

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.778/PUN/2022

निर्धारण वर्ष / Assessment Year : 2012-13

Nandkumar Gajanan Lad, Flat Nos.404, Building No.3, Sushil Garden, Kinara Road, Panvel – 410 206, Dist. Raigad Maharashtra PAN : AATPL5042Q	Vs.	ITO, Ward-5, Panvel
Appellant		Respondent

Assessee by Shri Nikhil S. Pathak &
Shri Ajinkya M. Vaishampayan
Revenue by Shri Ramnath P. Murkunde
Date of hearing 30-05-2023
Date of pronouncement 01-06-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 29-08-2022 passed by the CIT(A) in National Faceless Appeal Centre (NFAC) u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2012-13.

2. The only issue raised in this appeal is against the adoption of certain amount as Cost of Acquisition in the computation of

capital gain on transfer of Plot Nos.20 & 20A, Sector-22, at Ulwe, Tal. Panvel, Dist. Raigad.

3. Succinctly, the facts of the case are that the assessee along with certain other persons entered into an agreement with M/s. Shriram Builders & Developers for transfer of their rights in respect of Plot Nos.20 & 20A, Sector-22, at Ulwe, Tal. Panvel, Dist. Raigad vide Tripartite Agreement dated 12-09-2011. Plot Nos.20 & 20A were allotted to the assessee on 26.8.2011 in lieu of compulsory acquisition of land, whose possession was taken over by the Government in the year 1986. Initially, some compensation was awarded to the assessee. Later on, the said plots were allotted under 12.5% scheme of the Maharashtra Government of giving plot of area equivalent to 12.5% of the area of compulsorily acquired land. These plots were allotted to the assessee and others on 26-08-2011, which were sold by them on 12-09-2011 to M/s. Shriram Builders & Developers for a sum of Rs.10.75 crore. On being called upon to explain as to why no capital gain was offered for taxation on the transfer of Plot Nos.20 & 20A during the year under consideration, the assessee submitted that the market value of the plots allotted against compulsory acquisition by the Government constituted the full value of consideration and the same value became cost

of acquisition in the transaction of sale to M/s. Shriram Builders & Developers. The AO observed that the assessee paid a sum of Rs.6,36,300/- and Rs.2,21,950/- totaling to Rs.8,58,250/- to CIDCO under 12.5% scheme and held this amount to have constituted cost of acquisition of the property transferred for a sum of Rs.10.75 crore. This resulted into total short term capital gain of Rs.10.66 crore with the assessee's share at Rs.1,86,49,906/-. The addition so made was echoed by the Id. CIT(A) in the first appeal. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. Indisputably, the agricultural land of the assessee along with other co-owners was acquired under the Land Acquisition Act, 1894 and its possession was taken over by CIDCO in the year 1986. Certain sum, whose exact figure was not known to the Id. AR nor has been referred to in the orders of the authorities below, admitted to be less than Rs.2.00 lakh (say, Rs. X) was awarded as compensation. In 1990, the Government of Maharashtra came out with 12.5% scheme covering even the transactions of compulsory acquisition taking place prior to that date. Under this scheme,

urban land equal to 12.5% of the area compulsorily acquired was to be allotted. Simultaneously, the amount originally paid as compensation was to be refunded with certain addition. In the present case, such 12.5% of the assessee's land with other co-owners is equivalent to Plot Nos.20 & 20A as referred to herein above. These plots were allotted to the assessee on 26-08-2011 and the assessee paid Rs.8,58,250/- to CIDCO, with net outflow of certain figure, say Rs. Y (Rs. 8,58,250/- minus Rs. X). The assessee transferred these two plots on 12-09-2011 for a sum of Rs.10.75 crore, both the events happening during the previous year relevant to the assessment year under consideration. On an overview, it can be seen that there are basically two transfer transactions of the assessee, first, the transfer by compulsory acquisition of land by the Government of Maharashtra and the, second, of the transfer of plots to M/s. Shriram Builders & Developers, which were allotted to the assessee in lieu of the compulsory acquisition. In a nutshell, the assessee was allotted the two plots as *quid pro quo* for the compulsory acquisition of his land after paying back Rs. Y. In that view of the matter, the fair market value of these two plots minus Rs. Y will constitute full value of consideration in the first transaction of transfer of agricultural land by compulsorily

acquisition. The AO, on page 8 para 5.3 of his order, has observed that the first transaction of transfer by compulsory acquisition will not attract capital gain because it was a transfer of agricultural land. On page 11 of his order, the AO further observed that the date of allotment of the plots was 26-08-2011. Had the compulsory acquisition been of some non-agricultural land, the capital gain chargeable to tax would have resulted by taking the fair market value of the two plots minus Rs. Y as full value of consideration.

5. Now we turn to the second transaction of the transfer of Plot Nos.20 & 20A taking place during the year, which happened on 12-09-2011, namely, around 15 days from the date of allotment of plots. As the same plots which were allotted to the assessee as a consideration against the acquisition of his agricultural land in the first transfer transaction became subject matter of transfer in the second transaction, their fair market value on the date of allotment, namely, 26-08-2011 will naturally constitute their cost of acquisition in the second transaction of their sale to M/s. Shriram Builders & Developers. The AO adopted a sum of Rs.8,58,250/- paid by the assessee to CIDCO as cost of acquisition of the two plots in the computation of capital gain in the second transaction, which is

neither here nor there. This amount is nothing but refund of the original compensation awarded to the assessee prior to 12.5% scheme along with certain addition. Once the two plots got allotted in lieu of compulsory acquisition of the assessee's agricultural land, their fair market value on the date of allotment minus Rs. Y, substituted the earlier amounts received as full value of consideration. Neither the original receipt of compensation in seclusion can be construed as the fair market value of the property in the first transaction of transfer nor its subsequent refund to CIDCO with certain addition in isolation as the cost of acquisition in the second transfer transaction. In fact, cost of acquisition of the two plots in the second transaction of transfer is their fair market value on the date of their allotment to the assessee, which constituted the basis for the full value of consideration in the first transfer transaction. In view of the foregoing discussion, the capital gain in the second transaction needs to be computed by taking the assessee's share in Rs.10.75 crore as full value of consideration to be reduced by his proportionate share in the value of plot Nos. 20 & 20A, Sector-22, at Ulwe, Tal. Panvel, Dist. Raigad on 26-08-2011 allotted by CIDCO. Since the necessary figure of the fair market value of the two plots on 26.8.2011, being,

the cost of acquisition in the second transaction is not available, we set-aside the impugned order and remit the matter to the file of the AO for determining it afresh in the light of our above observations. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 01st June, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 01st June, 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 concerned
4. DR, ITAT, 'A' 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	30-05-2023	Sr.PS
2.	Draft placed before author	31-05-2023	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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