

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.839/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Mrs. Bhavana Shashikant Ghone,
CTS No.576,
Malati Balwant Apartment,
Ramanbaug Chowk,
Narayan Peth,
Pune- 411 030.

PAN : AEVPG4868D

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward 12(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 07.06.2022
घोषणा की तारीख / Date of Pronouncement : 20.06.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for A.Y. 2014-15 is directed against the CIT(A) - 8, Pune's order dated 03/01/2018 passed in case No. PN/CIT(A) -8/ ITO, Wd. 12(2)/253/2017-18/596 involving proceeding u/s. 143(3) of the Income Tax Act, 1961 ; in short “the Act”.

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee's sole substantive ground challenging section 56(2)(vii)(b) addition of Rs.67,61,000/- pertaining to the alleged purchase/acquisition of the asset i.e. plot no. J326 in MIDC industrial area, hardly requires us to delve deeper in the relevant factual matrix for the reasons hereunder.

3. We note with the able assistance both the parties as well as from a perusal of assessee's paper book running into 126 pages that her vendor namely M/s. General Pharmaceuticals Pvt. Ltd. had acquired leasehold rights in the foregoing industrial plot/ factory vide its agreement dated 09.08.1984 and 16.10.1986; as the case may be. It thereafter executed a similar lease deed in assessee's favour on 04.08.2014 which has made learned lower authorities to invoke the impugned addition in the latter's stands forming subject matter of adjudication before us.

4. The first and foremost issue that arises for our apt adjudication in this backdrop herein is as whether such leasehold rights are covered under the statutory definition of "any immovable property" u/s.56 (2)(vii)(b) as defined in Explanation (d)(i) as "being land or building or both." We note that the legislature has used an identical expression in section 50C(1) of the Act wherein various judicial precedents (2017) 77 taxmann.com 308 (Bom.) CIT Vs. Greenfield Hotels and Estates Pvt. Ltd., (2015) 55 taxmann.com 171 (Pune) KancastPvt. Ltd. Vs. ITO, (2011) 4SCC 36 (SC) GVK industries Ltd. V/s. ITO and 2020 - TIOL-307-ITAT-Kolkata hold that such a leasehold right

does not come under either of the twin specified categories of “land or building or both” ; as the case may be. We adopt the very reasoning herein as well to conclude that the learned lower authorities have erred in law and on facts in invoking section 56(2)(vii)(b) addition qua assessee’s acquisition of leasehold rights in issue. The impugned addition stands deleted in above terms. Ordered accordingly.

5. This assessee’s appeal is allowed in above terms.

Order pronounced in the Open Court on this 20th day of June, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 20th 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)-8, Pune.
 4. The Pr.CIT-4,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.

ITA No.839/PUN/2018
A. Y. : 2014-15
Mrs. Bhavana Shashikant Ghone,

S.No.	Details	Date	Initials
1	Draft dictated on	07.06.2022	
2	Draft placed before author	20.06.2022	
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		