

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.222/PUN/2021
निर्धारण वर्ष / Assessment Year: 2011-12

Dhananjay Kisan Tapkir, Wadmukhwadi, Near Vitthal Mandir, Pune Alandi Road, Pune-412105. PAN : AAKPT2856P	Vs.	ITO, Ward-10(2), Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani
Date of hearing : 26.07.2022
Date of pronouncement : 26.07.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2011-12 arises against the National Faceless Appeal Centre, Delhi's order dated 27.02.2021 passed in case no.ITBA/NFAC/S/250/2020-21/1031073476(1) 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

disallowing/adding his section 54F deduction claim of Rs.12,00,000/-, Mr. Jasnani inviting my attention to the lower appellate discussion as follows :-

“Ground No. 1 is addition made by the A.O. worth Rs. 12,00,000/- as long term capital gains.

During the appellate stage, the assessee has contended that it has constructed the house property and hence due to section 54F it has not declared capital gains. Remand report has been sent to the AO, as the assessee has filed additional evidence. The comments of the assessee were also taken.

The contention of the AO in the remand proceedings is that the investment in the new asset was not made before the due date of filing of the Return of Income. The money was not deposited in the Capital gains account Scheme. Further, the commencement Certificate was not received from the competent authority.

The assessee has submitted that, it has not received the commencement certificate as the construction was on agricultural land and as there is no commencement and completion Certificate from PCMC. Further it has relied upon two judgments of Tribunals Kamal Mulidhar Mokashi vs ITO, Ward 8(3), Pune and Vijay Chaudhari vs ITO Ward 4(4) Gurgaon that the amount has been invested so the assessee is eligible for deduction u/s 54F.

Hence, in this case, it is not clear when the construction was commenced, when it got completed. No details were filed before filing of Return of Income. Even 54F was not claimed. Purpose of section 54F is to promote housing sector, but the assessee can claim when linkage is established with the sale of property, and the acquisition of new property. In his case, it has not been done. Hence, the appeal of the assessee is dismissed.”

3. Suffice to say, it has come on record that the assessee had claimed to have reinvested his long term capital gains in construction of the residential house raised on his agricultural land. Both the learned lower authorities on the other hand hold that there is no evidence of commencement of such a construction. Mr.

Jasnani could hardly dispute that the authorities below have nowhere considered the Revenue's record of the corresponding agricultural land indicating conversion thereof to residential area. Face with this situation, I deem it appropriate to restore the assessee's sole substantive grievance back to the Assessing Officer for his appropriate adjudication with three effective opportunity of hearing. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced on this 26th day of July, 2022.

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

पुणे / Pune; दिनांक / Dated : 26th 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)-NFAC, Delhi.
4. The Pr. CIT concerned.
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.