

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1192/PUN/2019
निर्धारण वर्ष / Assessment Year: 2013-14

Pankaj D. Desai, Pankaj Laxmikant Desai, 3997, Bhavani Peth, Barshi Dist.- Solapur- 413401 PAN : AARPD6535C	Vs.	ITO, Ward-2(5), Solapur.
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani
Date of hearing : 25.07.2022
Date of pronouncement : 25.07.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2013-14 arises against the CIT(A)-9, Pune's order dated 23.01.2019 passed in case no.PN/CIT(A)-6- trf. from/CIT(A)-9 trf. In/10466/16-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at assessee's behest. He is accordingly proceeded *ex-parte*.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in assessing him for having derived business income and not capital

gains, Mr. Jasnani invited my attention to the CIT(A)'s detailed discussion as follows :-

"2. Aggrieved by above order, the appellant has filed this appeal raising the following grounds of appeal:

- 1. "The Assessing Officer has not justified in treating long term capital gain income as business income and denying the indexation of cost of acquisition Addition of Rs. 3,55,840 requires to be deleted.*
- 2. The appellant craves to leave, to add, alter, amend modify and/ or delete to the ground already taken or take any additional ground, if a found required".*

3. The brief facts of the case are that the appellant is a partner in M/s. Desai & Company which runs Petrol Pumps of BPCL at Lonand, Neera, Taradgaon in Pune district. He filed his e-return of income on 28.08.2013 declaring total income of Rs. 9,86,557/-. The appellant had purchased a property at Barshi bearing number 1551-A and 1551-B from Madhukar Bahgwant Sulakhe family on 27.11.2003 for Rs. 69,00,000/- jointly with Shri Chetan Suryakant Desai and incurred an expenditure of Rs. 5,50,000/- on stamps and registration. The existing building on this land was demolished and permission for layout was obtained from Town Planning Authority of Solapur vide letter dtd. 29.01.2008. A layout of 15 plots measuring 4636.75 sq. mts. with roads and open spaces was formed under the name and style "Dream Land Property". During the year the appellant along with the co-owner sold 4 plots for consideration of Rs. 26,28,000/-. The appellant had treated the same as sale of long term capital asset and worked out his share of capital loss at Rs. 4,49,180/-. The AO rejected the appellant's claim under the Long term Capital Gain and treated the sale transactions as Business transactions by relying on the following case laws:

- A. Raja J. Rameshwar rao Vs. CIT (42 ITR 179)*
- B. G. Venkataswami Naidu & Co. Vs. CIT (1959) 35 ITR 594 (SC)*

" The activity of an assessee in dividing the land into plots and not selling it as a single unit as he purchased goes to establish that he was carrying on business in real property and it is business venture"

The AO has also placed his reliance on the wealth tax return filed by the appellant in which it was shown as business asset. The AO accordingly passed the assessment order on 23.03.2016 assessing the assessee's share of business income in sale of 4 plots at Rs. 3,55,840/-.

4. Aggrieved by the above assessment order, the appellant filed this appeal raising various grounds of appeal. In response to the notice u/s 250 of the I.T. Act 1961, the authorised representative of the appellant Sh. S. M. Vaidya appeared and filed written submissions. Case discussed. The assessment order, grounds of appeal and the

submissions have been considered in disposing this appeal. The written submissions have also been considered and the various grounds are disposed as under:

5. *The appellant submitted that it had purchased the property at Barshi as a part of business expansion to set up a Petrol Pump. It was claimed that in view of the substantial time lost in getting the tenants vacated from the purchased premises, the purpose of setting up Petrol Pump in the said location was lost. Therefore, it was claimed that the said premises was converted into saleable units as it was a large property for one single person to purchase it. It was further claimed that he is a long term investor in Immovable properties by relying on the details filed of the fixed assets shown in the balance sheet. It was further claimed that he is not into dealing in plots to treat it as a business activity. It was further claimed that the AO has wrongly relied on his submission in wealth tax proceedings that it is a business asset though the intention in making the claim was that the income earning assets are not liable to wealth tax. It further claim that the nature of holding does not change in view of one such letter.*

6. *The submissions have been considered. It is clear from the assessment order that the appellant had obtained the approval of a layout and has been selling the plotted land separately to various Individuals and concerns. Therefore, it has to be treated as a business activity. The AO has correctly invoked the SC decision cited supra which made it clear that the plots sold separately has to be treated as business activity and the appellant's case is similar to that decided by the SC. Therefore, I find no reason to disturb the findings of the AO. In effect, the ground is dismissed."*

3. I have heard the Revenue and gone through the assessee's pleadings throughout. Suffice to say, it has come on record that the assessee had taken plunge in regular adventure in real estate by plotting the land in issue. I thus conclude that both the learned lower authorities have rightly treated the same as a business activity than an investment. The assessee's sole substantive grievance is rejected.

4. Delay in filing of 97 days stands condoned in light of assessee's condonation averments which have gone un-rebutted from the Revenue's side.

5. This assessee's appeal is dismissed in above terms.

Order pronounced on this 25th day of July, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th July, 2022.

Sujeet (DOC)

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.