

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A', PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1676/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Shivram Rakhmaj Bankar, Bankarwasti, A/P. Moshi Pune Nashik Road, Tal. Haveli, Pune 412 105 PAN : ABAPB6211F	Vs.	DCIT, Circle-8, Pune
Appellant		Respondent

ITA No. 1677/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Sitaram Rakhmaj Bankar, Bankarwasti, A/P. Moshi Pune Nashik Road, Tal. Haveli, Pune 412 105 PAN : AZQPB8796F	Vs.	DCIT, Circle-8, Pune
Appellant		Respondent

Assessee by  
Revenue by

Ms. Daini Shinde  
Shri S.P. Walimbe

Date of hearing

26-08-2020

Date of pronouncement

31-08-2020

आदेश / ORDER

**PER R.S.SYAL, VP :**

These two appeals by different but connected assessee arise out of separate orders, both dated 10.03.2017, passed by the CIT(Appeals)-9, Pune in relation to the assessment year 2012-13. Since common issues have been raised in these appeals, we are,

therefore, disposing them off by this consolidated order for the sake of convenience.

SHIVRAM R. BANKAR :

2. Firstly, we take up the appeal filed by Shivram R. Bankar. As against 10 grounds raised in the original Memorandum of Appeal, the assessee has filed concise grounds running into four grounds, which have only one issue, which is being discussed hereinafter. Briefly, the facts are that a survey action u/s.133A of the Income-tax Act, 1961 (hereinafter also called 'the Act') was carried out on 29-07-2013 in the case of Pharande Promoters and Builders, Pune, which is engaged in the business as Developers and Builders. During the course of survey action, it transpired that Pharande Promoters and Builders had entered into an Agreement with the assessee and his family members on 21-10-2011 for purchasing a land situated at Gat No.728 and 734 admeasuring 40R for a total consideration of Rs.3.00 crore. The said land was ancestral property of the assessee. The assessee filed his return computing capital gain by taking full value of consideration at Rs.1.50 crore. Thereafter, exemption was claimed u/ss. 54B and 54F of the Act. The Assessing Officer (AO) observed that the

assessee's claim for exemption u/s.54B amounting to Rs.69.00 lakh was not tenable because the new piece of land was purchased by the assessee in the names of his two sons, namely, Shri Vinod Shivram Bankar and Shri Bipin Shivram Banker. Some problem was found *qua* the claim of exemption u/s.54F as well. The AO, thereafter, computed the chargeable capital gain at Rs.1,46,07,500/- after reducing the cost of acquisition of Rs.3,92,500/- from sale consideration of Rs.1.50 crore pertaining to the assessee's share. The assessee contended before the Id. CIT(A) that at the time of transfer of property, he had no right over the same except the amount received to the tune of Rs.21.50 lakh in the capacity of Approver. It was so claimed on the ground that Family partition took place before effecting the transfer of property and the land in question was partitioned in favour of his sons. In support of such a claim, the assessee filed a copy of Partition Deed. The Id. CIT(A) accepted the assessee's contention and then came to hold that the assessee was not eligible for exemptions u/s.54B and 54F because the ownership of the property did not vest in him and hence the exemption was not available. The assessee has come up in appeal against such finding.

3. We have heard both the sides through virtual court and gone through the relevant material on record. A copy of Sale deed dated 21-10-2011 between Pharande Promoters and Builders and the family of the assessee has been placed at page 42 onwards of the paper book, which refers to the sale of the designated agricultural land. From such sale deed, it can be seen that it has been executed between Pharander Promoters and Builders on the one hand as buyer and 13 persons on the other which include close and extended family members of the assessee, who have been described as vendors. The extant assessee and the other assessee in this batch of appeals, namely, Sitaram R. Bankar have been described as “Approver” in the Sale deed. A copy of the translated Partition deed dated 11.8.2011 between the two assesses in the instant batch of appeals and their children, has been placed at pages 11 onwards of the paper book. The Id. CIT(A) has accepted the validity of the Partition deed by returning a categorical finding in para 7.4 of the impugned order that: *“The land was transferred in name of sons through distribution deed dated 11-08-2011 and further sold to builder on 21-10-2011. The distribution deed shows that the appellant is having no ownership on land sold. . . .*

. In case of the assessee ownership of the land was not there on the date of transfer of land, therefore the assessee cannot claim deduction u/s.54F.” Similar finding was recorded by the Id. CIT(A) in para 10.3 of the impugned order anent to the claim of exemption u/s.54B by noticing that: “*The appellant was not having ownership of the land on the date of transfer therefore no capital gain would arise to the appellant.*” From the above findings recorded by the Id. CIT(A), it becomes apparent that he accepted the assessee’s claim that he was not owner of the property at the time of sale inasmuch as the Partition deed, transferring interest in the property to his sons, was executed prior to the date of sale. Once the assessee was not the owner of the property, there could obviously have been no question of allowing exemption u/ss.54B or 54F of the Act. To that extent, the view taken by the Id. CIT(A) is correct. Once the assessee is not entitled to exemption because he was not the owner of the property transferred, there can be no question of computing any capital gain in his hands from the transfer of the same property.

4. It is no doubt undisputed that the assessee did compute capital gain in his return of income and thereafter claimed exemptions u/ss.54B and 54F of the Act. Simply because such a computation of capital gain was made on an ill-advice, cannot bind the assessee for the times to come, if, in fact, he was not liable for such capital gain. As the proceedings in the first appeal are continuation of the assessment proceedings, there can be no impediment on the assessee in making a lawful claim before the CIT(A) for the first time and the CIT(A) accepting the same, if it is otherwise sustainable. There can be no estoppel against the provisions of the Act. If an assessee is not legally chargeable to tax, he can validly make such a claim before the CIT(A) notwithstanding the fact that the amount was wrongly included in the return of income. The contention of the Id. DR objecting to raising a fresh claim before the Id. CIT(A) for the first time is, ergo, jettisoned. We thus hold that not only the assessee was justified in making a claim of Partition Deed in the first appeal, the Id. CIT(A) was also fully within his jurisdiction in entertaining such a claim. In the absence of the Revenue having filed any cross appeal assailing the acceptance of the genuineness of such a Partition Deed by the Id.

CIT(A), such a finding attained finality and the same cannot be challenged before the Tribunal when the appeal of the assessee is under consideration.

5. The Id. AR has invited our attention towards page 5 of the written submissions which indicate that the assessee received a sum of Rs.21.50 lakh towards extinguishment of his right in the property at the time of sale. She raised no objection to the chargeability of this amount in the hands of the assessee as capital gain. We, therefore, direct the AO to consider the income chargeable under the head "Capital gain" in the hands of the assessee by taking full value of consideration towards extinguishment of his right in the property at Rs.21.50 lakh.

6. In the result, the appeal is partly allowed.

SITARAM R. BANKAR :

7. The facts of the case of Sh. Sitaram R. Bankar are *mutatis mutandis* similar to those of Sh. Shivram R Bankar, whose appeal has been disposed of hereinabove. Here also, the return was filed under misconception by computing capital gain and simultaneously claiming exemption u/ss.54B and 54F of the Act.

The AO did not allow these exemptions for almost the similar reasons as assigned in the assessment of Shivram R Bankar. During the course of proceedings before the Id, CIT(A), the assessee lodged similar claim. The Id. CIT(A) recorded similar findings as in the case of Shivram R. Bankar that the assessee was not the owner of the property at the time of sale on 21-10-2011 because the Partition deed dated 11-08-2011 had come into force before the date of sale and as such there was no question of claiming exemptions u/ss.54B or 54F. In view of the decision taken in the case of Shivram R. Bankar (*supra*), we hold, in principle, that the assessee was entitled to make a claim before the Id. CIT(A) for the first time against wrongful computation of capital gain in the return of income. As the Id. CIT(A) has accepted the genuineness of the Partition deed, which remains unchallenged, there can be no computation of capital gain on this score and the consequential exemptions. The same is, therefore, directed to be deleted.

8. Similar to Shivram R Bankar, this assessee received a sum of Rs.17.48 lakh as sale consideration as Approver for extinguishment of right in the property. The Id. AR did not raise

any dispute as to the chargeability of this amount in the hands of the assessee under the head “Capital gain”. Following the view taken hereinabove in the case of Shivram R. Bankar, we direct the AO to compute the amount of capital gain by considering the assessee’s share at Rs.17.48 lakh towards extinguishment of right in the property in the computation of capital gain.

9. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 31<sup>st</sup> August, 2020.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

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

पुणे Pune; दिनांक Dated : 31<sup>st</sup> August, 2020  
 Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(Appeal)-9 ,Pune
4. The Pr. CIT-5, Pune
5. The DR, ITAT, Pune;
6. गार्ड फाईल / Guard file ‘A’ Bench, Pune.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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

		Date	
1.	Draft dictated on	26-08-2020	Sr.PS
2.	Draft placed before author	26-08-2020	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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