

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1872/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Harish Kishan Baney,
1161/10, Devi Niwas,
Shivajinagar, Pune-411005

PAN : AARPB9076C

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1873/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Vinod Kishan Baney,
1161/10, Devi Niwas,
Shivajinagar, Pune-411005

PAN : ABEPB4421B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 2(5), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishore B. Phadke
Revenue by : Shri Ramnath P. Murkunde

सुनवाई की तारीख / Date of Hearing : 14-11-2022
घोषणा की तारीख / Date of Pronouncement : 21-11-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both these two appeals by the different assesseees against the common order dated 25-09-2018 passed by the Commissioner of Income Tax (Appeals)-2, Pune [‘CIT(A)’] for assessment year 2012-13.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 1872/PUN/2018 for A.Y. 2012-13.

4. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in restricting the addition of Rs.1,15,39,324/- on account of alleged capital gain.

5. Heard both the parties and perused the material available on record. We note that the assessee is an individual derives income from interest and remuneration from firm. The assessee filed its return of income declaring a total income of Rs.4,13,67,478/- and under scrutiny, the AO by issuing notices u/s. 143(2) and 142(1) of the Act determined the total income of the assessee at Rs.7,47,02,193/-. We note that the AO asked the assessee to justify the claim of exemption u/s. 10(37) of the Act in respect of long term capital gains shown by the assessee of Rs.3,33,34,715/- on account

of sale of agricultural land situated at Village Male in Pune District. In response to the said queries raised by the AO, the assessee submitted its submissions which were reproduced by the AO in his order at pages 3 and 4. According to the AO, no documentary evidences corroborating the claim of exemption u/s. 10(37) of the Act were filed and he added the said amount to the income of the assessee.

6. In first appeal, the assessee raised an issue of non-applicability of provisions of capital gains by arguing that the land sold is not a capital asset. In support of its claim the assessee filed certificate from Government authority stating the nearest Taluka is around of 10 KM from the land, 7/12 extracts, status of usage of said land, certificate showing the population is less than ten thousand, availability of irrigation facilities from Mulshi lake and case laws, which are, part and parcel of impugned order from pages 7 to 11. The CIT(A) considering the same as additional evidences sought remand report from the AO. The remand report dated 05-03-2018 and supplementary report dated 07-05-2018 are reproduced from pages 11 to 23 of the impugned order. According to CIT(A) taking into account the remand report as furnished by the AO, only lands falling under Gat No. 627/628 approximately 21 Hectors out of 33 Hectors treated as agricultural lands and remaining lands held as non-agricultural lands for having no irrigation facilities and non-mention of crops. We note that in para 4.18 of the impugned order it was observed that the entire subjected land is located beyond 8 kilometres of the municipal limit and the population was also less than ten thousand. Having finding the same falling under sub-clause (a) and (b) III of clause III of sub-section (14) of section 2 of the Act, the CIT(A) merely on basis of non-availability of irrigation of facilities and non-mentioning of crops held the same as non-

agricultural lands, in our opinion, it is not justified that there was certificate issued by the competent authority the subjected lands beyond 8 kilometres and population in respective area also less than ten thousand. When it is so the entire extent of land as tabulated in chart at page 36 of the impugned order are agricultural lands falling under sub-clause (a) and (b) III of clause III of sub-section (14) of section 2 of the Act. Therefore, the assessee is entitled to claim exemption on account of agricultural lands. Thus, grounds raised by the assessee are allowed.

7. In the result, the appeal of assessee is allowed.

ITA No. 1873/PUN/2018, A.Y. 2012-13

8. We find that the issues raised in the appeal and the facts in ITA No. 1873/PUN/2018 are identical to ITA No. 1872/PUN/2018 except the variance in amount. Since, the facts in ITA No. 1873/PUN/2018 are similar to ITA No. 1872/PUN/2018, the findings given by us while deciding the appeal of assessee in ITA No. 1872/PUN/2018 would *mutatis mutandis* apply to ITA No. 1873/PUN/2018, as well. Accordingly, the appeal of assessee is allowed.

9. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 21st November, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st November, 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, Pune
4. The Pr. CIT-1, Pune
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