

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1302/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Sanjay Manohar Sagvekar,
Akshay Society, Sant Tukaram Nagar,
Near YCM Hospital,
Pimpri, Pune – 411018

PAN : APOPS0720C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 8(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 29-10-2021

घोषणा की तारीख / Date of Pronouncement : 10-01-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 17-04-2018 passed by the Commissioner of Income Tax (Appeals)-6, Pune [‘CIT(A)'] for assessment year 2014-15.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent and set ex-parte. Therefore, we proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The assessee raised five grounds of appeal amongst which the only issue is to be decided is as to whether the CIT(A) justified in confirming the addition made by the AO on account of debatable issue relating to interpretation of section 2(14)(iii) of the Act in the facts and circumstances of the case.

4. Heard ld. DR, Shri S.P. Walimbe and perused the material available on record. We note that the assessee is an individual and derives income from profession. The assessee filed return of income declaring a total income of Rs.10,49,360/-. The AO completed the assessment inter-alia making addition on account of Short Term Capital Gain to an extent of Rs.13,28,053/-. According to the AO, the assessee did not disclose the Short Term Capital Gain in the return of income thereby initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of particulars of income in the form of Short Term Capital Gain. The CIT(A) confirmed the same. We note that the contention raised by the assessee before the CIT(A) was that the assessee's bonafide belief was that the land sold being agricultural land situated within the jurisdiction of Gram Panchayat and is not capital asset within the meaning of section 2(14) of the Act. Further, it was contended that the land is located at Mouje Dapoli, which is a small Village near Dapoli Nagar Panchyat. We note that the assessee's contention raised before the CIT(A) that the land is an agricultural land and not located within the jurisdiction of Dapoli Nagar Panchayat, hence, the gain on the sale of such land is not taxable. The assessee's bonafide belief was that the land sold being agricultural land and not a capital asset as determined by the AO and as confirmed by the CIT(A). Therefore, the contention of assessee as we note that on the debatable issue, there is no penalty is warranted.

5. We note that the assessee placed reliance in the case of Mahindra L. Shah (HUF) in ITA No. 4382/Mum/2014, order dated 30-05-2017 wherein, the Mumbai Tribunal deleted the penalty imposed u/s. 271(1)(c) of the Act being debatable issue relating to interpretation whether it is a capital asset or agricultural land. The ld. DR did not bring on record anything to show that this Tribunal can confirm the order of CIT(A) on debatable issue u/s. 271(1)(c) of the Act. Therefore, the order of CIT(A) is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 10th January, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th January, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune