

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER &

ITA No.512/PUN/2023
(A.Y. 2014-15)

DCIT, Circle-2, Pune	vs	Padmakar Gopal Bhide, 1 st Floor, 'A' Wing, PMT Building, Shankar Seth Road, Swargate, Pune. PAN: ABBPB 7155 P
Appellant/Revenue		Respondent /Assessee

Assessee by	:	Shri C.H. Naniwadekar, CA
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	10/07/2023
Date of pronouncement	:	11/07/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 09.03.2023 for A.Y.2014-15 as per the following grounds of appeal:-

1	<i>On the facts and circumstances of the case and in law, the Id.CIT(A) erred in allowing the claim of assessee without considering the fact that even though the assessee had received pay order before 15/12/2023, the assessee failed to estimate his income and pay tax thereon on the capital gain earned during the year as per section 209(1)(a) of the Income Tax Act, 1961.</i>	<p style="text-align: center;">Rs. 30,11,069/-</p> <p><i>The case is covered under the exception clause (c) [Revenue Audit Objection Accepted by the Dept.] mentioned in para 10 of CBDT circular No.03/2018</i></p>
2	<i>The appellant prays that the order of the Id.CIT(A) be held to be bad in law and be quashed</i>	

	<i>and that the order passed by the AO u/s. 154 of the Act be restored.</i>	
	<i>Total tax effect</i>	<i>Rs. 30,11,069/-</i>

2. The relevant facts in this case are that the assessment proceedings in assessee's case for A.Y. 2014-15 were completed on 23/03/2021. Thereafter, the AO had issued notice u/sec. 154 of the Act on 07/03/2021 proposing to levy interest u/sec. 234C of the Act on the ground that assessee had failed to pay advance tax installment by 15/12/2013 on the capital gains arising on the sale of property carried out as per agreement dated 19/12/2013. The AO held that though the agreement was dated 19/12/2013, the capital gain had accrued on that date and, hence, the liability to pay advance tax has been arisen. According to the assessee, though the pay order issued towards sale consideration was dated 14/12/2013, it was actually cleared by the bank only on 16/12/2013. It was further submitted that the sale agreement itself was registered much later on 19/12/2013 and the transaction was legally completed only on that day. Hence, it was contended that the liability for payment of advance tax on capital gain could arise only after the transfer of property is legally complete and not earlier to that. The AO had drawn an inference that since the pay order purchased by the buyer towards sale consideration was dated 14/12/2013, the assessee was fully aware of the likely capital gains thereon and hence, the liability to pay tax arisen on 14/12/2013 i.e. the date when the pay order was issued

towards sale consideration. Since, no advance tax was paid on or before 15/12/2013, the AO held that interest u/sec. 234C ought to be charged thereon.

3. When the matter travelled before the Id. CIT(A), he observed that though the terms and conditions of the sale transaction might have been finalized by the time pay order was purchased on 14/12/2013 by the buyer, legally no transfer had taken place till 19/12/2013. The clearing of the pay order on 16/12/2013 was only an advance payment and in the absence of a valid registration, it does not partake the character of sale consideration. Till the time, the sale is duly registered, the receipt of money by the assessee would continue to remain a liability and it does not partake the character of income accrued. Liability to pay advance tax can arise only on the accrual of income in the hands of the assessee and not prior to that. Therefore, on the facts of the case, income from sale of property has accrued to the assessee only on registration of the sale agreement on 19/12/2013 and the liability to pay advance tax installment on or before 15/12/2013 did not arise. Accordingly, the Id. CIT(A) held that the liability to pay advance tax on the sale transaction had arisen only on 19/12/2013 and, hence, there was no liability to pay any advance tax installment on or before 15/12/2013 on resultant capital gain. The rectification order u/sec. 154 was annulled and the appeal of the assessee was fully allowed.

4. We have heard the rival submissions, analysed the facts and circumstances in this case. This is an issue of payment of interest u/sec. 234C of the Act. When an assessee does not pay the advance tax installment on time as per sec. 208 of the Act which he is required to pay, then he would be responsible to pay interest u/sec. 234C of the Act. It is the case of the AO that though the agreement was dated 19/12/2013, the pay order for payment of sale consideration was dated 14/12/2013 and that day, since the pay order was purchased, the capital gain had accrued on that date and liability to pay advance tax had arisen on 14/12/2013 itself. Since, no advance tax was paid on or before 15/12/2013, the AO levied interest u/sec. 234C on the assessee. Admittedly, the factual position is that the pay order was purchased on 14/12/2013 which was cleared on 16/12/2013, but the registration of sale took place only on 19/12/2013. That, as per the provisions of Transfer of Property Act, 1882, the ownership of an immovable property gets transferred from one party to another only through valid registration before the Registrar of Assurances. Till the time, the ownership is transferred whatever advance, party receives is a liability in his hand and it does not take the character of income accrued. We are in conformity with the findings of the Id. CIT(A) that such liability to pay advance tax arises only on the accrual of income in the hands of the assessee and not prior to that. When the pay order was purchased and it was cleared on 16/12/2013 such amount received was only a liability in the hands of the assessee and was not

an income accrued. Therefore, there does not arise any liability to pay advance tax on or before 15/12/2013. Since, the sale registration was completed on 19/12/2013, the liability to pay advance tax on the sale transaction can only be said to have arisen on 19/12/2013. Therefore, we do not find any infirmity with the findings of the Id. CIT(A), which is upheld. The grounds of appeal of the Revenue are dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in open Court on 11th July, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 11th July, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.