

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.174/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Late Shri Saifulla Abubakar Inamdar Legal Heir – Ilahi Saifulla Abubakar 1845, A-Ward, Sakoli Corner, Near Rankala Stand, Kolhapur – 416012 PAN : ACGPI1954B	Vs.	ITO, Ward 1(4), Kolhapur
Appellant		Respondent

ITA No.451/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Jainap alias Jainabi Abubakar Inamdar 1845, A-Ward, Sakoli Corner, Near Rankala Stand, Kolhapur – 416012 PAN : AFYPI0239J	Vs.	ITO, Ward 1(4), Kolhapur
Appellant		Respondent

ITA No.452/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Batul Mohammad Sayed 1845, A-Ward, Sakoli Corner, Near Rankala Stand, Kolhapur – 416012 PAN : HOQPS4934J	Vs.	ITO, Ward 1(4), Kolhapur
Appellant		Respondent

Assessee by

Shri M.K. Kulkarni

Revenue by

Shri M.G. Jasnani

Date of hearing

15-03-2022

Date of pronouncement

16-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

These three appeals by different but connected assessee arise out of separate orders passed by the Id. CIT(A) in November, 2016 in relation to the assessment year 2009-10. Since common issues are raised in these appeals, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated, the facts of Late Shri Saifulla Abubakar Inamdar (ITA No.174/PUN/2017) are that the Assessing Officer (AO) got information about the assessee having transferred two properties situated at C.S. No.1845 K 1 to 13, 1845 KH/1 to 5 (East side) and C.S.No.1845 K 1 to 13, 1845 KH/1 to 5 (West side) situated at A Ward, Tal-Karveer, Dist. Kolhapur for a consideration of Rs.35,75,000 and Rs.38,25,000, respectively. The AO observed that the stamp value of these properties was Rs.1,19,11,000 and Rs.1,12,72,000, respectively. As the sale deeds were executed on 25.07.2008, the AO opined that the transfer took place on such date only. Taking into consideration the property card extracts along with sale deeds wherein the name of assessee was appearing along with other two appellants in this

batch of appeals, the AO proceeded to determine capital gain on the transfer of the properties. The assessee requested for making a reference to the DVO u/s 50C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the purpose of determining fair market value as on 01.04.1981 and also as on the date of transfer. The DVO submitted the report determining the two values. On considering the Court order of Civil Judge, Junior Division, Kolhapur to the effect that the partition was not directed in respect of C.S.No.1845 K 1 to 13, 1845 KH/1 to 5 in respect of both the properties, the AO inferred that the assessee had 1/3rd share in these properties and 29.73% share in the remaining properties. Considering the DVO's report u/s 50C determining the value of property at the time of transfer, the AO adopted Rs.20,78,862 as full value of this property and Rs.6,92,954 as the value of property at 1/3rd share. The assessee's share in the remaining property at 29.73% was determined at Rs.32,64,692, thereby computing full value of consideration at Rs.39,57,646. Similar calculation was done for cost of acquisition by taking 1/3rd share in C.S.No.1845 K 1 to 13, 1845 KH/1 to 5 and 29.73% share in the remaining property. That is how, the AO computed the long

term capital gain pertaining to the assessee's share at Rs.27,15,676. The assessee contended before the Id. CIT(A) that the land sold by the assessee was sanadi land which was received by his forefathers from Sansthanik as Inam issued by the then Chatrapati. Since the Inam did not have any cost of acquisition, the assessee submitted that the capital gain was not chargeable to tax. As this issue was taken before the Id. CIT(A) for the first time, the Id. CIT(A) called for a remand report from the AO. The AO, in his remand report dated 03.12.2015, submitted that the assessee had not taken any such Inami land issue before him. The Id. CIT(A) vide para 5 of his order, firstly, held that the document placed on record issued by Tahsildar, Karveer, Dist. Kolhapur in respect of Inami land was in torn condition and not legible. As the assessee failed to place on record any concrete evidence for claiming non-chargeability of capital gains, the Id. CIT(A) held that the assessee failed to file any worthy evidence for accepting the contention. As regards the second contention of assessee that in the absence of any cost of acquisition and the machinery provision for computing the capital gains failing, the Id. CIT(A) observed that the sale / purchase of Inami land can be effected only on payment of Nazarana to Govt.

of Maharashtra, which was a pre-condition. He, therefore, held that Nazarana payment would be the cost of acquisition. That is how, he held that the argument of assessee was not tenable and affirmed the order passed by the AO. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. The facts of the other two appellants in this batch are similar inasmuch as they are co-owners who transferred the properties resulting in capital gains and the computation of capital gains has been done by the AO in the same manner and the Id. CIT(A) also decided the issue in the same way.

4. I have heard both the sides and gone through the relevant material on record. Firstly, it is relevant to mention that the assessee did not take up the issue of Inami land before the AO. It was for the first time that the assessee raised this issue before the Id. CIT(A) contending that in the absence of any cost of acquisition incurred by his forefathers in obtaining the land in Inam, the machinery provisions for computing the capital gains failed. In support of the said contention, the assessee placed before the Id. CIT(A) some documents asserting Inam Patrak containing the entry of impugned land which was in torn condition and not

legible. The Id. CIT(A) rejected the assessee's contention on the ground that the same was not legible. The second view canvassed by the assessee that there was no cost of acquisition in view of such property being received as Inam, the Id. CIT(A) observed that payment of Nazarana to the Govt. of Maharashtra was a pre-condition to receive a marketable title and for transfer of such land, such payment of Nazarana would constitute the cost of acquisition. The Id. AR submitted that there was no such provision in the relevant Statute providing for payment of Nazarana as a pre-condition for receiving Inam property. A prayer was made that the Id. CIT(A) ought to have examined the assessee's claim of Inami land by directing the enquiry to the concerned officials. Considering the entirety of the facts and circumstances of the instant case, I am of the considered opinion that it would be in the fitness of things, if the impugned orders are set aside and the matter is restored to the file of AO. I order accordingly and direct the AO to decide the issue afresh after conducting proper enquiries about the assessee's claim of having received the land in question by his forefathers as Inam and further about the Nil cost of

acquisition claim raised by the assessee. Needless to say, reasonable opportunity of hearing will be afforded to the assessee.

5. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 16th March, 2022.

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

पुणे Pune; दिनांक Dated : 16th March, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Kolhapur
4. The Pr. CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे /
DR 'SMC', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	15-03-2022	Sr.PS
2.	Draft placed before author	15-03-2022	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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