

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.634/PUN/2019
निर्धारण वर्ष / Assessment Year: 2011-12

Narayan Pandit Borole, Plot No.37, Pankaj Nagar, Yawal Road, Chopda, Dist: Jalgaon- 425107. PAN : AHOPB7368R	Vs.	ITO, Ward-2(4), Jalgaon.
Appellant		Respondent

Assessee by : Shri Vinay V. Kawdia
Revenue by : Shri Ramnath P. Murkude
Date of hearing : 22.11.2022
Date of pronouncement : 05.12.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Nashik [‘the CIT(A)’] dated 05.03.2019 for the assessment year 2011-12.

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of builders and land developers. The Return of Income for the assessment year 2011-12 was filed on 29.09.2011 declaring Rs.Nil income. Subsequently, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) vide order dated 17.01.2014 assessing the total income of

Rs.64,696/-. Subsequently, the Assessing Officer forming an opinion that the income had escaped assessment had issued a notice u/s 148 on 10.03.2016 and the assessment was completed on 06.12.2016 passed u/s 143(3) r.w.s. 147 of the Act at total income of Rs.63,93,300/- by disallowing a sum of Rs.63,28,602/- on sale of flat to Buldhana Urban Co-op. Credit Society, Chopda. The factual background of the above addition is as under :

During the previous year relevant to the assessment year under consideration, the appellant had sold a property to Buldhana Urban Co-op. Credit Society, Chopda for a consideration of Rs.85,00,000/-. The said sale proceeds were credited to the Profit & Loss Account as sales and claimed direct expenditure of Rs.64,41,847/- which was allowed in the original assessment proceedings. However, during course of re-assessment proceedings, the Assessing Officer was of the opinion that the amount of Rs.64,41,847/- is nothing, but diversion of income and cannot be allowed as deduction while computing the capital gains. Accordingly, the Assessing Officer brought to tax the same.

On appeal before the Id. CIT(A), the action of the Assessing Officer was confirmed rejecting the contention of the appellant that

the appellant entered into MOU with Pankaj Infrastructure Pvt. Ltd. (PIPL) and the amount was payable in terms of the said MOU.

3. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. The ld. AR reiterated the same submissions as made before the lower authorities.

5. On the other hand, ld. Sr. DR placing reliance on the order of the ld. CIT(A) submits that no interference is required.

6. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the allowability of expenditure of Rs.64,41,847/- claimed in respect of sale of property to Buldhana Urban Co-op. Credit Society, Chopda. The only argument advanced on behalf of the appellant is that the said sum is payable in terms of the MOU entered by the appellant with PIPL. The appellant had not discharged the onus of proving that the expenditure was incurred in connection with the sale of this property. If for any reason, the amount was payable to PIPL, it is nothing, but an application of income, which cannot be allowed as deduction. Therefore, we do not find any merit in the grounds of appeal filed by the assessee in the present appeal and hence, the appeal of the assessee stands dismissed.

7. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 05th day of December, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 05th December, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" 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.