

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

**BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**  
**AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.680/PUN/2018**  
**निर्धारण वर्ष / Assessment Year : 2011-12**

Yogesh Ramdas Magar,  
Shravani Bunglow, Velshi,  
Alibag, Dist.-Raigad – 402209

PAN : AAWPM6017D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward – 4, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : Shri Subodh Ratnaparkhi  
Revenue by : Shri M. Jasnani

सुनवाई की तारीख / Date of Hearing : 11-04-2022  
घोषणा की तारीख / Date of Pronouncement : 09-05-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 31-01-2018 passed by the Commissioner of Income Tax (Appeals)-2, Thane [‘CIT(A)’] for assessment year 2011-12.

2. The only issue is to be decided is as to whether the CIT(A) is justified in confirming the addition of Rs.13,48,850/- made by the AO on account of short term capital gain on sale of agricultural land in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is an individual and had purchased  $\frac{1}{2}$  share in agricultural land on 19-04-2008 for a total consideration of Rs.16,00,000/- ( $\frac{1}{2}$  share Rs.8,00,000/-) plus cost of registration and stamp duty etc. The assessee entered into agreement for sale of his  $\frac{1}{2}$  share of the said land on 31-12-2010 for a consideration of Rs.32,98,100/-. A sum of Rs.5,00,000/- was received by cheque and balance amount was to be paid in installments prior to execution of Sale Deed, the copy of said agreement of sale in English translation at Page Nos. 05 to 08 of paper book. Subsequently, on receipt of entire sale consideration amount, registered Sale Deed was executed on 07-08-2013. The market value determined by stamp valuation authorities for levy of stamp duty as on 07-08-2013 was Rs.1,29,00,000/-, the copy of said registered Sale Deed in English translation at Page Nos. 33 to 40 of paper book. The assessee offered long term capital gain on sale of land to tax in A. Y. 2014-15 as the registered sale deed was executed on 07-08-2013. The AO in assessment proceedings for A.Y. 2014-15 formed an opinion that actual capital gains arose in A.Y. 2011-12 and assessed such gain in A.Y. 2011-12 on substantive basis u/s. 147 of the Act. The AO also made protective assessment in A.Y. 2014-15. The AO also applied the provisions of section 50C to the transaction.

4. The CIT(A) by way of a common order deleted the protective addition for A.Y. 2014-15 by holding that the Capital gain is to be made in A.Y. 2011-12 and not A.Y. 2014-15 vide Para No. 5.1 at Page No. 11 of the impugned order. As per proviso to Section 50C, the market value as per stamp valuation authorities prevalent in A.Y. 2011-12 was to be taken as sale consideration and not Rs.1,29,00,000/- stamp duty value prevalent in

A.Y. 2014-15 vide Para Nos. 5.2 and 5.3 at Page No. 11 of the impugned order and claim for exemption u/s. 54B was denied vide Para No. 5.4 at Page No. 12 of the impugned order. We note that the CIT(A) brought to tax the Capital Gain in A.Y. 2011-12 by relying on a clause of registered sale deed dated 07-08-2013 that *"Second Part has given the vacant and peaceful possession of the said property to the First Part in the year 2011, on receipt of total consideration amount by visiting the said property and demarcating the boundaries of the said property including all items on the said property and rights therein."* We note that as per this clause, the AO/CIT(A) have considered possession was given in previous year relevant to A.Y. 2011-12 and the capital gain to arise in the said assessment year. On perusal of the registered sale agreement dated 07-08-2013, that possession of the property is given in 2011 on receipt of total consideration amount and the total sale consideration amount was received by the assessee only by 14-05-2011 for a sum of Rs.13,00,000/-. This fact is evidenced by the internal Page No. 5 of sale deed dated 07-08-2013 giving details of payment of sale consideration to assessee at Page No. 36 of the paper book. Further, we note that credit of cheque of Rs.13,00,000/- in the bank account of the assessee on 15-05-2011 at Page No. 42 of paper book. Therefore, it is clear that the total sale consideration of Rs.33,00,000/- was received by the assessee only by 14-05-2011 which is not disputed by the lower authorities. The contention of ld. AR is that as per the relevant para of the registered sale deed dated 07-08-2013, the possession of land is handed over only on receipt of entire sale consideration amount. As undisputedly, the entire sale consideration is received by the assessee only by 14-05-2011, falling in previous year relevant to A.Y. 2012-13, the possession of land is also handed over in previous year relevant to A.Y. 2012-13 which is at Page Nos. 9 and 10 of the paper book and the capital

gain brought to tax in A.Y. 2011-12 is factually unjustified. The ld. DR contended that the capital gain is triggered by operation of section 2(47)(v) of the Act, but, we find that the assessee received entire sale consideration on 14-05-2011 and handing over possession of land in A.Y. 2012-13, in our opinion, no capital gain arises to the assessee in A.Y. 2011-12. In view of our discussion and in the facts and circumstances of the case, the order of CIT(A) is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 09<sup>th</sup> May, 2022.

Sd/-  
(Dr. Dipak P. Ripote)  
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> May, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Thane
4. The Pr. CIT-2, Thane
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