

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 2061/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Sudesh Sudhakar Angchekar, Ramghat Road Camp, Vengurla, Taluka Vengurla, Dist. Sindhudurg – 416 516 Maharashtra PAN : AMIPA4763A	Vs.	ITO, Ward-1, Kudal
Appellant		Respondent

ITA No. 2063/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Kamalakant Vasant Kubal Shri Datta Agencies, Ward No.11/113(2), Dr. Khardekar Road, Vengurla, Dist. Sindhudurg – 416 516 Maharashtra PAN : ABQPK1783P	Vs.	ITO, Ward-1, Kudal
Appellant		Respondent

Assessee by  
Revenue by

Shri Pramod Shingte  
Shri M.G. Jasnani

Date of hearing

08-08-2022

Date of pronouncement

10-08-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These appeals by two different but similarly placed assesseees relate to the assessment year 2009-10. Since similar facts and identical grounds are involved, we are, therefore,

proceeding to dispose them off by this consolidated order for the sake of convenience.

Sudesh Sudhakar Angchekar :

2. The first issue challenged in this appeal is the initiation of assessment proceedings.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) initiated re-assessment proceedings and completed the assessment vide his order dated 26-03-2015 determining total income at Rs.91.61 lakh, making an addition of Rs.78,85,000/- towards unsecured loan. The assessee remained unsuccessful before the Id. CIT(A), which has brought him before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The assessee is an individual engaged in the business of Mango, Cashew Grafts and Land commission. The AO received some information somewhere in the year 2010 divulging that the assessee had purchased a property worth Rs.72.00 lakh. Re-assessment proceedings were initiated by means of notice u/s.148 issued on 11-05-2010 (hereinafter called 'the first round of re-assessment proceedings'). In the return filed, the assessee had shown unsecured loan at Rs.78,85,000/-.

The assessee appeared before the AO. Replying to question No.4 in his statement recorded u/s.131 of the Act, the assessee submitted that: “During the financial year 2008-09, I have made investment of Rs.72.00 lakh in purchase of agricultural land at Morve and Hindale Village of Deogad Taluq admeasuring 0.30 hector and 1.73 Hector respectively...”. During the course of assessment proceedings, the assessee admitted that he received certain advance from Dr. A.G. Vakundre of Vengurla as the latter was helping him in his land dealing activities. The AO issued a letter to Dr. A.G. Vakundre, who appeared in person. The AO recorded his statement u/s.131 on 24-08-2011. In response to question No.6, he submitted to have paid a sum of Rs.72.00 lakh as a consideration and Rs.3.00 lakh towards stamp duty registration and expenses totalling to Rs.75.00 lakh by cheque No.71922 (RTGS) dt. 30-06-2008 on Axis Bank, Mapusal Branch to Mr. Balkishan Sadekar towards purchase of the above property. In reply to notice u/s.142(1), the assessee submitted point-wise explanation to the query raised by the AO and submitted the details of loan of Rs.78,85,000/- from Dr. A.G. Vakundre as under :

Sr.No.	Amount (Rs.)	Remarks
1	72,00,000	Consideration for plot of land At -Hindale, Tal-Devgad
2	2,88,000	Stamp duty
3	2,08,000	Consideration and stamp duty of the plot at Ubhadanda, Tal.- Vengurla
4	1,00,000	Received as advance for sale of land at Ubhadanda, Tal-Vengurla
5	89,000	Balance after incurring and expenses on behalf of Dr. A.G. Vakundre out of Rs.5,00,000 received as advance for expenses
	78,85,000	

5. It was categorically stated that out of the above, a sum of Rs.72.00 lakh was transferred by Dr. A.G. Vakundre to owners of land directly from his account maintained with Axis Bank. Since the land was registered in the name of the assessee, he treated such amount as an advance from Dr.A.G. Vakundre. The AO completed such assessment by concluding on page 7 of his order that: “The amount of Rs.78,85,000/- as shown by the assessee as unsecured loan in his return of income is not fully explained, as the referred lender Dr. A.G. Vakundre denied of any loan to the assessee during the captioned A.Y. . . . . However, the properties in question are found registered in the name of the assessee during the year and no further sale was evidenced, as no tax can be levied on capital gain”. This is how, the AO completed the first

round of reassessment at total income of Rs.8.89 lakh, making some small additions totalling to Rs.7.12 lakh.

6. The instant re-assessment proceedings (second round) was triggered on the basis of reasons, which read as under:

“In the instant case, the assessee had purchased immovable property worth Rs.72,00,000/- as per instrument for purchase of property executed on 04-07-2008. In the course of assessment proceedings the assessee gave his statement on oath that the investment was made by Dr.A.G. Vakundre, and Dr. A.G. Vakundre gave his statement on oath that the aforesaid property belonged to him and he had invested the amount on behalf of Sansudha Corporation Pvt. Ltd., New Delhi, and had declared the property in his return of income.

2. In the case of another assessee viz. Shri Kamalakant Vasant Kubal, it was seen that immovable property was purchased and registered in the name of Shri Kamalakant Vasant Kubal, and the source of income not explained and the same needs to be taxed u/s.68 of the IT Act, 1961, even though the assessee had admitted that the source of the investment is not his. The ACIT, Circle-2, Kolhapur has initiated proceedings u/s.147 of the IT Act, 1961 in the case of his assessee, i.e. Dr.A.G. Vakundre to verify the amounts advanced to Shri Kamalakant Vasant Kubal for purchase of land.

3. Similar facts as mentioned above in the case of Shri Kamalakant Vasant Kubal are applicable in the instant case of Shri Sudesh Sudhakar Angchekar, who is also associated with Dr.A.G. Vakundre and have executed similar land transaction amounting to Rs.72,00,000/- at Hindale, Tal. Devgad.

2. The ACIT, Circle-2, Kolhapur vide letter No.710 dated 24-03-2014 initiated that the aforesaid transactions do not appear to be reflected in the return of income filed by Dr.A.G. Vakundre. It is also stated that, income earned from these activities have also not been offered in the return of income. Further the payment made by Dr.A.G. Vakundre towards purchase of property is also required to be verified. As such proceedings u/s.147 of the IT Act, 1961 has been initiated in the case of his assessee, i.e. Dr.A.G. Vakundre.

4. On the basis of the above information received from ACIT, Circle-2, Kolhapur, I have reasons to believe that the investment in immovable property worth Rs.72,00,000/- made by the assessee Shri

Kamalakant Vasant Kubal has remained unexplained; & thus has escaped assessment within the meaning of section 147 of the IT Act.

5. Therefore, the income chargeable to tax to the extent of Rs.72,00,000/- had escaped assessment for the Asst. Year 2009-10. I, therefore, consider it to be a fit case for initiating proceedings u/s.147 of the I.T. Act, 1961. As such, a notice u/s.148 of the Act, after obtaining sanction of the Jt. CIT, Range-2, Kolhapur vide letter No.Kop/Addl.CIT/R-2/App.148/SSA/2013-14/1496 dated 28/03/2014 is hereby issued.”

7. From the above reasons, it transpires that the AO re-opened the assessment of the assessee as well as Shri Kamalakant Vasant Kubal, the other assessee in the instant batch, on the ground that Dr. A.G. Vakundre stated that he had not given any advance to them. The extant reassessment was completed by making an addition of Rs.78,85,000/-, which was the amount of loan shown to have been received by the assessee from Dr. A.G. Vakundre. From the above narration of facts, it is clear that the AO initiated the first round of re-assessment proceedings on the very same issue of the assessee having purchased a property worth Rs.72.00 lakh, which was not reflected. During the course of such proceedings, the assessee submitted that the property was purchased by means of payment of Rs.72.00 lakh made directly by Dr. A.G. Vakundre to the seller. Such payment is first item of the break-up of loan of Rs.78,85,000/- from Dr. A.G. Vakundre,

as has been tabulated above. The AO completed the re-assessment proceedings without making any addition on this score and accepting that the property was purchased in the name of the assessee. It appears that subsequently re-assessment proceedings were taken up in the case of Dr. A.G. Vakundre on the same date on which the instant re-assessment proceedings were taken up against the assessee. These proceedings were started to verify the genuineness of loan given by Dr. A.G. Vakundre to the assessee. The Id. CIT(A) has reproduced the remand report from the AO of Dr. A.G. Vakundre, in which the status of assessment in the case of Dr. A.G. Vakundre for the assessment year under consideration, has been given as under :

“The Assessment for the AY 2009-10 in the case of Dr. Anil Vakundre was re-opened by the O/o. the ACIT, Circle-2, Kolhapur by issue of notice u/s.148 on 24-03-2014. Subsequently the case was assigned to this ward for completion of assessment proceeding vide the Jt.CIT,R-2, Kolhapur order No.Kop/JCIT/R-2/120/2014-15/452 dated 01-08-2014. The scrutiny assessment for the year 2009-10 was completed on 30-03-2015 raising a demand of Rs. 35,877/-. During the assessment proceeding the assessee furnished Confirmation with regard to the advances received from M/s. Sansudha Consultants Pvt. Ltd., & other Companies for purchase of land for these Companies; necessary documentary evidence such as MOU with the Company, Bank Account Extracts of the said Advances & advance given by the assessee to the land owners have also been furnished. All the transactions were routed through bank accounts as such no addition was made in the case of Dr. Vakundre with regard to the investment in land amounting to Rs.72,00,000/-.”

8. On going through the above status of assessment of Dr. A.G. Vakundre, it is manifest that notice u/s.148 was issued in his case *qua* the investment in land amounting to Rs.72.00 lakh and the AO accepted the genuineness of this transaction without making any addition in his hands. Thus, it becomes evident that the issue, which had attained finality in the first round of the re-assessment proceedings with the AO accepting the genuineness and break-up of loan of Rs. 78.85 lakh received by the assessee from Dr. A.G. Vakundre, was again sought to be raked up by means of the second round of reassessment. There is no logic in initiating the reassessment proceedings again on the very same basis as constituted the edifice in the first round. The Revenue cannot time and again initiate re-assessment proceedings on the very same issue. Once the proceedings are re-opened, it becomes incumbent upon the AO to give a logical conclusion to such proceedings by examining each and every aspect thereof. However, once the genuineness of a transaction is accepted in the first round, the AO is precluded from espousing the same issue once again by means of another round of reassessment. Sword of re-assessment cannot be allowed to hang over the head of the

assessee eternally. There has to be an end somewhere, at least of an issue, with the completion of the proceedings in which it was first taken up.

9. We are confronted with a situation in which the AO initiated re-assessment proceedings in the first round on this very issue and passed the order without making any addition by duly recording in the order and accepting the contention of the assessee about having received loan of Rs.78,85,000/- from Dr. A.G. Vakundre with proper details. The re-assessment has been initiated in the second round of proceedings on the same issue, which in our opinion, is totally unfounded.

10. Be that as it may, it is seen that the entire transaction involved in the case is about the assessee purchasing the land worth Rs.72.00 lakh, whose payment was admittedly made by Dr. A.G. Vakundre directly to the seller on behalf of the assessee. That appears to be the sole reason because the registered sale deed was executed in favour of the assessee. In his turn, the assessee reflected the land as his assets in the balance sheet and equal amount as payable to Dr. A.G. Vakundre. Dr. A.G. Vakundre, himself in his statement recorded by the AO, categorically

admitted that he paid the consideration of Rs.72,00,000/- for the purchase of property. It is the same property which is the subject matter of dispute. Once Dr. A.G. Vakundre admitted to have paid for the property, which was registered in the name of the assessee, the natural consequence is that the amount paid by Dr. Vakundre is the liability which the assessee owes to him. The transactions of acquisition of the land and its payment by Dr. Vakundre are tagged with each other. If the land is the asset of the assessee, then naturally, the corresponding payment is his liability, irrespective of denial by Dr. Vakundre for extraneous considerations. Viewed from any angle, it is patent that the initiation of re-assessment proceedings on this score cannot be validated. We, therefore, overturn the impugned order by quashing the second round of re-assessment proceedings. All the consequential orders passed are hereby set-aside. In view of our decision on the invalidity of the initiation of reassessment proceedings, there is no need to dispose of other grounds raised on merits.

Shri Kamalakant Vasant Kubal :

11. The facts and circumstances of this appeal are *mutatis mutandis* similar to those of Sudesh Sudhakar Angchekar dealt with above. In this case also, the first re-assessment of the assessee was completed by the AO on 28-12-2011. A specific query was raised about the assessee having purchased some property (different from the one considered in the case of Sudesh Sudhakar Angchekar) for Rs.61,15,000/-. The assessee submitted that a sum of Rs.68.35 lakh was received from Dr.A.G.Vakundre, out of which a sum of Rs.61.15 lakh was paid directly by the latter as a consideration for purchase of plot of land at Hindale Taluka Devgad. Dr. A.G. Vakundre also appeared before the AO and admitted that he paid Rs.61.15 lakh as consideration for purchase of property by cheque. The AO completed the first round of the re-assessment proceedings by noting that the amount of Rs.68.35 lakh, shown by the assessee as unsecured loan in his return of income, was not fully explained as the referred lender Dr. A.G. Vakundre denied of any loan to the assessee during the captioned assessment year. He, however, did not make any addition because the property was registered in the name of the

assessee. On the same facts, the AO again initiated the second round of re-assessment proceedings by means of a notice, which coincided with the notice issued to Dr.A.G. Vakundre on the same date. This time, the AO completed the assessment u/s.143(3) r.w.s.147 making addition of Rs.68.35 lakh towards unsecured loan. The ld. CIT(A), too, sustained the addition.

12. Having regard to the facts of the instant case, we find that the substance of both the transactions in the case of the assessee and in Sudesh Sudhakar Angchekar (*supra*) is similar. In both the cases, the AO initiated the first round of re-assessment proceedings on account of purchase of property and accepted the assessee's contention on the ground that the properties were purchased in their names, for which payments were made by Dr. A.G. Vakundre. However, subsequently, the second round of re-assessment proceedings followed in which the additions on account of unsecured loan have been made. The fact remains that Dr. A.G.Vakundre admitted in this case also that payment for purchase of the property in question was made by him. This shows that the same property, which the assessee is contesting to have purchased, and is also registered in his name, was paid for

by Dr. A.G.Vakundre directly. In such a scenario, there could have been no option other than to treat the property as his *asset* and amount payable to Dr. A.G.Vakundre as *liability*, as has been correctly done by the assessee. Following the same reasoning as given in the case of Sudesh Sudhakar Angchekar (*supra*), we quash the initiation of re-assessment proceedings and the consequential assessment proceedings. In view of our decision on the invalidity of the initiation of reassessment proceedings, there is no need to dispose of other grounds raised on merits.

13. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 10<sup>th</sup> August, 2022.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 10<sup>th</sup> August, 2022  
*Satish*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Kolhapur
4. The Pr.CIT-2, Kolhapur  
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
5. DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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

		Date	
1.	Draft dictated on	08-08-2022	Sr.PS
2.	Draft placed before author	10-08-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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