

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE
BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1808/PUN/2019

निर्धारण वर्ष / Assessment Year : 2013-14

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|---|------------|-------------------------|
| Kalpesh Nemichand Oswal, A/12, Shatrunjay Society, 299, Ghorpade Peth, Shankar Sheth Road, Pune – 411 002 PAN : AAHPO1089L | Vs. | ITO, Ward-6(5), Pune |
| (Appellant) | | (Respondent) |

Appellant by Shri Kalpesh Oswal

Respondent by Shri Arvind Desai

Date of hearing 27-05-2022

Date of pronouncement 31-05-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2013-14 arises against the CIT(A)-4, Pune's order dated 26-09-2019 passed in case No. PN/CIT(A)-4/ITO, Ward-6(5), Pune/202/2016-17 involving proceedings under Section 143(3) of the Income Tax Act, 1961 in short the Act.

Heard both the sides. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

“On the fact and in the circumstances of the case the learned Assessing officer and CIT(A) erred in:

1. Not considering the capital gain of Rs.2,82,838/-, arising from sale of property, as long as term capital gain. This action being not in accordance with law it is prayed that the AO be directed to treat and consider the said amount of Rs. 2,82,838/- as long as term capital gain and tax accordingly.
 2. Not considering an including the amount of Rs. 1,42,738/- paid as interest on loan for housing, to the cost of acquisition. The action being bad in law it is prayed that the AO be directed to include the said amount of Rs.1,42,738/- to the cost of acquisition of the flat for determining the capital gains.
 3. In treating the amount of Rs.13,10,603 /- being surplus arising on sale of flat as short-term capital gain and assessing accordingly. This action of the Assessing Officer being not in accordance with law it is prayed that the said surplus be treated as surplus arising on transfer of long-term capital assets and be tax as such by computing the long-term capital gain in accordance with the provisions of the law.
 4. Not assessing the income in accordance with the provisions of law. It is prayed that the assessment be set aside and AO be directed to consider and accept the submission made by the assessee and assess the income accordingly.
3. Mr. Desai vehemently argued that the lower authorities have been rightly rejected assessee's claim since not filed by way of a revised return thereby violating Goetz India Ltd. Vs. CIT 284 ITR 323 (SC). He fails to rebut the clinching fact that their lordships have made clear that the same nowhere impinges upon the appellate authorities decision vested under the provisions of the Act to entertain a new claim. Coupled with this, there is no adjudication on merits regarding the assessee's

claim (supra) rejected herein. Faced with this situation, I deem it appropriate to restore the assessee's substantive grievance back to the Assessing Officer for his adjudication on merits within three effective opportunities of hearing. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 31st May, 2022.

Sd/-

(S.S.GODARA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 31st May, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
/ 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 | 27-05-2022 | Sr.PS |
| 2. | Draft placed before author | 30-05-2022 | 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. | | |