

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE**

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

आयकर अपील सं. / ITA No.359/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

M.N. Navale, Sinhagad Technical Education Society Campus, Vadgaon Budruk, Pune – 411 041 PAN : AAIPN0909R	Vs.	ACIT, Central Circle-2(2), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.541/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

M.N. Navale, Sinhagad Technical Education Society Campus, Vadgaon Budruk, Pune – 411 041 PAN : AAIPN0909R	Vs.	ACIT, Central Circle-2(2), Pune
Appellant		Respondent

Assessee by

Shri Suhas P.Bora

Revenue by

Shri A.M. Mahadevan Krishnan

Date of hearing

04-10-2021

Date of pronouncement

06-10-2021

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee are directed against the separate orders passed by the CIT(A)-12, Pune on 27-12-2016 & 06-01-2017 in relation to the assessment years 2007-08 and 2008-09 respectively. Since common issues are raised in these two appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2007-08 :

2. All the grounds except ground no.8 deal with a common issue. Briefly stated, the facts of the case are that the assessee, an individual, filed his return declaring total income of Rs.11,44,837/-. The assessment was completed u/s.143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') by making an addition of Rs.34,70,696/- on account of rental income received from certain properties by holding that said properties belonged to M.N. Navale (Individual) and not M.N. Navale (Bigger HUF) as was claimed by the assessee. The AO, for reaching this decision, relied on his order passed u/s.171 of the Act for an earlier year holding that M.N. Navale (Bigger HUF) did not exist and these properties belonged to M.N. Navale (Individual). The assessee challenged the matter before the Id. CIT(A), who confirmed such an order. In the second appeal, the Tribunal in ITA No.149/PUN/2010 accepted the existence of HUF vide para 21 of its order. The Tribunal held that any property would become property of HUF provided it is inherited or devolved from the grandparents. Thereafter, it issued certain directions for quantification of income and eventually restored the matter for fresh adjudication. Giving effect to such directions, the AO, in the earlier round of proceedings, made certain additions. The matter was again

brought before the Tribunal. Vide its order dated 24-07-2013 in ITA No.1001/PUN/2012 and others, the Tribunal again restored the matter to the file of the AO for passing an order in conformity with the order passed in ITA No.149/PUN/2010. In the instant proceedings, the AO made the following additions :

ii.	LTCG	:	Rs.1,05,38,028/-
ii)	Short term Capital Gain	:	Rs.10,57,040/-
	Gat No.321 (21R)	:	Rs.7,85,920/-
	Gat No.321 (20R)	:	Rs.9,35,853/-
	Gat No.321 (82R)	:	Rs.27,39,640/-
	Gat No.321 (41R)	:	Rs.14,72,960/-
iii)	Unexplained Investment u/s.69B	:	Rs.19,73,626/-

3. The Id. CIT(A) did not grant any relief to the assessee, against which the appeal has been preferred before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. At the outset, the Id. AR placed on record a copy of the order dated 15-11-2019 passed by the Tribunal in the case of Maruti Navale (Bigger HUF) and Maruti Navale (Smaller HUF) [in ITA Nos. 360-367/PUN/2017 and ITA No.542/PUN/2017] laying down a mechanism for computation of income in the hands of Maruti Navale (Bigger HUF). The relevant discussion has been made from para 51 onwards of the Tribunal order. The Id. AR submitted that at the time of passing of the instant orders by the AO as well as the CIT(A), they did not have the benefit of the order passed by the

Tribunal in the case of Maruti Navale (Bigger HUF) and Maruti Navale (Smaller HUF) which has direct bearing on the determination of the issues raised in the instant appeal inasmuch as a mechanism has been provided for determining the income in the hands of HUFs, which will automatically affect the inclusion of quantum of income in the hands of the assessee-individual. The ld. DR fairly conceded the position. In view of the foregoing rival but common submissions, we set-aside the impugned order and remit the matter to the file of the AO for deciding these issues afresh in the hue of the directions given by the Tribunal in the aforementioned case of Maruti Navale (Bigger HUF) and Maruti Navale (Smaller HUF).

5. Ground no.8 is against the confirmation of addition of Rs.1.55 crore. The facts apropos this ground are that during the course of search conducted in the case of the assessee certain incriminating documents were found, which revealed that assessee had paid cash amounting to Rs.1.55 crore to Srikantia Somashekhar on different dates in the month of March 2007. The payments were acknowledged on revenue stamp and the minute details like denominations of currency notes and quantity were also mentioned thereon along with the signature of witness, Mr. M.M. Lopez. The assessee had purchased certain properties at Geeta Building, Sion,

Mumbai from the said Mr. Srikantia Somashekhar vide registered deed dated 28-03-2007. There was no reference to such cash payments in the registered deed which were recorded in the seized documents. When these facts were confronted to the assessee during the course of recording the statement u/s.132(4), the assessee, in response to question No.15, stated that he did not recollect any such transactions. Later on, a written explanation was filed by the assessee in which he accepted cash payment of Rs.1.55 crore was made by him to Mr. Srikantia Somashekhar and stated that the amount was paid for eviction of tenants. It was further stated that on failure to evict the tenants, the amounts were refunded to him on 28-03-2007 itself. As regards the source of payment, the assessee submitted that he withdrew Rs.95.00 lakh from his bank account maintained with Central Bank of India and the remaining amount of Rs.60.00 lakh was claimed to be out of cash in hand with Maruti Navale (Bigger HUF). The AO rejected the explanation of the assessee as no such reference was made to this transaction in the statement u/s.132(4) of the Act. He further did not believe the theory set up by the assessee on the ground that the amount claimed to have been paid for eviction was stated to be received back within 3 days of the payment on the eviction not taking place. The AO further observed that the assessee

had not recorded the alleged cash withdrawn in the books of account. He further did not accept the source of Rs.60.00 lakh being cash in hand with HUF. That is how, the AO held that the entire amount of Rs.1.55 crore was liable to be included in the hands of the assessee. He, therefore, made the addition of Rs.1.55 crore, which came to be sustained in the first appeal.

6. It is an undisputed fact that the assessee paid Rs.1.55 crore to Mr. Srikantia Somashekhar in cash at the time of purchase of certain properties during the year from him. Such cash payment was not recorded in the books of account. It was only during the course of search that the fact of cash payments came to light and the assessee also admitted that he paid cash of Rs.1.55 crore to Mr. Srikantia Somashekhar for eviction of tenants. At the same time, the assessee also claimed that the eviction could not take place and he got refund of the amount within 3 days. In our considered opinion, the AO as well as the Id. CIT(A) have rightly appreciated the fact that the theory of payment of Rs.1.55 crore for eviction of tenants and its receipt back within 3 days on the failure of the eviction, is not based on any evidence and hence, cannot be accepted.

7. As regards the source of payment of Rs.1.55 crore, the assessee stated that a sum of Rs.95.00 lakh was withdrawn from his bank

account and Rs.60.00 lakh was out of cash in hand in the hands of HUF. *Qua* the cash withdrawal of Rs.95.00 lakh from the bank account, it is seen that even though the amount was withdrawn from the bank account but the assessee has not placed any evidence on record to show that such withdrawn cash was recorded in the books of account to have been paid to Mr. Srikantia Somashekhar on different dates as was revealed from the incriminating documents found during the course of search. If the books of account are regularly maintained and cash is withdrawn from the bank, it has necessarily to be shown to have been paid to Mr. Srikantia Somashekhar, so as to claim the benefit. Merely showing withdrawals from the bank does not prove that such withdrawn amount was utilized for paying cash to Mr. Srikantia Somashekhar. The Id. AR could not place on record any evidence to demonstrate that cash of Rs.95.00 lakh withdrawn from bank was, in fact, paid to Mr. Srikantia Somashekhar in the books of account. That being the position, we set-aside the impugned order on this score and remit the matter to the file of the AO for examining the assessee's contention about the utilization of cash of Rs.95.00 lakh withdrawn from the bank for the purposes of payment to Mr. Srikantia Somashekhar in

the books of account. If the assessee's contention is found to be incorrect, then the addition to that extent should be made.

8. Now coming to the remaining addition of Rs.60.00 lakh, both the sides admitted that this issue will have to be decided by the AO afresh in the same manner as in giving effect to the direction of the Tribunal in respect of the other 8 grounds of the present appeal, through which the inclusion of income in the hands of the assessee-individual *vis-à-vis* Maruti Navale (Bigger HUF) and Maruti Navale (Smaller HUF) has been discussed *supra*. We order accordingly.

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

A.Y. 2008-09 :

10. The only issue raised through 7 grounds is against the inclusion of following items in the total income of the assessee :

- | | | |
|--|---|----------------|
| i. Income from house property | : | Rs.34,300/- |
| ii. Income of bigger HUF (as per original order (protective basis in the case of bigger HUF) | : | Rs.5,64,540/- |
| iii. Income of Smaller HUF (as per original order) (protective basis in the case of Smaller HUF) | : | Rs.42,61,000/- |

11. Both the sides are in agreement that the facts and circumstances of these grounds are *mutatis mutandis* similar to those for the assessment year 2007-08. Following the view taken hereinabove, we set-aside the impugned order and remit the matter to the file of the

AO for deciding it in the light of the decision rendered by us for the immediately preceding assessment year.

12. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 06th October, 2021.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 06th October, 2021
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The CIT(A)-12, Pune
3. Pr.CIT, Central, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	04-10-2021	Sr.PS
2.	Draft placed before author	05-10-2021	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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