

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 1596/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Prathamesh Developers, S.No.41/1, Waraje-Malewadi, Pune – 411 058 Maharashtra PAN : AAJFP3456G	Vs.	ITO, Ward-2(1), Pune
Appellant		Respondent

Assessee by Shri Sharad Atmaram Vaze
Revenue by Shri M.G. Jasnani

Date of hearing 06-06-2022
Date of pronouncement 06-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order dated 05-07-2019 passed by the Id. CIT(A)-3, Pune in relation to the assessment year 2015-16.

2. The only issue raised in this appeal is against the confirmation of addition of Rs.28,35,750/- in the hands of the assessee despite the fact that the income to that extent was offered for taxation in the hands of the partner of the assessee firm.
3. Succinctly, the facts of the case are that the assessee is a Promoter, Builder and Developer. It filed return declaring total

income of Rs.9.88 crore. During the course of assessment proceedings, the Assessing Officer (AO) observed that receipt from completed contracts amounting to Rs.23.96 crore shown by the assessee did not include sale consideration of Rs.90,34,500/- in respect of Flat No. C-105 in Phase-1. On being called upon to explain the reasons, the assessee submitted that the flat was sold to Mr. K.R. Bora, partner of the assessee firm, during the financial year 2011-12 for a total consideration of Rs.61,98,750/- and hence its sale by the partner in the year under consideration did not warrant recognition of sale proceeds as its revenue. The AO observed that no registration of flat, at the time of sale in 2011-12, was done. Even though the sale consideration of the flat in the earlier financial year was shown as Rs.61.98 lakhs, the assessee-firm received only a sum of Rs.1.00 lakh with the remaining amount of Rs.60.98 lakh appearing as receivable. The assessee's contention that Mr. K.R. Bora, partner of the assessee firm, who had purchased the flat in F.Y. 2011-12, declared the sale consideration in his own hands during the year under consideration, did not find favour with the AO. He noticed that the sale of such a flat to Ms. Anjali Naik and Ms. Milind Naik, through registered sale deed, took place on 21-02-2015 through

one of the partners of the assessee firm, namely, Mr. Shirish G. Riswadkar. That is how, the AO included Rs.90.34 lakh in the total income of the assessee. The Id. CIT(A) upheld the view point of the AO, in principle, by however, reducing the amount of the addition to Rs.28,35,750/- [Rs.90,34,500 (sale consideration in the year in question) minus Rs.61,98,750/- (consideration settled and recognized as income in the F.Y. 2011-12)]. The assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. The assessee has set up a case that Flat No.C-105, Phase-1 was sold by the assessee to its partner Mr. K.R. Bora in the F.Y. 2011-12 and hence, no sale consideration can be taken up for inclusion in the total income of the assessee for the year in appeal. It is an admitted fact that no registered sale deed was executed in the financial year 2011-12, when the alleged sale took place from the assessee firm to Mr. K.R. Bora. The Hon'ble Supreme Court in *CIT Vs. Balbir Singh Maini (2017) 398 ITR 531(SC)* has held that if an agreement for sale of immovable property is not registered, it does not amount to transfer in view of the 2001 amendment carried out to section 55A of the Transfer of Property Act and also simultaneous

amendments to section 17(1A) and 49 of the Registration Act, 1908. In that view of the matter, no transfer of the immovable property can be said to have taken place in the F.Y. 2011-12, when the assessee allegedly transferred the property to Mr. K.R. Bora but did not execute any registered sale deed. It is only in the year under consideration when the assessee transferred the property by means of a registered sale deed on 21-02-2015 to Ms. Anjali Naik and Ms. Milind Naik that the transfer will take place in the hands of the assessee. It is, ergo, held that the sum of Rs.28.35 lakh, being, the amount of addition sustained in the first appeal, is includible in the hands of the assessee firm.

5. The contention of the ld. AR that since the partner Mr. K.R. Bora included the said amount of Rs.28.35 lakh in his total income and paid taxes thereon and hence, inclusion of the similar amount in the hands of the assessee firm should not be made, is not germane to the issue. It goes without saying that simply because a wrong person has been assessed would not deter the Revenue from assessing the right person. The Hon'ble Apex Court in *ITO VS Ch. Atchiah (1996) 218 ITR 239 (SC)* has held that only the right person is to be assessed. However, double taxation of the same amount in two hands cannot be permitted.

Mr. K.R. Bora, an individual, who had included Rs.28.35 lakh in his own hands while filing the return for the assessment year under consideration and paid taxes thereon, is free to take remedial action for exclusion of said amount from his total income as per law.

6. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 06th June, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 06th June, 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)-3, Pune
4. The Pr. CIT-2, Pune
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
5. DR 'B', 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	06-06-2022	Sr.PS
2.	Draft placed before author	06-06-2022	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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