

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

M.A.No.337/PUN./2022
Arising out of
I.T.A.No.2443/PUN./2017 - Assessment Year 2013-2014

Shri Ramraje Namdevrao Jadhav, Flat No.806, Building A-2, 8 th Floor, Mont Vert Prestine, Behind Khadki Railway Station, Khadki, Pune - 411 020 PAN ABAPJ9226E	vs.	The ITO, Ward - 11 (1), Pune.
(Applicant)		(Respondent)

For Assessee :	Shri Hari Krishan
For Revenue :	Shri M.G. Jasnani

Date of Hearing :	16.06.2023
Date of Pronouncement :	16.06.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's miscellaneous application M.A.No.337/PUN./2022 filed u/s.254(2) of the Income Tax Act, 1961 (in short "the Act") seeks to recall/rectify the tribunal's order dated 08.06.2023 upholding the learned lower authorities action disallowing payment(s) made to Shri Ramesh Shinde of Rs.3,46,00,000/- and Rs.1,00,00,000/- to M/s. Yashwant Ghadke Nagar Co-operative Housing Society; respectively.

Heard both the parties at length. Case file perused.

2. We find at the outset that our detailed discussion has rejected the assessee's twin substantive grounds as under:

2. The assessee's former substantive grievance challenges correctness of both the lower authorities action declining deduction of payment made to Shri Ramesh Shinde for Rs.3,46,00,000/- and for yet another claim of Rs. 1,00,00,000/- made to M/s. Yashwant Ghadge Nagar Co-operative Housing Society; respectively.

3. It emerges during the course of hearing that the relevant facts pertaining to both these issues are very much identical. We note from a perusal of the assessee's detailed paper book containing 197 pages that he owned and possessed the capital asset in issue situated in the above stated co-operative housing society. Pages 1 to 29 in assessee's paper book file on record his agreement dated 17.08.1995 with one Shri Bipin Shah which is not the issue before us. There is further no dispute that assessee has declared the same in his computation and return for assessment year 1996-97 (pages 30-37). This followed the latter party's intimation to the assessee dated 17.08.1995 confirming handing over of possession as well as receipt of property card, share certificates and all other relevant details.

4. We next find that Shri Bipin Shah thereafter executed an irrecoverable power of attorney 14.02.1998 (pages 40-49) in favour of Shri Ramesh Shinde. We do not find neither any purchase consideration between them. Nor assessee was a party to the said agreement. Learned counsel invited our attention to assessee's notarized agreement date 25.05.2012 (page 52 to 54) between him and Mrs. Nandini R. Jadhav (as first party in favour of Mr. Ramesh Shinde) for valuable consideration wherein Mr. Bipin Shah is not a party. This followed the impugned transfer deed in the relevant assessment

year dated 17.09.2012 which has been assessed u/s. 2(47) of the Act. This taxpayer and Mr. Shinde had received the total consideration of Rs.4,91,00,000/- out of which the impugned claim of Rs.3.46 crore has been raised at assessee's behest as a deduction. Both the learned lower authorities have rejected genuineness of his claim as an attempt to siphon off the corresponding long term capital gains.

This is what leaves the assessee is aggrieved.

5. Mr. Hari Kishan vehemently argued that both the lower authorities have erred in law and on facts in rejecting the assessee's impugned claim. He refers to assessee's detailed paper book that he was required to pay the impugned sum to Mr. Shinde since the former hardly had any right or title left qua the capital asset in issue. And also that this assessee and Mr. Ramesh Shinde (supra) had agreed to share the impugned sale consideration which stands duly proved by sufficient documentary evidence.

6. The Revenue has placed strong reliance on learned lower authorities impugned deduction.

7. We find no merit in assessee's arguments qua this first and foremost issue of deduction claim amount to Rs.3.46 crore involving payments made to Mr. Ramesh Shinde as the consenting party. We make it clear that this latter party had allegedly got executed an irrecoverable power of attorney from Shri Bipin Shah(supra) without any consideration. We do not find any stipulation in said power of attorney dated 14.02.1998 that Shri Bipin Shah had received any valuable consideration at all. This is coupled with the fact

that notarized agreement (supra) nowhere records that Mr. Bipin Shah is the consenting party despite that he had paid consideration way back in 1998. And also that once Mr. Ramesh Shinde has acquired right and total possession over the asset, neither there is no documentary evidence nor there was any requirement for the assessee to act as the rightful owner in the assignment deed dated 17.09.2012 executed in the relevant previous year. We thus express our complete agreement the lower authorities doubting assessee's stand thereby alleging an attempt on his behalf for siphoning off the long term capital gains. The assessee fails in the instant first and foremost issue therefore.

8. Next comes to latter component of Rs.1 crore made to the society and claimed as deduction since pertaining to transfer of the capital asset. Learned counsel invited our attention to society letter dated 12.04.2016 on page 142 in the paper book that assessee had made the impugned payment as pertained to transfer of membership in favour of the ultimate vendee (supra). We find no merit in the instant grievance as well since this expenditure of Rs. 1 crore; even, if accepted as genuine, fails to satisfy the twin categories cost of acquisition incurred or improvement u/s.48 of the Act. The impugned disallowance of Rs. 1 crore stands confirmed.

3. Learned counsel invited our attention to the assessee's pleadings in the instant miscellaneous application that our impugned order dated 08.06.2023 suffers from many apparent mistakes on record. He could hardly dispute that our detailed discussion has already rejected all the submissions and therefore, there is hardly any occasion for us to invoke sec.254(2) of the Act to re-appreciate the entire evidence at this stage in light of ACIT vs. Saurashtra Kutch Stock Exchange Ltd., [2008] 305 ITR 227 (SC) and CIT vs. Reliance Telecom Ltd., [2021] 133 taxmann.com 41 (SC). Faced with the situation, we hold that our impugned order does not suffer

from any mistake even much less an apparent one so as to invoke sec.254(2) rectification jurisdiction. Rejected accordingly.

4. This assessee's miscellaneous application is dismissed in above terms.

Order pronounced in the open Court on 16.06.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 16th June, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A), Pune.
4.	The Pr. CIT-1, Pune
5.	D.R. ITAT, Pune "A" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.