



आयकर अपीलीय न्यायाधिकरण, पुणे न्यायपीठ, “बी” बेंच पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1874/PUN/2018

करनिर्धारण वर्ष / Assessment Year : 2014-15

Soham Laxman Kulkarni,
Plot No. 4, S. No. 249, GophBaner,
A1, Nalanda Soc. Pune – 411007
PAN :BILPK8583L

..... अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 2(1), Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri M. R. Shirude

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 17/08/2022

घोषणा की तारीख / Date of Pronouncement : 17/08/2022

आदेश / ORDER

PER G.D. PADMAHSHALI, AM;

The present appeal of the appellant assessee is assailed against the first appellate order of Commissioner of Income Tax (Appeals)-3, Pune [for short “**CIT(A)**”] dt.14/09/2018 passed u/s 250 of the Income-tax Act,1961 [for short “**the Act**”] which in turn sprung out of assessment order dt.27/12/2016 passed by the Income Tax Officer Ward 2(1), Pune [for short “**AO**”] u/s 143(3) of the Act for the assessment year [for short “**AY**”] 2014-15.



2. The solitary controversy under the present appeal lies in a narrow compass as to attraction of provisions of section 56(2)(vii)(b) of the Act, to a transaction of purchase of immovable property being rural agricultural land.

3. In advancing the matter for adjudication, it is essential to reproduce **grounds challenged** by the appellant as;

“1) In the facts, circumstances and position of law learned CIT(A)-3, Pune erred in not annulling the assessment being bad in law and void ab initio.

2) In the facts, circumstances and position of law learned CIT(A)-3, Pune erred in not deleting the addition of Rs.2,04,25,000/- made by Assessing Officer u/s. 56(2)(vii)(b) of I.T. Act, 1961 on account of difference in actual purchase consideration and value as per ready reckoner maintained by Stamp Duty Authority of Maharashtra in respect of rural agricultural lands bearing Gat No. 128/1 & 134/2 situated at Yelwade purchased on 8/5/2013.

3) In the facts, circumstances and position of law learned CIT(A)-3, Pune erred in not deleting the addition of Rs.15,00,000/- made by A.O. on account of unexplained investment in purchase of rural agricultural land bearing Gat No. 128/1 & 134/2 at Yelwade vide purchase deed dated 8/5/2013.



4) In the facts, circumstances and position of law learned CIT(A)-3, Pune erred in charging interest u/s. 234B at Rs.17,44,116/-.

5) Appellant craves leave to add, alter, amend or substitute to the above grounds of appeal at the time of hearing.”

4. Succinctly stated the facts of the case are;

4.1 The assessee is an individual and for AY 2014-15 e-filed his return of income [for short **“ROI/ITR”**] on 31/07/2014, declaring total taxable income of ₹7,640/- after claiming chapter VI-A deduction for ₹10,000/-. For verification of large investment in property, by service of notice dt. 01/09/2015 u/s 143(2) of the Act, the case of the appellant was selected for scrutiny under CASS. The authorised representative for the assessee [for short **“AR”**] attended the proceedings and filed the copies of ITR, Statement of Income and copy of purchase deed in respect of investment into immovable property made for a consideration of ₹15,00,000/- as against the stamp duty valuation [for short **“SDV”**] of ₹2,19,25,000/-. The Ld. AO considering the submission filed on record,



completed the assessment with threefold addition and brought to tax the following amount of by an order u/s 143(3) of the Act;

a. Addition of ₹15,00,000/- being the consideration paid in acquiring the immovable property as unexplained investment.

b. Addition of ₹2,04,25,000/- as differential amount of SDV over the purchase value of immovable property of ₹2,19,25,000/- u/s 56(2)(vii)(b) and,

c. Addition of ₹9,08,340/- as unexplained expenditure incurred in connection with investment in immovable property u/s 69C.

4.2 In an appeal before the first appellate authority [for short "**FAA**"], the Ld. CIT(A) after a due consideration of material placed, reverberated the views of assessing officer in so far as the first two additions are concerned and granted a part relief by deleting the addition made u/s 69C on account of unexplained expenditure in support of documentary evidences of gift received from father of the appellant. Aggrieved by the orders of tax



authorities below, the appellant assessee brought up the matter before Tribunal with the grounds of appeal assailed herein before at para 3.

5. At the outset of physical hearing, Ld. AR is allowed withdrew the ground number 1 and 3 to 5 as not pressed; resultantly the solitary ground number 2 is contested for adjudication. Ld. AR reiterated the equivalent arguments as were raised before the revenue authorities below and submitted that, the authorities fell in error in confirming the addition u/s 56(2)(vii)(b) of the Act, being the difference between the SDV and purchase value of rural agricultural land, by not accepting the contention that, the provisions of section 56(2)(vii)(b) are applicable only in case purchase of "immovable property" being a "capital asset" and not otherwise. As per Ld. AR, since the rural agricultural land purchased by the assessee is not a "Capital Asset" within the meaning of section 2(14) of the Act, therefore, the provisions of section 56(2)(vii)(b) are not attracted. **Au contraire**, the learned departmental representative [for short "**DR**"] entrusting the explanation (d) to section



56(2)(vii) of the Act, has firmly supplicated the survival of addition in the light of catena of judicial pronouncements and vehemently supporting the orders of the tax authority below contended that, the immovable property being land or building or both held as such and otherwise than stock-in-trade, falls well within the ambit of section 56(2)(vii)(b) of the Act, hence exigible to taxation thereunder, irrespective of nature of agricultural land.

6. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

7. In order to appreciate rival contention and to reach the end of the justice, it shall be imperious to reproduce the provision of section 56(2)(vii)(b) of the Act, as;



56(2)'In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :-

(vii) where an individual or Hindu undivided family receives in any previous year, from any person or persons on or after 1st day of October, 2009 but before the 1st day of April, 2017-

(a).

(b) any immovable property,-

(i) without consideration, the stamp duty value of the which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii)for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration; *(Emphasis supplied)*

8. The provisions of section 56(2)(vii) are anti-abusive and acts as counter evasion mechanism in preventing money laundering of unaccounted vis-à-vis untaxed income, consequently the provisions are to be construed in its strict sense. For bringing the excess of SDV over the amount of investment into immovable property to tax, the explanation (d) categorically provided a list of exclusive



class or classes of property to which the provision of section 56(2)(vii) applies, **ergo** the reproduction thereof is also of paramount importance before we ride the cycle of adjudication;

(d) “property” means the following capital assets of the assessee namely:—

- (i) immovable property being land or building or both;*
- (ii) shares and securities;*
- (iii) jewellery;*
- (iv) archaeological collections;*
- (v) drawings;*
- (vi) paintings;*
- (vii) sculptures;*
- (viii) any work of art; [or]*
- (ix) bullion.*

(Emphasis supplied)

9. The isolative reading of aforesaid clause may give rise to a question as to whether, the phrase **“capital assets of the assessee”** as appearing in the explanation (d) can it be read into the definition of “Capital Asset” as defined by section 2(14) of the Act or not. For the reasons it shall be noteworthy to sheer mention that, the term property as per clause (a) falling within section 2(14) “Capital Asset”, was in context of **“held by an assessee”** denoting prior holding for application, whereas the



explanation clause (d) to section 56(2)(vii) r.w. the text of memorandum refers to **“of the recipient” or “of the assessee”** denoting no prior holding. So much so, the question is negatively but airlessly answered by the text of memorandum to Finance Act, 2010 which reads as under;

Taxation of certain transactions without consideration or for inadequate consideration

Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000) by an individual or an HUF is chargeable to income-tax in the hands of recipient under the head ‘income from other sources’. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archaeological collection, drawings, paintings, sculpture or any work of art.

A.

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such



transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

C.

D.

E.

This amendment is proposed to take effect from 1st July, 2010.

(Emphasis supplied)

10. In this framework, when read explanation (d) to section 56(2)(vii) in support of text of memorandum, it abundantly clarifies that, the legislature in its wisdom excluded **“Stock-in-Trade or raw material or consumable stores of the recipient”** from the class or classes property as defined by clause (d) explanation to section 56(2)(vii), consequently there remain no iota of doubt to press into service any part of the definition of section 2(14) of the Act for the purpose of explanation



clause (d) vis-à-vis section 56(2)(vii) of the Act, and in holding so, we are mindful to the decision of co-ordinate bench in **“Mubarak GafurKorabu Vs. Income Tax Officer”** (ITA No. 752/PUN/2018) which is strongly relied by the Ld. AR, however the facts of the case are disparate or dissimilar to the extent that, the assessee therein purchased agricultural land and held as **its stock in trade and on its sale the receipts were recognized and accepted as business income, *per contra***, in the present case, the appellant’s investment into immovable property is otherwise than stock in trade, hence ***de-jure*** falls out of decision relied upon.

11. In nutshell, we concur with the view of tax authorities below to the effect that, explanation clause (d) to section 56(2)(vii) refers to any immovable property and the same is not circumscribed or limited to any particular nature or class of immovable property, as it refers to any immovable property which by its grammatical meaning would mean all and any property which is immovable in nature. In the instant case, the appellant purchased



agricultural land (may it be rural or urban) and held as such, being a property squarely falling within the purview of clause (d) explanation to section 56(2)(vii) of the Act, and irrespective of whether such property falls within the definition of capital asset u/s 2(14), in our considered view is exigible to taxation u/s 56(2)(vii)(b) so long as the property as defined by explanation (d) thereto is exterior to exclusion carved out by the Memorandum to Finance Act 2010 and for the reasons, we see no infirmity with the orders of tax authorities below, therefore the ground number 2 of the appeal stands adjudicated against the appellant assessee and in favour of the revenue.

12. Resultantly, the appeal of the appellant assessee is dismissed in terms of aforestated observation.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 17th day of August, 2022.

S. S. GODARA
JUDICIAL MEMBER

पुणे/ PUNE ; दिनांक / Dated :

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

day of August, 2022.



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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Pune (Mh-India)
4. The CIT(A)-3, Pune (Mh-India)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, पुणे -बी-बेंच, पुणे / DR, ITAT, Pune "B" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY RDER,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.