

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

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

आयकर अपील सं. / ITA No.605/PUN/2020
निर्धारण वर्ष / Assessment Year :2009-10

Sharfuddin Yunus Kazi, House No.25, At Vadghar, Panvel, Raigad – 410208. PAN: ASIPK 7994	V s	The Income Tax Officer, Ward-1, Raigad.
Assessee/ Appellant		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	17/04/2023
Date of pronouncement	28/06/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax (Appeal)-2 [Id.CIT(A)], Thane dated 07.09.2020 for A.Y.2009-10 emanating from assessment order under section 143(3) of the Act dated 28.03.2018. The Assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law Lower Authorities erred in treating the transaction of sale of land at village Pangaon, Tal: Panvel, Dist. Raigad, as completed

transaction and thereby taxing the capital gain on Rs.96,11,050/- in the hands of assessee, by not appreciating the facts of the case and also erred in rejecting appellants' contention in this regard.

2. Without prejudice to above ground, it is appellants alternate contention that net sale consideration arising out of relevant transaction shall be restricted Rs.2,00,00,000/- being amount actually received by appellant."

Brief facts of the case :

2. The assessee had not filed Return of Income for A.Y.2009-10. The Income Tax Officer, Ward-1, Panvel received some information regarding sale of property by assessee. The Assessing Officer(AO) issued notice under section 148 of the Act on 29.08.2011. Assessee filed Return of Income for A.Y.2009-10 declaring total income of Rs.80,330/-. During the scrutiny proceedings, assessee's Authorised Representative and his son attended the hearing. The assessee had sold Land vide registered Sale Deed dated 04/08/2008 duly registered at Panvel vide registration number 5994/2008. The only issue involved in this case is that whether Capital Gain has arisen or not. The assessee pleaded before AO, that no possession has been handed over, only 10% of the total consideration has been received by the assessee and land has been acquired by the Government. Assessee also pleaded before the AO that it was a "Watan Land" hence there will be no cost of acquisition and hence no capital

gain as held by the Hon'ble Supreme Court. However, AO held that assessee is liable to pay Capital Gain Tax on total consideration mentioned in the agreement of Rs.20 crores after reducing index cost of acquisition. AO also denied assessee's claim for deduction under section 54F stating that no details were filed. The ld.CIT(A) confirmed the findings of the AO. Aggrieved by the order of the ld.CIT(A), assessee filed appeal before this Tribunal.

Submission of ld.AR :

3. Ld.AR filed paper book containing 165 pages. Ld.AR submitted that assessee had entered into a sale deed on 04/08/2008 for Sale of his ancestral land to various members of Kukreja Family. Mr.Kukreja had given post dated cheques to the assessee. However, subsequently Mr.Kukreja asked his Bank not to honour the cheques. Therefore, the assessee has received only 10% amount of the Total Sale Consideration mentioned in the Sale Deed. The ld.AR pleaded that as per provisions of section 53A of Transfer of Property Act, there are three conditions which needs to be fulfilled. Two of these conditions i.e. Possession has not been handed over and the purchaser is not

willing to pay the remaining amount. Thus two conditions of Section 53A of Transfer of Property Act have not been satisfied, hence there is no Transfer as per section 2(47)(v) of the Income Tax Act. The ld.AR invited our attention to the legal notice issued by purchaser. The ld.AR also submitted that purchaser has instructed the bank not to honour the cheques which were given to the assessee. The ld.AR submitted that Government of Maharashtra has passed an order on 24.11.2008 (page no.147 – 158 of paper book) vide which Government of Maharashtra held that land belongs to “CIDCO”. The ld.AR also invited our attention to copies of the documents filed at page no.142, 143 of the paper book to demonstrate the case filed before the Hon’ble Bombay High Court. Ld.AR also submitted that it is the “Watan Land”, therefore, there is no cost of acquisition and hence, even if there is transfer of land, there cannot be any kind of Capital Gain as held by the Hon’ble Supreme Court in the case of CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294. The ld.AR also submitted that all these details were submitted before the AO and ld.CIT(A) but they failed to consider these documents. The ld.AR vehemently stated that there is no transfer of land and hence there cannot be any kind of capital gain. The ld.AR relied

on the decision of ITAT Mumbai in the case of General Glass Company Vs. DCIT 108 TTJ 854 (Mum), ACIT vs. Ms.Geethadevi Pasari 104 TTJ 375 (Mum).

3.1 The ld.AR Invited our attention to the Remand Report submitted by the AO which is reproduced in para 6.2 of the ld.CIT(A)'s order. Ld.AR submitted that AO has admitted that the land is in the name of CIDCO, and CIDCO has started construction on the impugned land. Therefore, ld.AR pleaded that it is an admitted fact by the Department that the impugned land is in the custody of CIDCO meaning thereby that assessee has not handed over the possession of the land to the purchaser Kukreja as claimed by the AO in the assessment order. This establishes that there cannot be any capital gain.

Submission of ld.DR :

4. The ld.Departmental Representative relied on the order of AO and ld.CIT(A). The ld.DR submitted that assessee has entered into an agreement on 04.08.2008 with "Kukreja family" for sale of the impugned land, copy of the said agreement is at

page no.1 to 54 of the assessee's paper book. The ld.DR vehemently pleaded that as per the said agreement assessee had received post dated cheques. Therefore, ld.DR pleaded that assessee has relinquished his rights and hence, it is taxable as capital gain.

Findings & Analysis :

5. We have heard both the parties and perused the records. The ld.CIT(A) while confirming the assessment order held that assessee has not filed any papers to indicate that assessee has appealed against Revenue Minister's order dated 24.11.2008 which is at page no.147 to 158 of the paper book. Ld.CIT(A) held that the land was in the name of CIDCO since 1972. The Appellant had a Title to the land which was under dispute, the said title was transferred hence capital Gain accrued.

6. However, on perusal of the Sale deed dated 04/08/2008 which is at Page 1-54 of the Assessee's paper book, it is observed that at page 16,17 of the said Sale Deed there is 7/12 extract duly signed by "TALATHI" i.e. revenue officer on 31/07/2008 which shows the Assessee as Owner of the impugned Land. Thus, as per the said 7/12 extract the Assessee

seems to be owner of the Land on 31/07/2008. CIDCO has been shown under the other rights. In these facts, the Id.CIT(A)'s findings that assessee was not the owner of the land at the time of sale is factually incorrect and this fact needs further investigation.

7. It is also a fact mentioned in the Revenue Minister's Order dated 24/11/2008 that the impugned land was 'Watan Land'. Assessee has filed in the paper book at page 144-146 copy of Sanad granting Watan to the assessee. Ld.AR pleaded that this document was filed by the assessee during the assessment proceedings and before the Ld.CIT(A). However, the AO and Ld.CIT(A) has not mentioned about the Sanad granting 'Watan' to the assessee. This aspect has not been considered by the AO and Ld.CIT(A) in the order while deciding the issue of Cost of acquisition for Long Term capital Gain.

8. It was pleaded before us that the possession of the impugned land was never handed over to the purchaser Mr.Kukreja. However, the AO in the Assessment Order has mentioned that Possession of the land was transferred over to Kukrejas. Subsequently the AO in the remand report submitted

to the Ld. CIT(A) admitted that the possession of the impugned land was with the CIDCO.

8.1 Thus, there are major factual errors in the Assessment Order and ld.CIT(A)'s order.

9. In these facts and circumstances of the case, in the interest of justice, the Assessment Order is set aside to the Assessing Officer for denovo adjudication after considering all the submission of the assessee and after making necessary inquiries if required. Opportunity of hearing shall be provided to the Assessee. Thus, the grounds of appeal raised by the Assessee are allowed for Statistical Purpose.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 28th June, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28th June, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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