the Act was carried out in the case of Smt. Vandana Ganapati Morge (i.e., Sharda Group of cases), wherein it was found that assessee i.e., Late Smt. Sumanbai Gangadhar Kshirasagar had sold land admeasuring 1.90R

at Taroda, Nanded on 20.02.2009 for a consideration of Rs.30.63 lakhs and further found that Smt. Vandana Ganapati Morge paid "On Money" amounting to Rs.54,75,810/- to the assessee. On verification, it is noticed that assessee did not file any return of income for A.Y. 2009-10. Accordingly notice u/s 148 of the Act was issued and served on assessee. Thereafter, notices u/s 142(1) and u/s 133(6) were also issued. Consequently, AO completed the assessment u/s 144 r.w.s. 147 of the Act on 14.03.2016 assessing the total income at Rs.85,38,810/- by making addition on account of long term capital gains. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 28.03.2017 (in appeal No.ABD/C(T(A)-1/135/2016-17) allowed the appeal of 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 in the circumstances of the case, the CIT(A) erred in accepting the fact that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions [charging sections].

2. On the facts and in the .circumstances of the case, the CIT(A) erred in not considering the fact that the lack for notice does not amount to the revenue authority having had no jurisdiction to assess. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected.

3. The order of the CIT(A) be vacated and that of the A.O. be restored.

4. The appellant requests for admission of an additional ground of appeal or additional evidences if required to support his case."

3. All the grounds being inter-connected are considered together.

4. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed though the hearing was

adjourned to the present date at the request of Ld.A.R. We therefore proceed to decide the present appeal based on the material available on record and after hearing the learned Departmental Representative.

5. Before us, Ld.D.R., at the outset, fairly admitted that the tax effect on the grounds raised by Revenue is below the limit prescribed by the recent CBDT Circular dt.11.07.2018 and therefore the appeal be decided accordingly.

6. We have heard the Ld.D.R. and perused the material available on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of Id. CIT(A) in respect of the relief given by him. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 11.07.2018 (Circular No. 3 of 2018), no Department appeals are to be filed against relief given by Id. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.20 lakhs and it further states that the instructions will apply retrospectively to the pending appeals also.

7. In the present case, since it is an undisputed fact that on the additions which are in dispute, the tax effect is less than Rs.20 lakhs and in the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect and accordingly

dismiss the appeal of Revenue without expressing any opinion on merits of the case. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. **Thus, the grounds of the Revenue are dismissed.**

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

Order pronounced on 16th day of October, 2019.

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

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

पुणे Pune; दिनांक Dated : 16th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Aurangabad.
4. Pr. CIT-1, Aurangabad.
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.