

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

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

आयकरअपीलसं. / ITA No.349/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

Mrs.Shruti Patni, S.No.1, Irani Market Compound, Yerawada, Pune – 411 006. PAN: ALSPS 5573R	Vs	The Income Tax Officer, Ward-7(4), Pune
Appellant/ Assessee		Respondent /Revenue

आयकरअपीलसं. / ITA No.545/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

JCIT (OSD), Circle-7, Pune	Vs	Mrs.Shruti Patni, S.No.1, Irani Market Compound, Yerawada, Pune – 411 006. PAN: ALSPS 5573R
Appellant/ Assessee		Respondent /Revenue

आयकरअपीलसं. / ITA No.368/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

Mr. Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune – 411 006. PAN: AGUPP 5917 H	Vs	The Income Tax Officer, Ward-7(4), Pune.
Appellant/ Assessee		Respondent /Revenue

आयकरअपीलसं. / ITA No.734/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

JCIT (OSD), Circle-7, Pune	Vs	Mr. Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune – 411 006. PAN: AGUPP 5917 H
Appellant/ Assessee		Respondent /Revenue

आयकरअपीलसं. / ITA No.548/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

JCIT (OSD), Circle-7, Pune	Vs	Mrs. Sadhana A. Patni, S.No.1A, Irani Market Compound, Yerawada, Pune – 411 006. PAN: AAUPP 2868H
Appellant/ Assessee		Respondent /Revenue

आयकरअपीलसं. / ITA No.547/PUN/2018
निर्धारणवर्ष / Assessment Year: 2015-16

JCIT (OSD), Circle-7, Pune	Vs	Mrs. Vasundhara A. Patni, S.No.1A, Irani Market Compound, Yerawada, Pune – 411 006. PAN: AFVPG2459K
Appellant/ Assessee		Respondent /Revenue

Assessee by Shri C.H. Naniwadekar
Revenue by Shri Sunil Kumar, CIT and
Shri Arvind Desai

Date of hearing 08-07-2022
Date of pronouncement 11-07-2022

आदेश / ORDER

PER BENCH :

This batch of 6 appeals by the different but connected assesses contain cross appeals pertaining to Mr. Shruti Patni and Mr. Arihant Patni and other two appeals by the Revenue in relation to the assessment year 2015-16. Since common issues

are raised in these appeals, we are, therefore proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The Departmental appeal in ITA No.734/PUN/2018 (Mr.Arihant Patni) is a recalled matter inasmuch as the earlier order passed by the Tribunal dismissing the appeal of the assessee due to low tax effect was subsequently recalled vide its later order in M.A.No.37/PUN/2021 dated 11-08-2021.

ITA No.349 & 545/PUN/2018 – Mrs. Shruti Patni :

3. The first issue raised by the assessee in her appeal is against the confirmation of addition of Rs.42,22,766/- made by the Assessing Officer (AO) under the head 'Income from house property'.

4. At the very outset, the ld. counsel for the assessee submitted that similar issue has been decided against the assessee by the Tribunal in earlier years and the facts and circumstances are similar. In view of this position, we dismiss the first ground of appeal.

5. The second ground of the assessee's appeal, without prejudice to the first ground, is against the confirmation of the computation of annual value at Rs.52.00 per sq.ft. and not as per

annual ratable value computed by the Pune Municipal Corporation.

6. The ld. AR fairly submitted that this issue was also there in the assessee's appeal for the preceding assessment year in which the Tribunal has restored the matter to the file of the AO for a fresh consideration and decision. The ld. DR fairly admitted the factual position stated on behalf of the assessee. Respectfully following the precedent, we set-aside the impugned order and remit the matter to the file of AO for deciding it afresh in conformity with the direction given by the Tribunal in its earlier order.

7. The only issue raised by the Revenue through various grounds is against the treatment of gain/loss from the activity of transactions in shares/mutual funds by engaging (Portfolio Management Service) PMS provider. The assessee treated such income as 'Capital gain', which was assessed by the AO as 'Business income'. The ld. DR fairly admitted that this issue also came up for consideration before the Tribunal in a group of cases including the assessee for the assessment year 2010-11. Placing on record a copy of the Tribunal order dated 12-02-2016, the ld. DR admitted that this issue has been decided against the Revenue

and in favour of the assessee. In view of the precedent being available on this issue in the assessee's own case for the earlier year, we approve the decision of the Id. CIT(A) in this regard.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is dismissed.

ITA No.368 & 734/PUN/2018 – Mr. Arihant Patni :

9. These cross appeals involve similar issues as were there in the case of Mrs. Shruti Patni above for the same assessment year.

10. The first ground of the assessee's appeal is against the confirmation of addition of Rs.1,14,87,032/- under the head 'Income from house property' which has been decided by the Tribunal against the assessee in its order for the preceding assessment year in the same batch of appeals in which the case of Mrs. Shruti Patni was decided. Copy of such order dated 07-06-2022 has been placed on record. In view of the fact that the Id. AR fairly admitted that similar matter to be covered against the assessee, we affirm the impugned order on this score. This ground is not allowed.

11. The second ground, without prejudice to the first ground, is against the confirmation of computation of annual value at Rs.52/- per sq.ft. per month and not as per the Annual ratable

value by the Pune Municipal Corporation (PMC). Following the view taken hereinabove in the case of Mrs. Shruti Patni *supra*, we set aside the impugned order on this issue and remit the matter to the file of the AO for deciding it afresh in conformity with the direction given by the Tribunal in earlier years.

12. The first issue raised by the Revenue in its appeal is against the deletion of the addition of capital gain from the activity of transactions in shares/mutual funds through PMS amounting to Rs.4,06,66,499/-.

13. Both the sides fairly admitted that the facts and circumstances of this ground are similar to those of Mrs. Shruti Patni, as discussed above. Following the same view, we approve the action of the Id. CIT(A) on this score. This ground is not allowed.

14. The only other issue surviving in this appeal is against the disallowance of Rs.15,81,440/- made by the AO u/s.14A of the Act.

15. Briefly stated, the facts of the case are that the assessee earned tax free dividend income. The AO computed the disallowance u/s.14A r.w. Rule 8D(2)(iii) of the Income Tax Rules, 1962 amounting to Rs.15,81,440/-. The Id. CIT(A),

following his order for the assessment year 2014-15, allowed the assessee's ground.

16. Having heard the rival submissions and gone through the relevant material on record, it is seen that the Id. CIT(A) decided the issue in favour of the assessee by following his order for the A.Y. 2014-15. The Id. AR has placed on record a copy of the order passed in a group case in which the addition made u/s.14A under similar circumstances has been deleted. The relevant discussion has been made in para 11 of the lead order passed in the case of *Mr. Arihant Patni vide ITA No.1508/PUN/2014 for the A.Y. 2010-11*. The Tribunal in this case followed the order in the assessee's own case for the A.Y. 2008-09 in which similar disallowance u/s.14A was deleted on the ground that the assessee did not incur any expenditure on PMS. The Id. DR could not point out any distinguishing fact for the year under consideration *vis-à-vis* those discussed in the aforementioned order. Further, the Id. CIT(A) also deleted such disallowance following an order passed by the Tribunal. Relevant discussion from the earlier order has been reproduced at para 5.2 of the impugned order. In view of these facts, we do not find any reason to deviate from the

decision of the Id. CIT(A), which is based on earlier orders passed by the Tribunal. This ground is not allowed.

17. In the result, the appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is dismissed.

ITA No.548/PUN/2018:

18. This appeal by the Revenue is in the case of Mrs. Sadhana A. Patni is for the A.Y. 2015-16. The only issue raised by the Revenue in its appeal is against the treatment of income from investments in shares/mutual funds by engaging PMS. The facts are similar to those discussed in the case of Mr. Arihant Patni and Mrs. Shruti Patni above. The assessee offered the income as 'capital gain' which was assessed by the AO as 'business income'. The Tribunal in series of decisions has held such issue in favour of the assessee by holding that such income should be taken as 'capital gain'. We, therefore, approve the view taken by the Id. CIT(A) on this score.

19. In the result, the appeal is dismissed.

ITA No.547/PUN/2018:

20. The facts and circumstances as well as relevant issue raised in this appeal by the Revenue are similar to that of appeal in the

case of Mrs. Sadhana A. Patni, discussed above wherein the Revenue has challenged the treatment of income derived from the investment made in shares/mutual funds by engaging PMS as capital gain. Since the facts are similar, we approve the view taken by the Id. CIT(A) on this score.

21. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 11th July, 2022.

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

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

पुणे Pune; दिनांक Dated : 11th July, 2022
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-5, Pune
4. The Pr.CIT-4, Pune
5. DR, ITAT, 'A' Bench, 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	08-07-2022	Sr.PS
2.	Draft placed before author	11-07-2022	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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