

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.18/PUN/2020

निर्धारण वर्ष / Assessment Year : 2016-17

Sunil Jaywant Domale, 401, Lunkad Skymax, Datta Mandir Chowk, Viman Nagar, Pune 411 014 Maharashtra PAN : AERPD8999J	Vs.	ITO, Ward-7(3), Pune
Appellant		Respondent

Assessee by : Shri S.G. Naik
Revenue by : Shri Suresh Gaikwad

Date of hearing : 17-05-2023
Date of pronouncement : 18-05-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order dated 09-10-2019 passed by the CIT(A)-5, Pune in relation to the assessment year 2016-17.

2. The only issue pressed by the Id. AR is regarding the adoption by the authorities of lower amount of Cost of Acquisition in respect of purchase of plot at Kumar Meadows, Manjri, Pune in the computation of capital gain.

3. Briefly stated, the facts of the case are that the assessee claimed short term capital loss of Rs.27,72,937/- from sale of plot at A-20, Kumar Meadows, Manjri, Pune by adopting the amount of sale consideration received at Rs.1.05 crore and cost of acquisition at Rs.1,32,72,937/-. The Assessing Officer (AO), on perusal of the purchase deed, observed that the share of the assessee jointly with his brother was 50% with remaining 50% of Shri Santosh Ramchandra Raskar. Since the share of the assessee jointly with his brother in the cost of acquisition came at Rs.81,74,755/-, being, 50% of Rs.1,63,49,510/-, the AO recomputed capital gain by adopting the cost of acquisition at Rs.81.74 lakh. This resulted into converting the amount of short term capital loss from sale of plot into short term capital gain of Rs.19,28,983/-. The Id. CIT(A) allowed part relief. The assessee in the instant appeal is aggrieved only by the non-adoption of the cost of acquisition at a sum of Rs.1,00,27,145/-.

4. I have heard the rival submissions and gone through the relevant material on record. It is seen that the assessee along with one Shri Santosh Ramchandra Raskar purchased the property on 31-03-2013 by paying some amount there and then and some amounts in subsequent two years. Ultimately, the assessee sold its 50% share to Shri Santosh

Ramchandra Raskar, the other 50% stakeholder in the property. In this regard it is seen that the assessee is a regular income-tax assessee filing income-tax returns for the earlier years well in time. I have examined the assessee's balance sheet for the A.Y. 2013-14 which depicts the amount of advance paid for Kumar Meadows plot at Rs.25,49,500/-. Return for this year was filed on 20-09-2013. For the next A.Y. 2015-16, the assessee declared opening balance of advance for purchase of plot at Rs.25,49,500/- and accounted for further payments during the year by reaching closing balance at Rs.93,30,195/-. For the A.Y. 2016-17 under consideration, the assessee declared closing balance of the last year as opening balance towards advance for purchase of Kumar Meadows property and added non-refundable charges paid to the seller of the property by computing closing balance at Rs.1,00,27,145/-. It is this value of Rs.1.00 crore and odd that the assessee claims should be substituted as its cost of acquisition. Rather than this, the AO chose to take 50% share of the assessee at Rs.81,74,755/- as the cost of acquisition of plot by ignoring the amount actually paid over the years for such acquisition.

5. The assessee has been regularly filing his income-tax returns on the respective due dates from the year of the purchase of the plot by showing the amounts paid in the intervening years in the respective accounts. Acceptance of the AO's case of the assessee contributing 50% towards purchase of plot would belie the acceptance of income-tax returns furnished by the assessee along with his balance sheets for all these years. It is pertinent to mention that the veracity of the returns has not been disputed by the Revenue. In view of the fact that the assessee's claim of cost of acquisition is at the same level at which it was actually acquired over the years by making payments, I am inclined to accept the same. It is, therefore, directed that the assessee's share towards cost of acquisition of the plot be taken at Rs.1,00,27,145/- as against Rs.81,74,755/- adopted by the AO.

6. In the result, the appeal is allowed to this extent.

Order pronounced in the Open Court on 18th May, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 18th May, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT-4, Pune
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

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

		Date	
1.	Draft dictated on	17-05-2023	Sr.PS
2.	Draft placed before author	18-05-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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