

आयकर अपीलिय 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.116/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Shalan Valmik Keswad,  
At Post Wade Bolai,  
Taluka Haveli Dist.,  
Pune – 412 207.

..... अपीलार्थी /  
Appellant

PAN : BVGPK7472Q.

बनाम v/s

The Income Tax Officer,  
Ward 6(5), Pune.

..... प्रत्यर्थी /  
Respondent

ITA No.117/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Shital Anand Keswad,  
At Post Wade Bolai,  
Taluka Haveli Dist.,  
Pune – 412 207.

..... अपीलार्थी /  
Appellant

PAN : BVGPK7474J.

बनाम v/s

The Income Tax Officer,  
Ward – 12(4), Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri Mahadevan A.M. Krishnan.

सुनवाई की तारीख / Date of Hearing : 29.07.2021

घोषणा की तारीख / Date of Pronouncement : 29.07.2021

**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) – 4 and 5 of Pune dated 19.06.2017 and 25.10.2017, respectively, 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.116/PUN/2018 in the case of Shalan V. Keswad are stated herein.

3. The Appellant has raised the following ground of appeal in ITA No.116/PUN/2018 :

*“ The learned CIT(Appeals)-4, Pune erred in law and on facts in confirming the addition of Rs.77,08,750/- to the total income of the appellant.”*

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

The appellant is an individual. No return of income under the provisions of Sec.139(1) of the Income Tax Act (“hereinafter referred to “the Act”) was filed. However, based on the information received from the Deputy Director of Income Tax (Investigation), Unit – II (1), Pune that the assessee has paid the consideration at the time of purchase of lands admeasuring 03H & 6R situated at Gat No.902, Wadebholai, Pune vide agreement dated 20.10.2011 over and above the stated consideration i.e., one crore, the Assessing Officer formed an opinion that the income had escaped from

assessment and accordingly issued a notice u/s 148 of the Act on 26.03.2015. In response to notice, no return of income has been filed by the appellant. The Assessing Officer after receipt of the statements recorded by the Investigation Wing, Pune from the Sellers stating that the cash deposits made by the said sellers is out of the sale consideration received on the sale of the lands to the appellant herein, had called upon the appellant to show cause why the addition should not be made, despite the several opportunities granted to the appellant, had not filed any information before the Assessing Officer. Therefore, the Assessing Officer had proceeded with the framing of the assessment order by making addition of Rs.77,08,750/- being the 50% of cash received by the sellers namely, Suresh Baburao Tope and Ashok Baburao Tope over and above the stated consideration in the sale deed.

5. Being aggrieved by the above addition, the appeal was filed before the Id.CIT(A) contending that the Assessing Officer without giving any proper opportunity had proceeded with framing of the assessment order and also submitting that during the course of investigation by the DDIT (Inv), Unit- II (1), of Pune, the assessee had denied having paid any money over and above the consideration stated in the sale deed. It is further contended that no addition can be made merely based on the statement given by the third party. However, the Id.CIT(A) rejected the contention of the appellant by relying upon the evidence gathered by the Assessing Officer during the course of assessment proceedings.

6. Being aggrieved with the order of Id.CIT(A), the appellant is before us in the present appeal.

7. The learned counsel for the assessee contended that the Id.CIT(A) ought not have confirmed the addition merely basing on the statement of the third parties.

8. On the other hand, Ld.D.R. placed reliance on the orders of lower authorities.

9. We heard the rival contentions of both the parties and perused the material on record. The issue in the present appeal relates to addition of Rs.77,08,750/- as unexplained investment on purchase of lands situated at Gat No.902, Wadebholai, Pune. On reading of the assessment order, it would suggest that the Assessing Officer made addition based on the statement given by the sellers before the Investigation Wing of the Department. No doubt, the Assessing Officer had given opportunity to the appellant to rebut the said evidence which was not availed of by the appellant for whatsoever reasons. But, during the course of proceedings before Id.CIT(A), the appellant had contested the addition on the ground that no reasonable opportunity was granted and no addition can be made merely based on the statement of third parties. The Id.CIT(A) confirmed the addition relying upon the evidence gathered by the Assessing Officer i.e., in the form of statement given by the sellers before the Investigation Department. In our considered opinion, the approach of the Id.CIT(A) does not stand the judicial scrutiny as it is settled position of law that no addition can be made merely based on the statement of third parties and the Id.CIT(A) without giving an opportunity to cross-examine the sellers, whose statements formed the basis of making addition, ought not have confirmed the addition. In the above circumstances, in order to meet the ends of justice, we remand the matter

back to the file of Assessing Officer to re do the assessment afresh in accordance with the law.

10. In the result, the appeal filed by the assessee in ITA No.116/PUN/2018 is partly allowed for statistical purposes.

11. **ITA No.117/PUN/2018**

We have already decided the issue under identical facts in favour of the assessee in ITA No.116/PUN/2018 and partly allowed the appeal of the assessee for statistical purposes by remanding the matter to the file of Assessing Officer. Therefore, our decision in ITA No.116/PUN/2018 shall apply, mutatis mutandis, to this appeal also and accordingly this appeal is also partly allowed for statistical purposes.

12. In the result, the appeal of assessee in ITA No.117/PUN/2018 is partly allowed for statistical purposes.

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

Order pronounced on 29<sup>th</sup> 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 : 29<sup>th</sup> 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)-4 and 5, Pune.
4. The Pr.CIT-3 and 4, 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.