

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.782/PUN/2018

निर्धारण वर्ष / Assessment Year : 2005-06

Suresh Keshav Wani,
Hiwarkheda Road,
Taluka Kannad,
Dist. Aurangabad – 431103.

..... अपीलार्थी /
Appellant

PAN : BGZPA2253B.

बनाम v/s

The Income Tax Officer,
Ward 1(4), Aurangabad.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri K. Srinivasan.

Revenue by : Shri Dinesh R. Pardeshi.

सुनवाई की तारीख / Date of Hearing : 11.09.2019	घोषणा की तारीख / Date of Pronouncement: 09.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 1, Aurangabad dated 14.09.2016 for A.Y. 2005-06.

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

Assessee is an individual. In this case, assessee did not file the return of income for A.Y. 2005-06 and not paid any capital gain tax though he sold the land at Gut No./Survey 38 of Mouze Kannad, Tq. Kannad, Dist. Aurangabad at Rs.6,10,000/-. Notice u/s 148 of the

Act was issued on 28.03.2012 and served on assessee. Notice u/s 142(1) of the Act was issued on 10.08.2012 along with questionnaire. Thereafter, case was selected for scrutiny and assessment was framed u/s 144 r.w.s. 148 of the Act vide order dated 18.03.2013 and the total income was determined at Rs.6,10,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 14.09.2016 (in appeal No.ABD/CIT(A)/175/2013-14/ dated 26.04.2013) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. On the facts and circumstances of the case the Assessing Officer erred in law in passing order u/s 147 r.w.s. 143(3) and the same may be quashed as NULL and void and CIT(A)’s order confirming it set aside as bad in law..

2. The assessing officer erred in

- i) Assuming jurisdiction u/s 148 of the I.T. Act, 1961.*
- ii) Passing assessment order u/s 143(3) of the I.T. Act, 1961.*
- iii) Determining income at Rs.610000/- without considering the purchase cost and development expenses of the asset sold and therefore the same may be held as bad in law ab initio.*

3. Appellant contends on merits no additions is warranted.”

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

4. Before me, Ld.A.R. at the outset, submitted that there is delay of 519 days in filing the present appeal. He submitted sworn affidavit of assessee wherein the reasons for delay is explained and submitted that the delay is not intentional and therefore prayed that the delay of 519 days be condoned. Ld.D.R. did not seriously object to the prayer of condonation.

5. On the issue of condonation of delay of appeal, I have gone through the sworn affidavit filed by the assessee and heard the Ld.A.R. After considering the reasons stated in the affidavit, I am of the view that the delay in filing the appeal has been satisfactorily explained. In view of these facts, I condone the delay and admit the appeal for hearing.

6. AO on the basis of CIB information, noticed that assessee had sold land at Gut No./Survey 38 of Mouze Kannad, Tq. Kannad, Dist. Aurangabad for Rs.6,10,000/- on 08.10.2004. AO noticed that despite service of notice u/s 142(1) of the Act, none appeared on behalf of the assessee nor any details were filed. He has also noted that assessee did not file any copy of Purchase Agreement, Bills/Vouchers to show the date of acquisition or cost of acquisition. As the assessee failed to prove the sources of investments, AO treated the same as unexplained and accordingly made addition of Rs.6,10,000/- on account of capital gain tax. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

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

7. Before me, Ld.A.R. submitted that Ld.CIT(A) has passed an ex-parte order and not on merits. Ld.A.R. further submitted that the total expenses for acquisition of property was worked out to Rs.1,60,000/- and if indexed cost of acquisition is worked out, then the indexed cost of acquisition works out to Rs.5,49,000/- and the indexed cost and expenses work out to more than the sale consideration and therefore assessee will not be liable for any capital gains. He further submitted that assessee could not appear before the lower authorities and did not

produce the purchase agreement and also the bills/vouchers to prove the expenses incurred for the construction and that if given a chance, assessee undertakes to appear before lower authorities and furnish all the required details to substantiate his case. He therefore submitted that assessee be granted one more opportunity to explain his case. Ld.D.R. on the other hand supported the order of AO and Ld.CIT(A) and objected to Ld.A.R.'s prayer for 2nd innings.

8. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition of Rs.6,10,000/- on account of capital gain tax. Before me, it is assessee's contention that if the indexed cost of acquisition and the other expenses are considered then the assessee will not be liable for any capital gains. I find that this aspect has not been dealt with by the lower authorities as they have passed ex-parte orders. In view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, I am of the view that one more opportunity be granted to the assessee to present his case before the lower authorities. I therefore restore the matter back to the file of AO to decide the issue on merits in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish all the details called for by the authorities. In view of my decision to restore the issue to the file of AO, I am not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

9. **In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 9th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 9th October, 2019.

Yamini

आदेश की प्रतिलिपि अग्रहित/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, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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