

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM
AND SHRI G.D. PADMAHSHALI, AM

आयकर अपील सं. / ITA No.48/PUN/2019
निर्धारण वर्ष / Assessment Year : 2011-12

Mr. Vasant Hanumant Buchade,
1-Near Marathi School,
Marunje,Mulshi,
Pune – 411 057

PAN : ABCPB7907L

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward - 10(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 27.09.2022
घोषणा की तारीख / Date of Pronouncement : 06.10.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for AY 2011-12 arises against the CIT(A)-13, Pune's order dated 27/09/2018 passed in case No. CIT(A)-13/16-17/546/234 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. We next note that the assessee's first and foremost ground on merits challenges correctness of both the lower authorities action making long term capital gains addition of Rs.45,68,527/- during the course of assessment dated 30.12.2016 as upheld in the CIT(A)'s order as follows:-

“5. DECISION: I have carefully considered the matter. Grounds 7 and 8 are general in nature. Grounds 2, 5 and 6 are against the action of the AO in referring the cost of acquisition as on 01.04.1981 to the DVO and are therefore clubbed for the sake of convenience.

5.1 Grounds 2, 5 and 6: As stated above, the AO has referred the matter of determination of the FMV of the land as on 07.04.1981 to the DVO. Before me, it was argued that the cost as on 01.04.1981 should be as per the valuation report of the Govt. Registered Valuer. In the grounds, the Appellant has argued that the AO was wrong in referring the case to the DVO to determine the Fair Market Value as on 01.04.1981. While arguing so, the Appellant has overlooked the amended provisions of section 55A(a) wherein the words 'as at variance with its Fair Market Value' have been substituted for 'is less than its Fair Market Value' with effect from 01.07.2012. On perusal of the arguments made before the AO, the Appellant is relying on the pre-amended section 55A(a). It is to be noted that the reference to the DVO was made in 2016 during the pendency of the re-opened assessment. Therefore, the amended section 55A would apply to this case. I am therefore, of the view that there is no infirmity in the action of the AO to refer the determination of the cost of land as on 01.04.1981 to the DVO. The appellant has also argued before me that the AO has not cited any reason for rejecting the report of the Registered Govt. Valuer. However, I find that in para 5.1 of the assessment order, the AO has obtained information from the Sub-Registrar, Hinjewadi regarding the prevailing market rate of agriculture land in Mharunje village relating to Financial Years 2008-09, 2009-10 and 2010-11. This information was sought u/s 133(6) and on examination of the replies from the Sub- Registrar, the

AO was of the opinion that the prevailing market rate in the year 2010 is approx. Rs. 15 lacs. As against this, the Appellant had valued the land as on at Rs 6,73,328. This is the reason for which the AO was of the view that the cost of acquisition as on 01.04.1981 has been over-valued. I do not see any reason to interfere with this action of the AO. Accordingly, grounds 2, 5 and 6 are dismissed and the Long Term Capital Gain determined by the AO of Rs. 1,21,01,340 is upheld as against the capital gain declared by the assessee of Rs. 75,32,823.”

3. Mr. Jasnani vehemently supported the CIT(A)'s above extracted discussion upholding the impugned addition. We find no merit in Revenue's arguments once it has come on record that we are in assessment year 2011-12 whereas the learned lower authorities have invoked section 55A(a) amendment vide Finance Act 2012 with retrospective effect going against CIT V/s. Puja Prints (2014) 360 ITR 697 (Bom.). Mr. Jasnani at this stage sought to place reliance on the Assessing Officer's reference made to the DVO on 27.12.2016 i.e. post the above statutory amendment. This latter plea also deserves to be rejected only as the clinching factor in the instant issue is the date of transaction viz-a-viz assessment year than the date of reference. The impugned long term capital gains addition of Rs.45,68,527/- based on section 55A(a) of the Act stands deleted therefore.

4. The assessee's section 54F deduction disallowance issue also succeeds as the necessary corollary.

5. We are now left with section 54B deduction disallowance of Rs.60,47,170/- made in both the lower proceedings. It emerges from a

perusal of para 7.1 in assessment order that the assessee had very well placed on record form 7/12 extract supporting his case that the lands in issue transferred in the relevant previous year were agricultural only. The Revenue on the other hand relies on departmental inspector's report to the contrary. This Revenue's stand hardly carries any merit as the revenue record of the land as on date of transfer in the relevant time period would override the inspection report, if any, finalized much later during the course of scrutiny. We therefore delete this last disallowance of Rs.60,47,170/- as well.

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

Order pronounced in the Open Court on this 06th day of October, 2022.

Sd/-

Sd/-

(G.D. PADMAHSHALI)

(S.S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 6th October, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The CIT(A)-13 Pune.

4. The Pr.CIT-5, Pune.

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.

6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials
1	Draft dictated on	28.09.2022	
2	Draft placed before author	03.10.2022	
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		