

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.542/PUN/2016
निर्धारण वर्ष / Assessment Year : 2008-09

I.T.O. Word -3, Panvel

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Jai Ganesh Co-Op Hsg.Society Ltd.,
C/o Shri Jayendra C. Naik,
Chairman of the Society,
House No.382, Mothe Nagaon,
Opp. Ganpati Temple,
Uran,Dist – Raigad- 400702

PAN : AABAJ8098H

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2921/PUN/2016
निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Jai Ganesh Co-Op Hsg. Society Ltd.,
C/o Shri Jayendra C. Naik,
Chairman of the Society,
House No.382, Mothe Nagaon,
Opp. Ganpati Temple,
Uran,Dist – Raigad- 400702

PAN : AABAJ8098H

.....अपीलार्थी / Appellant

बनाम / V/s.

I.T.O. Word -3, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Rajeev Kumar & Shri S.P.Walimbe

सुनवाई की तारीख / Date of Hearing : 12.05.2022
घोषणा की तारीख / Date of Pronouncement : 08.06.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. These Revenue's and assessee's cross appeal for Assessment Year 2008-09 arise against the CIT(A) -2 Aurangabad's order dated 18.01.2016 passed in case No. THN/CIT(A)-2/359/2014-15 involving proceeding u/s 144 r.w.s.147 of the Income Tax Act, 1961 in short the "Act."

Cases called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. Coming to the Revenue's sole substantive grievance regarding fair market value of assessee's capital asset as Rs. 5,94,96,000/-, we note with the able assistance coming from the Departmental side that this taxpayer had neither transferred any "land nor a building" as specified u/s.50C(1) of the Act but only its lease hold rights in the 'CIDCO' area. We thus hold that such a leasehold rights are nowhere covered u/s.50C(1) going by specified categories therein as per stricter interpretation recently reiterated in Commissioner of Customs Vs. Dilip Kumar and Co. (2018) 9 SCC 1(SC) (FB). We accordingly reject the Revenue's instant sole substantive grievance as well as the main appeal ITA No. 542/PUN/2016.

3. Next comes the assessee's cross appeals challenging correctness of both the lower authorities action adding the alleged unaccounted cash component of Rs.5,94,96,000/- in issue. The Revenue vehemently argued that both the learned authorities have gone by the seized material annexure O-2(extracted

in page 12 in assessment order dated 24.03.2014) clearly indicating cash “paid to Jai Ganesh Co-operative ... members”. It further invokes the necessary presumption of correctness given to the such seized documents u/s 292C as well.

4. We find no substance in Revenue’s forgoing arguments supporting the impugned addition. This is for the precise reason that the alleged seized document itself rebuts the presumption in assessee’s favour once its members only had received the payment who are separately assessable in their individual capacity(ies). We further make it clear that the learned lower authorities have nowhere quoted any other cogent evidence since they have only gone by above seized document. We accordingly accept the assessee’s sole substantive grievance as well as its cross appeal ITA No. 2921/MUM/2016 in very terms. Ordered accordingly.

5. This Revenues appeal ITA 542/PUN/2016 is dismissed and assessee’s cross appeal ITA No. 2921/MUM/2016 is allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on this 8th day of June, 2022.

Sd/-

Sd/-

(DR.DIPAK P.RIPOTE)

(S.S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 8th June, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr.CIT-2, Thane
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
1	Draft dictated on	12.05.2022	
2	Draft placed before author	06.06.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
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		