

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

श्री आर. एस.स्यल, उपाध्यक्ष के समक्ष

आयकर अपील सं. / ITA No. 937/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Mr. Manik Vishnu Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : ARAPB9311N	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No. 938/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Mr. Krushna Manik Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : AQZPB5348K	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No. 939/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Mrs. Komal Krushna Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : BBXPB0579G	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No. 940/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Mrs. Nanda Popat Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : BACPB1615H	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No. 941/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Mrs. Nutan Sandesh Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : AZYPB0245M	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No. 942/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Mrs. Sraddha Mangesh Bankar, Bankar Wasti, Moshi, Pune – 412 105 PAN : BCJPB0745F	Vs.	ITO, Ward-8(4), Pune
Appellant		Respondent

Appellant by Shri Abhay Avchat
Respondent by Shri Abhijit Chaudhuri

Date of hearing 15-11-2019
Date of pronouncement 15-11-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This batch of six appeals having common issues relate to the assessment year 2012-13. All the appellants are co-owners of the property transferred and have similar grounds. I am, therefore, proceedings to dispose them off by this consolidated order for the sake of convenience.

2. The Id. AR has taken an additional ground challenging the initiation of re-assessment proceedings. The same being a legal ground not requiring examination of fresh facts, is hereby admitted for disposal on merits.

3. Briefly stated, the facts as recorded in the assessment order of Krushna Manik Bankar (ITA No.938/PUN/2018) are that a survey action u/s.133A of the Income-tax Act, 1961 (hereinafter called 'the Act') was conducted in the case of M/s. Pharande Promoters & Builders on 29-07-2013, during the course of which it transpired that they purchased a particular piece of land for a consideration of Rs.2.55 crore. Such land was held by all the assesseees in the instant batch of appeals. Shri Krushna Manik Bankar, as per page 1 of the assessment order, received his share consideration at Rs.31.50 lakh by cheque and the same was not offered for computation of capital gain in the return for the A.Y. 2012-13. The Assessing Officer (AO) initiated the reassessment and completed the same by computing long term capital gain at Rs.30,69,930/-, which came to be countenanced in the first appeal. The assessee is aggrieved by the confirmation of such addition.

4. I have heard both the sides and gone through the relevant material on record. Taking up the additional ground against the initiation of re-assessment proceedings, it is found from page 1 of the assessment order that the AO has recorded as under :

“A survey action u/s.133A of Income Tax Act, 1961, was conducted in the case of M/s. Pharande Promoters & Builders dated 29.0.2013. During the course of survey proceedings, it was noticed that M/s. Pharande Promoters & Builders had purchased land at Plot No.729 & 733, located at Borhadewadi, Moshi at a consideration of Rs.2,55,00,000/- dated 12.10.2011. On perusal of the 7/12 extract and purchase agreement dated 12.10.2011 of the said land, it was noticed that Krishna Manik Bankar is one of the owner of said plot *and he has received his share consideration of Rs.31,50,000/- by cheque. He has not offered any capital gains income arising out of the sale of above said land to M/s. Pharande Promoters & Developers for the purpose of taxation for F.Y.2011-12 relevant to A.Y. 2012-13.*”

5. On going through the above extraction, it is manifested that the AO initiated re-assessment proceedings on the ground that though the assessee received his share of consideration at Rs.31.50 lakh by cheque but did not offer any capital gain arising out of sale for the above said land to M/s. Pharande Promoters & Builders for the purpose of taxation in his return for A.Y. 2012-13. The ld. AR invited my attention towards the

original return filed for the A.Y. 2012-13, a copy of which is available from page 50 onwards of the paper book. Page 52 of the paper book, which is continuation of the income-tax return, discerns that the assessee did declare full value of consideration at Rs.31.50 lakh and after claiming deductions u/s.54, 54B, etc. computed long term capital gain at Rs.1.80,000/-. This is how, the assessee filed return with total income at Rs.1,80,000/- arising from the transfer of property in question. On an examination of the above extraction from the assessment order vis-a-vis the copy of income-tax return filed by the assessee on 31-07-2012 u/s.139(1) of the Act, it turns out that that the assessee did declare his share of consideration at Rs.31.50 lakh and also offered capital gain arising out of sale of the above said land to M/s. Pharande Promoters & Builders for the purposes of taxation. On a specific query, the Id. AR could not place on record a copy of the reasons leading to the initiation of re-assessment proceedings. Ex-facie, it appears from page 1 of the assessment order that the AO initiated re-assessment proceedings only on the ground that the assessee did not offer any capital gain arising from sale of the above said land, which,

on factual narration discussed above, does not appear to stand. Since the legality of initiation of re-assessment proceedings has been challenged for the first time before the Tribunal, I consider it expedient to send the matter back to the Id. CIT(A) for disposal of the ground raised before the Tribunal for the first time challenging the initiation of re-assessment proceedings. In such an examination, he will take into consideration the reasons for re-assessment. If the reasons are similar to the extraction made above, then obviously the re-assessment proceedings cannot stand. In case there are certain other reasons also or certain other aspects of the computation of capital gain, then the Id. CIT(A) will decide the issue as per law after allowing a reasonable opportunity of hearing to the assessee.

6. Facts of all other five appeals are *mutatis mutandis* similar to those of Krushna Manik Bankar discussed above. In all the five appeals, assessees have raised similar additional ground challenging the initiation of re-assessment proceedings. The Id. AR submitted that all the other five assessees filed returns u/s 139(1) of the Act declaring the transaction and also computed the long term capital gain. In view of our above decision in the

case of Krushna Manik Bankar, I set-aside the impugned orders and remit the matter to the file of Id. CIT(A) for dealing with the ground taken before the Tribunal for the first time against the initiation of re-assessment proceedings and thereafter dealing with appeal as per law.

7. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 15th November, 2019.

(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 15th November, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-8, Pune
4. The Pr.CIT- 5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', 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	15-11-2019	Sr.PS
2.	Draft placed before author	15-11-2019	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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