

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

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.930/PUN/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Shaila Balwant Dambe,
Bahadur Shekh Naka,
Sahil Garden Hsg. Soc.,
Paranjape Scheme,
Chiplun - 415605

PAN : ATSPD3790P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 1(3), Ratnagiri

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 12-08-2022
घोषणा की तारीख / Date of Pronouncement : 30-08-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2011-12 arises against the CIT(A)-2, Kolhapur's order dated 02-08-2017 passed in case No. RTN/107/2016-17, in proceedings u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at the assessee's behest. The very factual position existed on 27-09-2021, 11-11-2021 and 07-07-2022. She

proceeded ex-parte therefore. We have heard the Revenue. Case file perused.

2. The assessee's following substantive grounds in the instant appeal :

“1.1 The Ld. CIT(A) erred in confirming the addition made by the AO on account of Capital Gain given without appreciating the fact that the appellant has entered into registered agreement to sale on 17.12.2009 and has already received part consideration and the possession of the property is also given at the time of agreement.

1.2 The Ld. CIT(A) failed to appreciate that the transfer as per the provisions of Income Tax Act is completed on 17.12.2009 i.e. AY 2010-11 and, hence, if at all the provisions of Sec. 50C are to be applied the same has to be done with reference to the documents registered on 17.12.2009.

2.1 Without prejudice to the above submission that no Capital Gain is chargeable to tax in the AY 2011-12, the Ld. CIT(A) erred in not considering the value determined by the Valuation Officer as per the provisions of Sec. 50C(2) of the Income Tax Act.”

3. Mr. Desai vehemently supported the learned lower authorities' action holding the assessee to have transferred the capital asset in issue on 28-03-2011 by way of registered sale deed wherein it was stipulated in clear cut terms at page 10 thereof that the possession in issue stood delivered on the said day only. We find merit in the Revenue's stand since contents of a registered documents prevail on all unregistered instruments executed between the parties.

4. Next comes the most significant aspect of quantification of assessee's capital gains in light of section 50C of the Act invoked by the learned lower authorities. It is an admitted factual position as per the CIT(A)'s detailed discussion in para 5.2 page 11 the assessee had inter alia executed the sale agreement dated 19-12-2009 preceded by advanced amount of Rs.1 lac as per MOU and Rs.4 lacs stated in the agreement followed by the

registered sale deed dated 28-03-2011. And further that the actual sale price herein is Rs.16.75 lacs as against that assessed to the tune of Rs.90.40 lacs by the revenue authorities. Leaned Assessing Officer appears to have invoked section 50C for assessing fair market value of assessee's capital asset going by stamp price only. Faced with this situation, we observe that section 50C(1) first and second proviso inserted in the Act by the Finance Act, 2016 w.e.f. 01-04-2017 stipulating that a payment or part thereof could very well be taken as the fair market value of the capital asset, in case it is made by the specified banking channels, when the date of agreement and transferred are not the same, are duly applicable herein. Mr. Desai sought to buttress the point that this amendment does not carry any retrospective effect. He fails to dispute that this tribunal's co-ordinate bench decision in Dharamshibhai Sonani Vs. ACIT (2016) 161 ITD 627 (Ahd.) has already settled the issue that the foregoing twin provisos are curative in nature having retrospective effect. We conclude in light of the assessee's having received the advance consideration through banking channel at the time of making the agreement to sell (supra) that the former actual price deserves to be adopted to the tune of Rs.16.75 lac only for the purpose of computing capital gains in issue. Ordered accordingly. Necessary computation shall follow as per law.

5. We further note that the assessee's instant appeal suffers from 219 days delay in filing stated to be attributable to various justifiable reasons and medical complications which have gone un-rebutted from Revenue's side. We thus quote Collector Land Acquisition Vs. MST Catiji (1987) 167

ITR 471 (SC) holding that all such technical aspects must make way for the cause of substantial justice, to condone the same.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 30th August, 2022.

Sd/-
(Dipak P. Ripote)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 30th 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)-2, Kolhapur
4. The Pr. CIT-2, Kolhapur
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