

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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.Nos.495 & 496/PUN./2018
Assessment Year 2012-2013

Shri Sudhir Angre, At Post Vengaon Mothe, Kajrat, Dist. Raigad PIN – 410 201 Maharashtra. PAN AFWPA4084K	vs.	The Income Tax Officer, Ward – 4, Panvel.
(Appellant)		(Respondent)

ITA.Nos.497 & 498/PUN./2018
Assessment Year 2012-2013

Shri Sunil Angre, At Post Vengaon Mothe, Kajrat, Dist. Raigad PIN – 410 201 Maharashtra. PAN AFXPA2201B	vs.	The Income Tax Officer, Ward – 4, Panvel.
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Khandelwal
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	13.07.2023
Date of Pronouncement :	20.07.2023

ORDER

PER BENCH :

The instant batch of four appeals pertains to two assessees viz., S/Shri Sudhir Angre and Sunil Angre. Both these assessees have filed their respective twin appeals i.e., ITA.Nos.495

& 496/PUN./2018 and ITA.Nos.497 & 498/PUN./ 2018, for assessment year 2012-2013, against the CIT(A)-2, Thane's as many common orders in case nos.ITA No.10199 & 10203/2017-18, both dated 22.12.2017, in proceedings u/sec.143(3) and 143(3) r.w.s. 147 [quantum] and sec.271(1)(c) [penalty] of the Income Tax Act, 1961 (in short "the Act"), respectively.

Heard both the parties at length. Case files perused.

2. It is noted during the course of hearing that we hardly need to delve deeper in the relevant factual matrix since the first and foremost identical issue that arises for our apt adjudication is that of head of income itself. Suffice to say, both these assessee's identical stand is that if at all they deserve to be assessed *qua* sale of the land in issue [as co sharers], they ought to be taxed under the head "capital gains" only as admittedly done by the Assessing Officer in his corresponding twin assessments.

3. The Revenue's case on the other hand strongly supports the CIT(A)'s identical detailed discussion directing the Assessing Officer to treat the assessee's profits derived from sale of the land in issue as business income as under :

"6. I have carefully considered facts of the case, findings of the AO in the assessment orders, submission of the Ld. AR

and material placed on record. From the facts of the case it is noticed that these two brothers/appellants claimed to have purchased one piece of land, vide purchase agreement No 4088/2011 dated 03.05.2011, executed on stamp paper of Rs.100/-, for total consideration of Rs.7,50,000/-, paid through three cheques of Rs 2,50,000/ of Pen Cooperative Urban Bank Ltd. On perusal of the sale deed it is noticed that the said land was sold within short span of 4 months, i.e. on 20.09.2011, vide sale agreement No.7403/2011 to M/s Rahul Land Pvt. Ltd, for total consideration of Rs 50 lakhs, that is at profit of Rs.42,50,000/-, which is quite abnormal profit in the trade. In the absence of purchase deed, the AO resorted to add their 50% share of entire sale consideration of Rs 50 lakhs, i.e. Rs.25 lakhs each in their respective hands as STCG. The transactions under dispute are adventure in nature and liable to be assessed as business income, as the appellants have harvested huge profit of Rs.42,50,000/-, which establishes the motto of the appellant to harvest maximum profit there from. In view of these facts the AO is hereby directed to assess the 50% share differential amount of Rs.42,50,000/-, i.e. Rs 21,25,000/- each, in the hands of these appellants, after verifying the source of investment of Rs.7,50,000/- made in the purchase of the land. The AO is therefore, directed

accordingly. The appellant is also directed to produce the required details, along with credible documents, in support of above claims, along with source thereof.”

4. We note in this clinching factual backdrop that the CIT(A)'s foregoing directions to the Assessing Officer for assessing the assessee's profits from sale of land as business income, have nowhere granted them adequate opportunity of hearing as provided u/sec.251(2) of the Act. No material to this effect has been placed during the course of hearing before us. Faced with the situation, we deem it appropriate to restore these twin assessee's quantum and consequential penalty appeals back to the CIT(A) for his afresh appropriate adjudication as per law, preferably within three effective opportunities of hearing. Ordered accordingly.

5. All other pleadings on merits stand rendered premature at this stage.

6. Both these assessee's instant twin appeals each ITA.Nos.495 & 496/PUN./2018 and ITA.Nos.497 & 498/PUN./2018 are allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 20.07.2023.

Sd/-
[G.D. PADMAHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 20th July, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A)-2, Room No.29, B-Wing, 6 th Floor, Ashar I.T. Park, Wagle Industrial Estate, Thane – 400 604.
4.	The Pr. CIT-2, Thane
5.	D.R. ITAT, Pune “A” Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.