

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2661/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Sagar Jeevanrao Patil,  
B-2, Govind Park, 1005/1A,  
Radhanagari Road, Near Sane,  
Guruji Vasahat,  
Kolhapur – 416012  
PAN : BCHPP5660F

ITO, Ward-2(2),  
Kolhapur

Vs.

(Appellant)

(Respondent)

Appellant by  
Respondent by

Shri M.K. Kulkarni  
Shri Rajesh Gawali

Date of hearing 05-11-2019  
Date of pronouncement 06-11-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A) on 27-09-2016 in relation to the assessment year 2011-12.

2. The only effective issue raised through several grounds is against the confirmation of addition of Rs.1,60,86,800/- as short term capital gain.

3. Succinctly, the factual matrix of the case is that the assessee filed his return declaring total income of Rs.2,56,570/- inclusive of Rs.1,20,000/- shown as 'Other income'. On verification of the information, the Assessing Officer (AO) observed that the assessee acquired agricultural property admeasuring 288585 sq.ft. bearing R.S.No.18A/2A, 18A/2B, 18A/2C, 18A/2D situated at Nipani, Taluka Chikodi, Dist. Belgaum, Karnataka as per the Sale Deed dated 22-01-2010 for a total consideration of Rs.68,80,000/- plus Stamp duty of Rs.4,66,700/-. Payment towards purchase of the said property was made through cheques. On being called upon to explain the source of funds invested in the acquisition of the property, the assessee submitted that his own source of income was salary from his employment with M/s. Tessitura Monti India Pvt. Ltd. He further submitted that payment towards acquisition of property was made by M/s. Aurora Apparel Pvt. Ltd. (AAPL) which was a collaborating company of his employer company M/s. Tessitura Monti India Pvt. Ltd. It was stated that all the expenses concerning the acquisition of property, its conversion into non-agricultural land etc. were borne by AAPL alone. The assessee still further submitted that after getting the agricultural land converted into non-agricultural one, the same was apparently sold

by him to AAPL for Rs.70.00 lakh on 18-10-2010. It was, therefore, stated that the assessee received only a sum of Rs.1,20,000/- as income from the transaction which was offered for taxation and that the acquisition of property was done for and on behalf of AAPL, which transaction was fully financed by that company only. The AO observed that the property was purchased by the assessee in his own name and thereafter sold to AAPL again, as a seller for a total consideration of Rs.70.00 lakh. He found out the Stamp value of the property at Rs.2,30,86,800/-. Taking such Stamp value as sale consideration under section 50C at Rs.2,30,86,800/, the AO, after reducing purchase price of Rs.68,80,000/-, computed short term capital gain on transfer of such property at Rs.1,62,06,800/-. The assessee's contentions before the Id. CIT(A) in this regard that the property was not purchased as his own or in the alternative it was converted into stock in trade or in another alternative, the intention at the time of purchase of land was to resell the land and hence, the provisions of section 45 should not be applied, did not find favour with the Id. CIT(A), who echoed the assessment order on this point. The assessee is aggrieved by the addition of Rs.1.60 crore and odd.

4. We have heard the rival submissions and gone through the relevant material on record. There is no doubt on the fact that it was the assessee who acquired the agricultural property bearing R.S.No.18A/2A to 18A/2D from four persons as per Sale Deed dated 22-01-2010 for a total consideration of Rs.68,80,000/-. There is equally no doubt that it was the assessee, who *ex facie* transferred this property to AAPL on 18-10-2010 for a consideration of Rs.70,00,000/-. In such a scenario, it is difficult to accept the contention of the Id. AR that the assessee should not be taken as an owner and hence the transaction should be treated as done on behalf of AAPL. Once the property was purchased by the assessee through a legal process under which he became its owner, there can be no question of denting his character as a legal owner by putting across an argument that the same was purchased on behalf of AAPL, more so when the sale deed does not recognize this fact. It is manifest from the factual panorama discussed supra that the entire purchase consideration of Rs.68,80,000/- plus Stamp duty of Rs.4,66,700/- at the time of purchase of the property was paid by AAPL. AAPL has confirmed in writing through page 1 of the paper book that the assessee undertook the trading of lands and it was AAPL which collaborated with the assessee for purchasing

the land for setting up its factory. AAPL passed a resolution on 09-11-2009, whose copy is available at page 2 of the paper book indicating that the assessee would be purchasing property on behalf of the company. Even though an application for conversion of agricultural land into non-agricultural land was moved by the assessee but all the financial burden in this respect was borne by AAPL. In the ultimate analysis, when the land was got converted into non-agricultural land, the assessee transferred it to AAPL. Thus, it can be seen that the purchase transaction was done in January, 2010 by the assessee and after converting, the non-agricultural land in question was transferred to AAPL in October, 2010, just within a short span of 10 months. Thus, the facts amply indicate that the *ab initio* intention of the assessee was to purchase the property for re-sale to AAPL which got fructified as well accordingly. In such circumstances, the property purchased by the assessee cannot be construed as a 'capital asset' so as to fall for consideration within Chapter IV-E of the Act. Since the land was purchased with intention of re-selling the same at a short span of time, such transaction can be characterized only as an 'Adventure in the nature of trade' so as to fall under Chapter IV-D of the Act, being, income chargeable to tax under the head 'Profits and gains

from business or profession'. Going by this, the purchase was made at Rs.68.80 lakh and the sale was made at Rs.70.00 lakh resulting into income of Rs.1.20 lakh, which the assessee had voluntarily declared in the return. We, therefore, hold that the authorities below were not justified in making and confirming the addition of Rs.1,60,86,800/- in the hands of the assessee. The addition is directed to be deleted.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 06<sup>th</sup> November, 2019.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

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

पुणे Pune; दिनांक Dated : 06<sup>th</sup> November, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Kolhapur
4. The CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**/ True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-11-2019	Sr.PS
2.	Draft placed before author	05-11-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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