

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	1152/PUN/2019	Smt. Shrushti U. Mulik, S.No.66/1, Sangamwadi, Khadki, Pune- 411003. PAN : BGAPS3329D	ITO, Ward-2(3), Pune.	2008-09
2	1153/PUN/2019	Sagar S. Sorte, S.No.66/1, Sangamwadi, Khadki, Pune- 411003. PAN : BGAPS3328C	ITO, Ward-2(3), Pune.	2008-09
3	1154/PUN/2019	Akash S. Sorte, S.No.66/1, Sangamwadi, Khadki, Pune- 411003. PAN : BGAPS3331K	ITO, Ward-2(3), Pune.	2008-09
4	1155/PUN/2019	Akash S. Sorte, L/h of Late Smt. Chandrabhaga N. Sorte, S.No.66/1, Sangamwadi, Khadki, Pune- 411003. PAN : BGHPS5367L	ITO, Ward-2(3), Pune.	2008-09
5	1156/PUN/2019	Ranjana Sambhaji Sorte, S.No.66/1, Sangamwadi, Khadki, Pune- 411003. PAN : BGAPS3333M	ITO, Ward-2(3), Pune.	2008-09

Assessee by : Smt. Deepa Khare  
Revenue by : Shri M. G. Jasnani

Date of hearing : 26.07.2022  
Date of pronouncement : 27.07.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM:**

These five assesseees' as many instant appeals ITA Nos.1152 to 1156/PUN/2019; all for assessment year 2008-09, arise against the CIT(A)-3, Pune's common order dated 07.06.2019 passed in case nos.422 to 423, 425 to 426 and 430/2015-16; respectively, in proceedings u/s 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard all five assesseees and the Revenue. Case files perused.

2. It emerges at the outset that these five assesseees' identical sole substantive grievance challenges correctness of both the learned lower authorities' action assessing long term capital gains of Rs.21,02,627/- (in "lead" ITA No.1152/PUN/2019) and varying sum(s) in other four appeals; as the case may be, after holding them to have transferred the corresponding capital asset in Village Yerwada, Sangamwadi, Pune. Mr. Jasnani sought to highlight the fact that all these assesseees were co-owners in the foregoing asset who had transferred the same by way of the joint development agreement in issue dated 31.12.2007 falling in the relevant previous

year and therefore, the learned lower authorities have rightly assessed the consequential capital gains in their respective hands after applying section 2(47)(v) of the Act.

3. I find no merit in the Revenue's foregoing arguments. It is noted with the able assistance coming from the assessee's side that these co-vendors as well as the vendee had inserted clause (4) in the above stated joint development agreement that the effective date thereof would read "this agreement will become effective only on the date of conversion of the zone in respect of the said land from Agricultural to Residential, which is the pre-requisite condition of this agreement and hence is the Essence of the Agreement. Upon the conversion of zone of said land from Agricultural to Residential, this agreement will automatically become effective without requiring any further act from the parties herein". It is made clear that there is no material at all in the case files to conclude that the assessee's land in issue stood converted from agricultural to residential in the relevant previous year so as to make the agreement itself effective. I therefore conclude in these peculiar facts and circumstances that both the learned lower authorities have erred in law and on facts in holding these assessee's to have transferred their respective shares in the foregoing capital asset by invoking section 2(47)(v) of the Act. The impugned capital gains addition in all

these cases stands deleted for this precise reason alone. Ordered accordingly. These assessee's instant identical sole substantive ground succeeds therefore.

All other pleadings in these five cases stand rendered academic.

4. These assessee's five respective appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced on this 27<sup>th</sup> day of July, 2022.

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

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> 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)-3, Pune.
4. The Pr. CIT-2, 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.