

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

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.2829/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Machindra L. Bodke,
A/p Gahunje, Maval
Pune- 410 506.

PAN : AOBPB9433R

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, 9(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Dr. Vardhaman L. Jain
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 19.04.2022
घोषणा की तारीख / Date of Pronouncement : 22.04.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for A.Y. 2009-10 directed against the CIT(A) - 6, Pune's order dated 20/09/2017 in case No. PN/CIT(A) -6 /ITO W.9(3)/151/2016-17 involving proceeding u/s. 143(3) of the Income Tax Act, 1961 ; in short "the Act. Heard both the parties. Case file perused.
2. The assessee pleads the following substantive grounds in the instant appeal:

"1. The Learned CIT(A) erred in law and on facts in confirming jurisdiction u/s 148 of the Income Tax Act, 1961.

2. *Without prejudice to the above, the learned CIT(A) in erred in law and on facts in confirming the valuation of land as on 01.04.1981 at Rs.20/- per Sq.Mt as against that of Rs.240 per Sq. Mt. claimed by the appellant, and thereby making addition of Rs.1,21,59,030/- to the Income from Capital Gains.”*

3. The assessee does not press for his former substantial ground challenging validity of proceedings u/s. 148 of the Act. Rejected accordingly.

4. Next comes assessee's latter issue of fair market value as on 01.04.1981 for the purpose of computing capital gains claimed @ of Rs.240 Sq.Mt. as per registered value report which has seen reduced to Rs.20 per Sq.Mt. only resulting in addition of Rs.1,21,59,030/-. We note, that the same has arisen on account of the fact that the lower authorities have proceeded to disturb assessee's registered valuer's report to this affect u/s. 55A of the Act.

5. There is hardly any dispute between the parties, that the assessee's registered valuer had determined the cost of acquisition/ fair market value as on 01.04.1981 at the rate of Rs.240 sq.ft. which admittedly happens to be already more than the SRO price at that point of time. The Revenue could not rebut the fact that the legislative amendment in Section 55(A)(a) substituting the earlier provision that the fair market value so claimed "is less than its fair market value" by "is at variance with its fair market value" has come by the Finance Act, 2012 with effect from 01.07.2012 whereas we are in assessment year 2009-10 only. Case law [2014] 367 ITR 238 (Guj) CIT Vs Gauranginiben S.Shodhan & [2006] 103 TTJ 216 (Pune) Smt. Krishnabai Tingre Vs. ITO holds that the Assessing Officer ought not to ignore a

registered valuer report in identical circumstances by applying the amended statutory provision with retrospective effect. We adopt the very reasoning mutatis mutandis to delete the impugned addition. Ordered accordingly.

6. This assessee's appeal is partly allowed in above terms

Order pronounced in the Open Court on this 22nd day of April, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 22nd April, 2022.

Ashwini

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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	19.04.2022		Sr. PS/PS
2	Draft placed before author	20.04.2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			