

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

**BEFORE SHRI S.S.GODARA, JM  
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.299/PUN/2020**  
**निर्धारण वर्ष / Assessment Year : 2013-14**

Shri Kantilal M. Khinvasara,  
H.No. 1215/2/11, Flat No. 1,  
Gulab Apartments Shirole Road,  
Shvianji Nagar, Deccan Gymkhana,  
Pune - 411 004.

PAN : ABIPK9752A

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle -3, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod S Shingte  
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 20.06.2022  
घोषणा की तारीख / Date of Pronouncement : 29.07.2022

**आदेश / ORDER**

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

1. This assessee's appeal for A.Y. 2013-14 is directed against the CIT(A)-8, Nashik's order dated 30/12/2019 passed in case No. PN/CIT(A)-8/DCIT. Cir.3/823/18-19 involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal.

- “1. On the facts and in the circumstances of the case and in law Ld. Commissioner of Income Tax (Appeals)-8, Pune erred in passing an ex-parte order without appreciating the fact that due to valid and sufficient reasons Your Appellant could not attend the hearing and without considering the merit of the case, Your Appellant prays for set aside the matter to the CIT (Appeals) in the interest of principal of natural justice.  
Without prejudice to the above ground it prays before Your Honors to consider following grounds of appeal.
2. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in passing the protective assessment order u/s. 143(3) by alleging that the real year of taxability of capital gain u/s 45(2) of the Income Tax Act, 1961 was A.Y. 2010-11 and of business income on receipt basis of consideration, your appellant prays for treating this order as substantive and oblige.
3. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making addition of Rs.37,54,125/- being Indexed cost of acquisition as on 01/04/1981 with the allegation that same was overvalued by disregarding appellant's contention.
4. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making a reference to DVO for valuation of cost of acquisition as on 01/04/1981, in the scrutiny proceedings for A.Y. 2013-14 by disregarding the fact that computation of capital gain u/s 45(2) of the Income Tax Act, 1961 pertains to A.Y. 2010-11 therefore reference to DVO in proceeding of A.Y. 2013-14 is illegal and is therefore void-ab-initio therefore such reference needs to be cancelled and cost of acquisition as adopted in return of income of A.Y. 2013-14 may kindly be accepted.”

3. We next note that the CIT(A) lower appellate order; affirming the assessing officers action adding long term capital gains of Rs.37,54,125/- on protective basis, has been passed ex-parte.

4. Mr. Desai vehemently argued in light of the CIT(A)'s tabulation in page 3 para 6 that he had afforded adequate opportunities herein to the assessee. We do not find any evidence of actual service of at least latter three notices in the foregoing tabulation. This is apart from the clinching fact that the CIT(A) has not decided the assessee's sole substantive grounds on merits in light of section 250(6) of the Act requiring him to frame points of determination followed by a detailed adjudication thereupon. Faced with this situation, we restore the assessee's instant sole substantive grievance back to the CIT(A) for his de-novo adjudication as per law within three effective opportunities of herein. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on this 29<sup>th</sup> day of July, 2022.

**Sd/-**  
**(DR.DIPAK P.RIPOTE)**  
लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**  
**(S.S. GODARA)**  
न्यायिक सदस्य/ **JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> July, 2022.  
Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-8, Pune.
4. The Pr.CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,  
// True Copy //

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

ITA No.299/PUN/2020  
A.Y. : 2013-14  
Shri Kantilal M. Khinvasara,

S.No.	Details	Date	Initials
1	Draft dictated on	20.06.2022	
2	Draft placed before author	29.07.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		