

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER**

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	442/PUN/2019	Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AGUPP5917H	DCIT, Circle-7, Pune.	2016-17
2	567/PUN/2019	ACIT, Circle-7, Pune	Apoorva Ashokkumar Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AGUPP5918J	2016-17
3	568/PUN/2019	ACIT, Circle-7, Pune	Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AGUPP5917H	2016-17
4	569/PUN/2019	ACIT, Circle-7, Pune	Shruti Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : ALSPP5573R	2016-17
5	418/PUN/2020	DCIT, Circle-7, Pune	Amitkumar Gajendrakumar Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AAUPP2869G	2017-18

6	419/PUN/2020	DCIT, Circle-7, Pune	Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AGUPP5917H	2017-18
7	420/PUN/2020	DCIT, Circle-7, Pune	Ashokkumar Sobhagmal Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AFVPP9713P	2017-18
8	421/PUN/2020	DCIT, Circle-7, Pune	Apoorva Ashokkumar Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AGUPP5918J	2017-18
9	422/PUN/2020	DCIT, Circle-7, Pune	Vasundhara Apoorva Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : AFVPG2459K	2017-18
10	423/PUN/2020	DCIT, Circle-7, Pune	Shruti Arihant Patni, S.No.1A, Irani Market Compound, Yerawada, Pune- 411006. PAN : ALSPP5573R	2017-18

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Arvind Desai

Date of hearing : 21.07.2022
Date of pronouncement : 22.07.2022

आदेश / ORDER

PER BENCH :

These are ten appeals under consideration. The appeal in ITA No.442/PUN/2019 for A.Y. 2016-17 filed by the assessee as well as the cross appeal/appeals in ITA Nos.567 to 569/PUN/2019 for A.Y. 2016-17 and ITA Nos.418 to 423/PUN/2020 for A.Y. 2017-18 filed by the Revenue against the respective orders of Id. Commissioner of Income Tax (Appeals), Pune for the respective assessment years on record.

2. Since the identical facts and common issues are involved in all the above captioned ten appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.442/PUN/2019 for the assessment year 2016-17 are stated herein.

4. Briefly, the facts of the case are that the appellant is an individual deriving income from house property. The return of income for the assessment year 2016-17 was filed on 29.07.2016 declaring total income of Rs.1,85,63,510/- and the said return of income was revised on 27.03.2018 at total income of Rs.1,85,63,510/-. Against the said return of income, the assessment

was completed by the Income Tax Officer, Ward-7(5), Pune ('the Assessing Officer') vide order dated 19.11.2018 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.5,72,16,757/-. While doing so, the Assessing Officer had brought to tax a sum of Rs.1,14,31,733/- under the head "income from house property", which was vacant during the whole of year under consideration. The Assessing Officer also made addition of Rs.3,68,69,651/- on account of income earned from Portfolio Management Services (PMS) as business income as against the claim of the assessee that it should be assessed under the head "capital gains". The Assessing Officer also made addition of Rs.20,49,446/- u/s 14A of the Act.

5. Being aggrieved by the above disallowances, an appeal was preferred before the ld. CIT(A), who vide impugned order confirmed the addition made under the head "income from house property". However, the ld. CIT(A) held that the income earned under the head "PMS" should be assessed under the head "capital gains" following the earlier decision of the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.1508, 1509 and 1510/PUN/2014 for A.Y. 2010-11 order dated 12.02.2016.

6. Being aggrieved by that part of the order of the ld. CIT(A), which is against the assessee, the assessee is in appeal before us in

ITA No.442/PUN/2019 for A.Y. 2016-17. Being aggrieved by that part of the decision of the Id. CIT(A) in holding that the income earned under the head “PMS” should be assessed under the head “capital gains”, the Revenue is in appeal before us in ITA No.568/PUN/2019 for A.Y. 2016-17.

7. Now, we shall take up the appeal of the assessee in ITA No.442/PUN/2019 for A.Y. 2016-17 for adjudication.

ITA No.442/PUN/2019, A.Y. 2016-17 – By Assessee :

8. The assessee raised the following grounds of appeal :-

“1. In respect of addition of Rs. 1,14,31,733 under the head 'income from house property':

a) In confirming the addition of Rs. 1,14,31,733 (including income of minor children clubbed u/s 64(1A)) as deemed income from house property

b) In not appreciating that the assessee has taken reasonable efforts to let out the property and hence by applying the provisions of section 23(1)(c) r.w.s. 23(1)(a) the annual value of the property should be taken at 'Nil'

2. Without prejudice to above, in confirming the computation of annual value @ Rs. 52 per sq. feet p.m. and not as per the annual ratable value computed by the Pune Municipal Corporation.

3. The appellant craves leave to add, modify or withdraw any of the grounds of appeal at the time of hearing.”

9. Ground of appeal no.1 challenges the finding of the Id. CIT(A) holding that the notational value of the building which was vacant during the whole year under consideration was assessable to income-tax under the head ‘income from house property’. This

finding of the Id. CIT(A) is inconsonance with the decision of the Hon'ble Supreme Court in the case of Chelmsford Club vs. CIT, 243 ITR 89 (SC) wherein the Hon'ble Supreme Court held that :-

“A conjoint reading of sections 2(24), 14, 22 and 23 also makes it abundantly clear that what is being taxed under section 22 is the 'deemed income' of an assessee from the property owned by him”.

.....

“What was charged under section 22 was the annual value of the ownership of the property irrespective of the fact whether or not any income was either actually received or had accrued to the assessee.”

Even the Co-ordinate Bench of this Tribunal in assessee's own case (supra) had confirmed the assessability of notional value of the building to income-tax. Accordingly, we hold that the notional value of building though vacant during the whole year is still assessable to income-tax. Thus, this ground of appeal no.1 raised by the assessee stands dismissed.

10. Ground of appeal no.2 challenges the reasonableness of fair market value of rental value of the property determined by adopting the higher than annual rental value rent receivable. Since in the present case, there is no rental receivable, the gross annual value computed by the local authorities may be taken as annual rental value of the property. Accordingly, we remit this matter to the file of the Assessing Officer to adopt the annual rental value of the property as computed by the local authorities as gross annual value

of the property. Thus, this ground of appeal no.2 raised by the assessee stands partly allowed.

11. In the result, the appeal filed by the assessee in ITA No.442/PUN/2019 for A.Y. 2016-17 stands partly allowed.

12. Now, comes to the Revenue's cross appeal in ITA No.568/PUN/2019 for A.Y. 2016-17.

ITA No.568/PUN/2019, A.Y. 2016-17 – BY Revenue :

13. The Revenue raised the following grounds of appeal :-

“Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the activity of transactions in shares/mutual funds by engaging PMS was an investment activity and resultant gain/loss was assessable under the head “Capital Gains”.

The CIT(A) erred in not appreciating the fact that the assessee had carried out business of trading in shares/mutual funds in a systematic and organized manner by utilizing the services of Portfolio Management Service Providers to act as an agent.

The CIT(A) erred in not appreciating that most of the transactions effected were of short term nature, clearly indicative of the motive of the assessee to earn profits by resorting to frequent trading rather than to earn dividend by holding shares for long durations.

The CIT(A) erred in not appreciating that the assessee had carried out transactions in high volume and in an organized manner which constitute the activity as business and not investment as claimed by the assessee and as such the profits derived from such transactions was taxable under the head “Income from business and profession.”

The appellant craves to leave, add, amend or alter any of the grounds of appeal.”

14. The Revenue challenges the finding of the Id. CIT(A) that income earned from PMS should be assessable under the head “capital gains”. This issue was decided earlier in the assessee's own

case by the Co-ordinate Bench of this Tribunal (supra) wherein the Tribunal held that earning under PMS should be assessable under the head “capital gains”. Accordingly, we do not find any illegality in the order of the ld. CIT(A). Thus, the grounds of appeal raised by the Revenue stand dismissed.

15. In the result, the appeal filed by the Revenue in ITA No.568/PUN/2019 for A.Y. 2016-17 stands dismissed.

ITA Nos.567 & 569/PUN/2019,
A.Y. 2016-17 – By Revenue :

16. Since the facts and issues involved in appeals of the Revenue in ITA Nos.567 & 569/PUN/2019 for A.Y. 2016-17 are identical to the appeal of the Revenue in ITA No.568/PUN/2019 for A.Y. 2016-17, therefore, our decision in ITA No.568/PUN/2019 for A.Y. 2016-17 shall apply *mutatis mutandis* to appeals of the Revenue in ITA Nos.567 & 569/PUN/2019 for A.Y. 2016-17. Accordingly, the appeals of the Revenue in ITA Nos.567 & 569/PUN/2019 for A.Y. 2016-17 are dismissed.

ITA Nos.418 to 423/PUN/2020,
A.Y. 2017-18 – By Revenue :

17. The Revenue challenges the finding of the ld. CIT(A) that income earned from PMS should be assessable under the head

“capital gains”. This issue was decided earlier in the assessee’s own case by the Co-ordinate Bench of this Tribunal (supra) wherein the Tribunal held that earning under “PMS” should be assessable under the head “capital gains”. Accordingly, we do not find any illegality in the order of the Id. CIT(A). Thus, this issue raised by the Revenue stands dismissed.

18. As regards to the issue of disallowance u/s 14A of the Act, the Revenue challenges the finding of the Id. CIT(A) that no disallowance u/s 14A is warranted on the ground that the assessee did not incur any expenditure for earning income under “PMS”. We find this finding of the Id. CIT(A) is inconsonance with the decision of the Co-ordinate Bench of this Tribunal in assessee’s own case (supra). Hence, we do not find any illegality in the order of the Id. CIT(A). Accordingly, this issue raised by the Revenue stands dismissed.

19. In the result, the appeals filed by the Revenue in ITA Nos.418 to 423/PUN/2020 for A.Y. 2017-18 stand dismissed.

20. To sum up, the appeal filed by the assessee in ITA No.442/PUN/2019 for A.Y. 2016-17 stands partly allowed and the cross appeal/appeals filed by the Revenue in ITA Nos.567 to 569/PUN/2019 for A.Y. 2016-17 and ITA Nos.418 to

423/PUN/2020 for A.Y. 2017-18 stand dismissed, as indicated above.

Order pronounced on this 22nd day of July, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd July, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The Pr. CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" 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.