

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

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

आयकर अपील सं. / ITA No.1924/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Mrs. Bharati Narendra Oswal,
C-201, Hyde Park, Market Yard,
Pune – 411037

PAN : AAOPO5462E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 5(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Mihir Naniwadekar & Prasanna L. Joshi
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 01-06-2022
घोषणा की तारीख / Date of Pronouncement : 01-08-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 15-03-2017 passed by the Commissioner of Income Tax (Appeals)-4, Pune [‘CIT(A)'] for assessment year 2013-14.

2. We find this appeal was filed with a delay of 12 days. To condone the said delay, the assessee filed notarized affidavit dated 11-08-2017 explaining the reasons for delay. On perusal of the same and upon hearing both the parties, the delay of 12 days is condoned.

3. The assessee raised ground Nos. 2 to 5 amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the addition of Rs.1,26,80,413/- on account of long term capital gain in the hands of the assessee instead of Jayantilal Oswal in the facts and circumstances of the case.

4. We note that the assessee is an individual and derives income from cooking, mehendi classes and rental income. The assessee filed return of income declaring a total income at Rs.3,22,471/-. The AO issued notices u/s. 143(2) and 142(1) of the Act for verification of "capital gains consideration in ITR is less than sale of property basing on the report in AIR and for low capital gain with respect to sales consideration". In response to the said notices, the assessee submitted documents as called for from time to time and the AO determined the total income of the assessee at Rs.1,25,44,810/- inter alia making addition on account of long term capital gain vide its order dated 28-03-2016 passed u/s. 143(3) of the Act. The CIT(A) confirmed the said addition by recording its reasoning vide Para No. 5.6.2 of impugned order. Having aggrieved by the order of CIT(A), the assessee is before us.

5. Heard both the parties and perused the material available on record. We note that the assessee purchased a plot of land for a consideration of Rs.50,00,000/- from one Ashok H. Oswal on 26-11-2008. The said sale was duly registered on 02-12-2008 which is at pages 5 to 13 of the paper book. Thereafter, in the year 2009, the assessee sold the said plot to Jayantilal Oswal, a relative, for a total consideration of Rs.51,00,000/- by way of Transfer Deed on 12-06-2009 which is at pages 23 to 26 of the paper book. On the same day, the said Jayantilal Oswal obtained Power of Attorney from the assessee which was duly registered on 12-06-2009,

which, we find at pages 37 to 39 of the paper book. According to the Id. AR, Shri Mihir Naniwadekar that the said Jayantilal Oswal is empowered to sell the sad plot of land and in pursuance of the said registered Power of Attorney, the said Jayantilal Oswal entered into an agreement for sell with Mrs. Saroj Mahendrakumar Nibjia and Another for a consideration of Rs.2,00,00,000/- and received Rs.11,00,000/- vide payment schedule therein from pages 46 to 50 of the paper book. On perusal of the said agreement dated 31-12-2012 at page 46, the assessee being shown as seller and the said Jayantilal Tarachand Oswal as consenting party. The payment of Rs.11,00,000/- made to consenting party vide two cheques of common dated 07-01-2013 by the purchasers. We also note that the assessee stated that she sold the property to consenting party for a consideration of Rs.5,00,000/- and she was under liability to transfer all rights and permissions to consenting party or his names which clearly shows that the assessee sold that property to Jayantilal Oswal and she has no right or whatsoever on the said property. We find at Clause 5A that the assessee acknowledged the receipt of Rs.51,00,000/- from the consenting party. Further by Clause 5C of the said agreement clearly shows that Jayantilal Oswal received Rs.11,00,000/- and it was agreed to pay Rs.1,89,00,000/- to said Jayantilal Oswal as consenting party within 90 days from 31-12-2012 by the purchasers. Further, we find Assignment Deed dated 23-01-2013 at page 67 of the paper book wherein the assessee and the consenting party registered the said property in favour of the Mrs. Saroj Mahendrakumar Nibjiya and Another. The payment schedule which is at Clause 17 at page 70 clearly shows that the purchaser Mrs. Saroj Mahendrakumar Nibjiya and Another paid the remaining amount of Rs.1,89,00,000/- vide three cheques dated 12-01-2013, 15-01-2013 drawn on Rupee Co-op. Bank Ltd., Bhawani Peth Branch, Pune in the name of consenting party i.e. Jayantilal Oswal.

6. The ld. AR, Shri Mihir Naniwadekar raised a proposition that the transfer of right of assessee on the subject property to Jayantilal Oswal is to be considered as transfer u/s. 2(47) of the Act. In support of said proposition he placed reliance on the case laws and drew our attention to case law compilation from pages 5 to 158 of the paper book. Further, he raised second proposition to the effect that the sale consideration in pursuance of Assignment Deed dated 13-01-2013 is neither received by the assessee nor deemed to be received by her. He argued when the assessee received no consideration she cannot be taxed for the same for the reason then the said sale consideration is neither accrued to her nor was deemed to be accrued to her. In support, he drew our attention to the copy of return of income filed by the said Jayantilal Oswal disclosing the entire consideration as his income for A.Y. 2013-14 on account of capital gain which is at pages 145 to 157 of the paper book. Therefore, the point for consideration before us is as to whether the assessee can be taxed on account of capital gain in the absence of receipt of sale consideration. As discussed above, the assessee vide deed of transfer sold the subject property to Jayantilal Oswal and received total sale consideration of Rs.51,00,000/- and also delivered possession to the said Jayantilal Oswal which is evident vide Clause 7 at page 2 of the paper book. Therefore, it clearly shows that the assessee transferred her right on the said property by receiving sale consideration of Rs.51,00,000/- in favour of Jayantilal Oswal on 12-06-2009 and registered a Power of Attorney in favour of the said Jayantilal Oswal to sell that property as Power of Attorney holder by Clause E which is at page 16 of the paper book. Further, copy of return of income of Jayantilal Oswal for A.Y. 2013-14 is at page 145 of the paper book wherein, we note that the said Jayantilal Oswal disclosed sale consideration at Rs.2,00,00,000/- and by availing indexed cost offered capital gain at Rs.1,31,23,659/- in schedule 18 at page 153 of the paper

book. Therefore, we find force in the arguments of ld. AR that it is not correct to be taxed in the hands of assessee when the same was taxed in the hands of Jayantilal Oswal. Therefore, when the assessee not received the said sale consideration of Rs.2,00,00,000/- vide registered Deed of Assignment dated 13-01-2013 and the same was received by the said Jayantilal Oswal as a consenting party which was disclosed by him under the head capital gain by Schedule 18 of his return of income, again, taxing the same in the hands of assessee is not justified. Thus, the order of CIT(A) in confirming the order of AO in taxing the assessee on account of capital gain of Rs.1,26,80,413/- is not justified and it is set aside. Thus, ground Nos. 2 to 5 raised by the assessee are allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 01st August, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 2022.

रवि

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

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

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune