

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "बी" PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

ITA No.1071/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Anil Rajaram Buchade,
S.No.2, Near Kirti Classique, A/P,
Marunji, Tal. Mulshi,
Dist. Pune – 411057.

..... अपीलार्थी /
Appellant

PAN : BHKPB4666F.

बनाम v/s

The Dy. Commissioner of Income Tax,
Circle – 2, Pune.

..... प्रत्यर्थी /
Respondent

ITA No.1072/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Shivaji Rajaram Buchade,
S.No.2, Near Kirti Classique, A/P,
Marunji, Tal. Mulshi,
Dist. Pune – 411057.

..... अपीलार्थी /
Appellant

PAN : AHQPB6205P.

बनाम v/s

The Dy. Commissioner of Income Tax,
Circle – 2, Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Chetan Karia / Shri Suhas Bora.

Revenue by : Shri Deepak Garg.

सुनवाई की तारीख / Date of Hearing : 05.07.2021

घोषणा की तारीख / Date of Pronouncement : 05.07.2021

आदेश / ORDER**PER INTURI RAMA RAO, AM:**

These are the appeals filed by different assesseees directed against the separate orders of Commissioner of Income Tax (Appeals) – 2, Pune dated 13.01.2017 for the assessment year 2012-13.

2. Since the identical facts are involved in both the appeals, we dispose of the same vide this common order. For the sake of convenience and clarity, the facts relevant to ITA No.1071/PUN/2019 in the case of Anil R. Buchade are stated herein.

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

The appellant is an individual. The return of income for A.Y. 2012-13 was filed declaring total income of Rs.99,33,577/-. Against the said return of income, assessment was completed by the DCIT, Circle – 2, Pune (hereinafter referred to as “Assessing Officer”) vide order dated 04.03.2015 passed u/s 143(3) of the Act at a total income of Rs.14,42,79,360/-. While doing so, the Assessing Officer made addition under the head “Capital Gains” of Rs.14,37,42,874/-.

4. The brief factual background is as under :

During the previous year relevant to the assessment year under consideration, the appellant sold property of land located at Sy.No.58/2m Marunji, Tal. Mulshi on 23.09.2011 for a consideration of Rs.15,89,80,000/-. In the return of income, the assessee claimed the indexed cost of acquisition of the land by adopting Fair Market Value (FMV) of the land as on 01.04.1981

at Rs.80,52,025/- and also claimed the cost of improvement at Rs.40 lac in 2011-12, accordingly, arrived at Capital Gains of Rs.6,22,57,506/-. From the capital gains so arrived at, claimed exemption u/s 54B of Rs.4,54,97,400/- and exemption u/s 54F of Rs.72,13,193/- and shown returned capital gains of Rs.95,46,913/-.

5. During the course of assessment proceedings, the Assessing Officer disputed the FMV as on 01.04.1981 adopted by the assessee after rejecting the valuation report of the Approved Valuer furnished by the assessee and adopted at Rs.1/- per Sq.mtr and also denied the claim for exemption u/s 54B on the ground that the asset sold was a capital asset and no agricultural activities were carried on the said land for last two years preceding to the date of sale.

6. Being aggrieved by the above addition, the appellant preferred an appeal before the Id.CIT(A) challenging inter-alia that the Assessing Officer himself ought not have disturbed the valuation adopted by the assessee without referring the matter to the District Valuation Officer (DVO) and also challenged the denial of claim for exemption u/s 54B by way of additional ground of appeal. However, the Id.CIT(A) failed to adjudicate the specific grounds of appeal raised before the Id.CIT(A). Thus, the grounds of appeal remain un-adjudicated.

7. Being aggrieved by the non-adjudication of additional grounds of appeal, the appellant is before us in the present appeal.

8. The learned counsel for the assessee submits that the ground of appeal No.3 raised before Id.CIT(A) and the additional ground of appeal challenging

the denial of exemption remained un-adjudicated by the ld.CIT(A). Therefore, the matter be restored to the file of ld.CIT(A) for adjudication of the grounds of appeal.

9. Ld.D.R. has no serious objection to the proposition canvassed by the learned counsel for the assessee.

10. We heard the rival contentions of both the parties. It is undisputed that certain grounds of appeal before ld.CIT(A) remain un-adjudicated and therefore, we remand the matter back to the file of ld.CIT(A) for limited purpose of adjudicating the ground of appeal No.3 raised before ld.CIT(A) which reads as under :

“The learned Commissioner of Income Tax (Appeals) – 2 has erred in not referring the matter to DVO completing assessment”

And also Additional ground of appeal at Page No.9 of the Paper Book which reads as under challenging the denial of claim for exemption u/s 54B of the I.T.Act.

“The learned Deputy Commissioner of Income Tax erred in not allowing deduction under Section 54B of the Income Tax Act and added back to the total income.”

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

12. **ITA No.1072/PUN/2017**

We have already decided the issue under identical facts in favour of the assessee in ITA No.1071/PUN/2017 and partly allowed the appeal of the

assessee for statistical purposes by remanding the matter to the file of ld.CIT(A). Therefore, our decision in ITA No.1071/PUN/2017 shall apply, mutatis mutandis, to this appeal also and accordingly this appeal is also partly allowed for statistical purposes.

13. In the result, the appeal of assessee in ITA No.1072/PUN/2017 is partly allowed for statistical purposes.

14. In the combined result, both the appeals of assessee are partly allowed for statistical purposes.

Order pronounced on 5th day of July, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
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. The CIT(A)-2, Pune.
4. The Pr.CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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