

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCH "B", PUNE
(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.544/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

The Joint Commissioner of Income Tax
(OSD), Circle – 7. Pune.

..... अपीलार्थी /
Appellants

बनाम v/s

M/s. Adrus Estate and Properties LLP,
Bodhi Tower, 548/2B, Salisbury Park,
Gultekdi, Pune – 411037.
PAN : AASFA4658C.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Percy Paridwala / Shri Sukhsagar Syal
Revenue by : Shri Sudhendudas

सुनवाई की तारीख / Date of Hearing : 25.06.2021
घोषणा की तारीख / Date of Pronouncement : 05.07.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of learned Commissioner of Income Tax (Appeals), Pune – 5, Pune dated 27.11.2017 for the assessment year 2013-14.

2. The brief facts of the case are as under :

The respondent / assessee is a Limited Liability Partnership (LLP). It is engaged in the business of Builders and Property Developers and Trading. The return of income for A.Y. 2013-14 was filed on 27.09.2013 declaring total income of Rs.10,81,448,060/-. Against the said return of

income, the assessment was completed by the DCIT, Circle-7, Pune (hereinafter referred to as "Assessing Officer") at a total income of Rs.12,68,61,411/-. While doing so, the Assessing Officer treated the profit arisen on sale of land as "Business Income" at Rs.11,76,88,305/- as against the claim of respondent/assessee company that the profits on the sale of land as Long Term Capital Gains at Rs.10,62,38,203/-. The Assessing Officer also made addition of Rs.70 lac by holding that the respondent / assessee had received consideration in the form of allotment of Corporate Box by Maharashtra Cricket Association (MCA) which was not disclosed in the return of income.

3. The brief factual matrix leads to the above addition is as under :

M/s. Adrus Estates & Properties Pvt. Ltd., is a Private Limited Company which was converted into Limited Liability Partnership namely, M/s. Adrus Estates & Properties LLP (the respondent / assessee) herein w.e.f 20.10.2010 purchased an agricultural land admeasuring 262R (2 Hecter and 62 R) situated at Gat No.167 Gahunje from M/s. City Park Ltd., vide an agreement dated 22.02.2007 in the name of its Director Dr. Cyrus Poonawalla. The said agricultural land was agreed to be sold to Maharashtra Cricket Association (MCA) vide Memorandum of Understanding (MOU) dated 21.01.2011 for a total consideration of Rs.13,75,50,000/-. Out of the agreed total consideration of Rs.13,75,50,000/-, a sum of Rs.9,62,85,000/- representing 70% of the sale consideration was received on 22.01.2011. In terms of the MOU dated

21.01.2011, the respondent / assessee has to perform the following obligations :

- i) Has to obtain permission for non-agricultural use of the land,
- ii) Has to transfer the legal titles of the land in favour of the assessee.

It is stipulated in the MOU that only on fulfillment of the above conditions the balance consideration i.e., Rs.4.13 crores shall be paid. It was also agreed that only on receipt of the entire consideration, the possession of the land shall be handedover to the MCA. The MOU was valid for 90 days which was subsequently extended and the balance consideration of Rs.4.13 crores and Rs.2,75,10,000/- was paid on 30.04.2011 and the land was converted into non-agricultural land on 15.02.2012. Thereafter, the sale deed was executed in favour of the MCA on 01.03.2012 and the balance consideration was also paid on 30.03.2012. In the return of income, the respondent / assessee has offered the profit on the sale of the said land under the head of "Capital Gains".

4. The Assessing Officer by observing that the respondent/assessee company was formed only for the purpose of dealing in the land and the source of acquisition of property of land was out of borrowed funds had called upon the respondent / assessee to show cause as to why the profits on the sale should not be assessed under the head "Income from Business". In response to the said show cause notice, the respondent / assessee company vide its letter dated 20.11.2015 had filed a detailed explanation which is extracted by the Assessing Officer at 4.2.2. of the assessment

order. The gist of the explanation offered by the respondent / assessee is that the land was reflected as Investment in the Balance-Sheet and never forming part of stock-in-trade and no development activities on the said land were carried on and not engaged in the continuous and regular purchase and sale of land except this solitary transaction. The land was purchased out of own funds and not out of borrowed funds. Thus it was contended before the Assessing Officer that the transaction of sale of land does not fall under the category of an "Adventure in nature of trade". The respondent / assessee company also placed reliance on the decision of Hon'ble Bombay High Court in respect of CIT Vs. Baguio Investment Pvt. Ltd. According to the respondent / assessee company, the ratio of the decision of Hon'ble Bombay High Court in Baguio Investment Pvt. Ltd., is squarely applicable to the facts of the present case.

5. Considering the above explanation of the respondent / assessee company, the Assessing Officer concluded that the land was purchased out of the proceeds received on allotment of 8% redeemable non-cumulative preference shares each to M/s. Cyzachem Pvt. Ltd. According to the Assessing Officer 8% redeemable non-cumulative preference shares are only in the nature of borrowed funds and taking into consideration the fact that the land was converted into non-agricultural land by the respondent / assessee after the sale to MCA and the fact that respondent / assessee has also generated huge profits establishes that motive is only to sell the property for profit, therefore the transaction is in the nature of adventure in trade and brought tax the profit arising out of the sale as "Income from business".

6. The addition was also on account of alleged un-disclosed consideration of Rs.70 lacs.

6.1. During the course of assessment proceedings, the Assessing Officer found that the respondent / assessee received a Corporate Box in the Maharashtra Cricket Stadium on account of sale of land. The Assessing Officer also made some enquiries with Maharashtra Cricket Association and received information that MCA allotted total 16 Corporate Boxes to 13 entities for a period of 10 years for a fee of Rs.70 lacs. The Assessing Officer also found that the MCA had allotted Corporate Box free of cost to Dr. C.S. Poonawalla for a tenure of 10 years in consideration of the respondent / assessee agreeing to sell the property to MCA. Accordingly, the Assessing Officer brought to tax a sum of Rs.70,00,000/- as undisclosed consideration.

7. Being aggrieved by the order of lower authorities, the respondent / assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals) who vide impugned order after considering the detailed submissions made by the respondent / assessee concluded that the land was sold after a period of six years and was shown as Investment in the Balance-Sheet and not as Stock-in-trade, was purchased out of its own funds and held that the ratio of the decision of Hon'ble Bombay High Court in the case of Baguio Investment Pvt. Ltd.(supra) was squarely applicable and directed the Assessing Officer to treat the profits arising on sale of land as "Capital Gains".

8. As regard to the addition of Rs.70 lacs as undisclosed consideration on account of allotment of Corporate Box in Cricket Stadium constructed by the Maharashtra Cricket Association, the Id.CIT(A) held that allotment of Corporate Box is directly linked with the sale of land and therefore should be treated as part of sale consideration of land.

9. Being aggrieved by the findings of Id.CIT(A), the Revenue is in appeal before us.

10. The Id.CIT.DR contended that the fact that the land was converted for non-agricultural purpose on 15.02.2012 by the respondent / assessee itself generated huge profits on the sale of land and the land was originally acquired out of the proceeds received on allotment of 8% redeemable non-cumulative preference shares would go to show that the land was acquired only to resell the property for profit. He also placed heavy reliance on assessment order. As regard to the addition on account of alleged undisclosed consideration on receipt of Corporate Box in Maharashtra Cricket Stadium, he submits that it should be assessed as a Revenue item as undisclosed income of the respondent / assessee.

11. On the other hand, the learned counsel for the respondent / assessee submitted that there is no material on record to say that the land was originally purchased with an intention to resell for profit. He further submits that mere fact that realization of the capital investment and generation of huge profit would not amount to an adventure in nature of trade. Having regard to the fact that the land was held for a period of six

years coupled with the conduct of the respondent / assessee by showing the land as investment, profits can not be assessed to tax under the head Business Profits. he placed reliance on the following decisions :

- Janaki Ram Bahadu Ram Vs CIT (SC) 57 ITR 21
- CIT Vs. Baguio Investment Pvt. Ltd – Bombay High Court (ITA 998/2011)
- CIT Vs. Nathuram Ramnarayan (P) Ltd – Bombay High Court 151 ITR 767.
- CIT Vs. Kasturi Estates P. Ltd – Madras High Court 62 ITR 578.
- PCIT Vs. John Poomkudy – Kerala High Court – 101 taxmann.com 244.

Finally, he submits that the ratio of the decision of Hon'ble Bombay High Court in the case of Baguio Investment Pvt. Ltd is squarely applicable to the present facts of the case and that the order of ld.CIT(A) is based on the proper appreciation of the facts and legal position governing the issue on hand and therefore, no interference is called for.

12. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether the profits arisen from the sale of land constitutes "Capital Gains" or "Business Income." The undisputed facts of the case are that the respondent / assessee acquired the land in the year 2007. The land was shown as a part of investment in the books of account. The land was sold to MCA for a total consideration of Rs.13.75 lakhs and the land was converted into non-agricultural land by the respondent / assessee himself as a part of obligation in the terms of

MOU entered into to sell the property. The chargeability of the profits to tax is not in dispute. In the return of income, the respondent / assessee has shown the profits arising on sale of land under the head "Capital Gains". The Assessing Officer had disputed the claim of the respondent / assessee on the ground that the borrowed funds were used for acquiring the agricultural land and the lands were sold for huge consideration of Rs.13.75 lakhs and the land was converted into non-agricultural land. The observations of the Assessing Officer that the lands were acquired out of the borrowed funds is rebutted by the respondent / assessee company by stating that the proceeds on allotment of 8% redeemable non-cumulative preference shares does not come under "borrowed funds". This submission of the respondent / assessee company came to be accepted by Id.CIT(A) placing reliance on the decision of Hon'ble Karnataka High Court in the case of Kirloskar Electric Company Ltd., Vs. CIT 228 ITR 674 and no contrary position of law was pointed out to us by the Ld. Sr.D.R. Therefore, in the given facts and the legal position, it cannot be said that the land was acquired out of borrowed funds. The another fact considered by the Assessing Officer is that realization of huge profits at the time of sale of the land. The Hon'ble Madras High Court in the case of CIT Vs. Kasturi Estates Pvt Ltd. 62 ITR 578 has categorically held that realization of investments or conversion of land into money would not amount to adventure in nature of trade. The mere fact that the respondent / assessee generated huge profit ipso facto not enough to infer that the transaction is in the nature of adventure in trade.

13. The contention of the respondent / assessee that it has not been engaged in any other transaction of purchase and sale of land remains uncontroverted by the Department. Therefore, there is no material on record to prove that the respondent / assessee is a dealer in land. In any event, it is settled position of law that assessee is entitled to maintain two different portfolios i.e., Stock-in-trade as well as Investment. This position is also accepted by the CBDT in the context of taxing the profits in respect of sale transaction and shares and securities vide CBDT Circular No.4 of 2007 dated 04.05.2007.

14. It is settled position of law that to determine whether a particular transaction is an adventure in the nature of trade or investment, the test to be applied is intention of the party at the time of acquisition of the property as held by the Hon'ble Supreme Court in the case of G. Venkataswami Naidu & Co. (supra). "It is therefore, clear that if an asset is purchased by way of investment, the transaction does not become an adventure in the nature of trade merely because at the date when the asset was acquired, there was intention to resell it, if an enhanced price could be earned. But, it is equally clear, and that is now settled by the decision of the Hon'ble Supreme Court in G. Venkataswamy Naidu and Company's case (supra) that if the purchase of the asset was made solely and exclusively with an intention to resell it at a profit, it would be a strong factor indicating that the transaction is an adventure in the nature of trade." This position was subsequently followed by the Hon'ble Supreme Court in the case of CIT Vs. Sutlej Cotton Mills 100 ITR 706 and Dalmiya Cements ITR 105 633.

15. It is an undisputed fact that the land was recorded in the books of account as part of investment. It is settled position that the treatment given in the books of account gives an indication as to the intention of the assessee to hold asset as an investment or stock-in trade. In the present case, the fact that the said land was shown as part of investment in the books of accounts coupled with the fact that the land was sold after a gap of six years would prima facie go to show that the intention on the part of the respondent / assessee is to hold the said land as "investment". It is settled position of law that the onus lies upon the Department for bringing the relevant material on record to prove that the transaction is an adventure in nature of trade. In the present case, the inference drawn by the Assessing Officer that the subject transaction is in nature of trade is not based on any material on record. The Department had failed to prove the allegation that the transaction is in the nature of adventure of trade. Whether holding of a particular asset is by way of investment or forms part of stock-in-trade is a matter which is within the exclusive knowledge of the assessee and it should be in a position to produce evidence from the records.

16. In the instant case, undisputedly, the intention of the parties apart from the treatment given in the books of accounts i.e., as investments, there is no material brought on record by the assessing authority to indicate that the land was purchased by the assessee with an intention to resale for profit. On the other hand, the intention of the parties clearly demonstrated in the form of treatment given in the books of accounts. Therefore, there is nothing on record to infer the contrary and the facts of the present case are identical to the case of Baguio Investments Pvt Ltd (supra) wherein the Hon'ble jurisdictional High Court has confirmed the findings of the Tribunal

that the land forms part of the investment and the land was held for a period of 10 years. Thus, the decision of the order of Ld.CIT(A) is based on the proper appreciation of the facts and in consonance with the settled position of law. Therefore, we do not find any reason to interfere with the findings of Ld.CIT(A) that the profits arising on sale of land should be assessed as Capital Gains.

17. As regards to the second ground of appeal raised by the Department challenges the findings of learned Commissioner of Income-Tax (Appeals) that undisclosed consideration of Rs.70 lac should be assessed as part of the sale consideration of land and the findings of Ld.CIT(A) is based on the consideration of material evidence like there is an established link between the transaction of sale of land to the MCA and grant of Corporate Boxes in the Cricket Stadium. Therefore, the findings of Ld.CIT(A) is also based on the material on record and we do not find any material on record contrary to the findings of the Ld.CIT(A). Thus, this ground of appeal also stands disallowed.

18. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 5th day of July, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 5th July, 2021.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Appeals), Pune – 5, Pune.
4. Pr.CIT, Pune – 4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” /
DR, ITAT, “B” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

// True Copy //

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