

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1768/PUN/2019  
निर्धारण वर्ष / Assessment Year: 2014-15

Sarika Pankaj Navlakha, Plot No.19, Matruchhaya, Audumbar Society, Pune- 411037. PAN : AEVPB2442Q	Vs.	ITO, Ward-11(2), Pune.
Appellant		Respondent

Assessee by : Smt. J. R. Chandekar  
Revenue by : Shri Arvind Desai  
Date of hearing : 24.05.2022  
Date of pronouncement : 26.05.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM:**

This assessee's appeal for assessment year 2014-15 arises against the CIT(A)-1 Pune's order dated 23.09.2019 passed in case no.PN/CIT(A)-1/ITO,Wd.11(2)/PN/712/16-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short the Act.

Heard both the parties. Case file perused.

2. Coming to sole substantive issue between the parties regarding the assessee's holding period of the capital asset forming subject matter of transfer herein, it emerges that the CIT(A) has affirmed the assessment findings holding her to have transferred a short term capital asset as follows :-

*“5.5.1 I have carefully considered the submission of the appellant in light of the judicial decisions and the facts as brought by the AO. The impugned issue is whether or not the Ld. AO was justified in taking the date of possession as the date for calculation of capital gain. Briefly stated, the facts are that the appellant had purchased a flat from M/s. Vahi Mantra Ventures along with her husband for Rs. 15,93,000/- on 17.02.2011. The possession of the said flat was taken on 17.12.2013. As per the agreement entered with the builder on 17.02.2011, the appellant had, out of the purchased consideration of Rs. 15,93,000/-, paid Rs. 2,39,000/- to the promoter on the date of this execution of agreement of sale i.e., 07.02.2011. The possession of the flat was handed over to the appellant on 17.12.2013. Before the possession of the flat, the appellant had to further make the payment of the remaining amount as per the payment schedule annexed at Second schedule of the agreement. During the course of the appellate proceedings, the Ld. AR of the appellant filed written submission and relied on the decision of the Delhi HC in the case of CIT Vs. K. Rama Krishna (supra) for a proposition that the date of allotment of plot to the assessee to be considered for the purpose of capital gain.”*

3. The Revenue vehemently argued that the learned lower authorities have rightly gone by the date of possession in assessee's case i.e. 17.12.2013 followed by transfer thereof falling in the impugned assessment year itself. Mr. Desai vehemently supported the Revenue stand. He failed to dispute that the assessee in fact has executed the transfer deed cum irrevocable of power of attorney regarding “right, title and interest” in the flat than the flat itself. She had acquired as her said right at the time of first and foremost instalment vide agreement dated 17.02.2011 than the possession and therefore, her share transferred deserves recognized from the date of agreement and first instalment falling on 07.02.2011 only. That being the case, I reject Revenue's vehement contention supporting the short term capital gains addition of Rs.19,04,960/- and direct the

learned Assessing Officer to rather compute long term capital gains rather as per law in consequential proceedings. Ordered accordingly.

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

Order pronounced on this 26<sup>th</sup> day of May, 2022.

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> May, 2022.

*Sujeet (DOC)*

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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