

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.308/PUN/2021  
निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,  
Ward – 2(3), Solapur

.....अपीलार्थी / Appellant

बनाम / V/s.

Kapurba and Company,  
4281, Punmiya Mension,  
Somwar Peth, Barshi,  
Tal.-Barshi, Dist.-Solapur-413401

PAN : AALFK3019J

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.50/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2012-13

Kapurba and Company,  
4281, Punmiya Mension,  
Somwar Peth, Barshi,  
Tal.-Barshi, Dist.-Solapur-413401

PAN : AALFK3019J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,  
Ward – 2(3), Solapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik  
Revenue by : Shri Keyur Patel

सुनवाई की तारीख / Date of Hearing : 17-07-2023  
घोषणा की तारीख / Date of Pronouncement : 21-09-2023

**आदेश / ORDER****PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 23-09-2020 passed by the Commissioner of Income Tax (Appeals)-7, Pune ['CIT(A)'] for assessment year 2012-13. The assessee has also filed Cross Objection in the appeal filed by the Revenue.

2. Upon hearing, we note that the issues raised in appeal and cross objection are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to dispose off above said appeal and cross objection together and to pass a consolidated order for the sake of convenience.

**3. Now, we shall take up the appeal filed by the Revenue in ITA No. 308/PUN/2021 for A.Y. 2012-13.**

4. We find that this appeal was filed with a delay of 206 days. After hearing both the parties, we condone the said delay.

5. The Revenue raised six grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in holding non-applicability of section 2(47) of the Act.

6. We note that the assessee is a firm, engaged in the business of purchase and sale of land. The assessee conducts its business under the name and style as "Kapurba and Company". The assessee filed its return of income declaring a total income of Rs.10,16,327/- which was processed u/s. 143(1) of the Act. The case was selected for scrutiny, notices u/s.

143(2) and 142(1) were issued by the AO. In response to the said notices, the assessee explained its claim in the assessment proceedings. According to the AO, the assessee entered into an agreement of sale dated 27-12-2011 relating to the land bearing Survey Nos. 73/1, 73/2 and 73/3A of village Majiwad and Survey No. 27A of village panchpakhadi, Dist.-Thane with Bluestar Infra Housing Private Limited for a sale consideration of Rs.20 crores. The said agreement of sale registered on 19-01-2012 and irrevocable power of attorney also executed on the same day i. 19-01-2012, which was according to the AO, the assessee extinguished all its rights to Bluestar Infra Housing Private Limited for development of the said property. Further, it was noted by the AO that the market value of the said property for the purpose of stamp duty is of Rs.30,74,93,500/- and the assessee has shown the same as capital asset under the head fixed assets in the balance sheet. The AO issued letter dated 23-01-2015 requesting the assessee as to why the receipts of sale consideration of land has not been offered for taxation. It was contended by the assessee that the purchaser is not co-operating to complete the sale and paid only Rs.13 crores out of Rs.20 crores. Further, it was requested to treat the subjected property as a stock-in-trade. The AO was of the opinion that the said subjected property is a capital asset as per balance sheet and in terms of various clauses of agreement of sale and irrevocable power of attorney held that the assessee transferred its capital asset to Bluestar Infra Housing Private Limited u/s. 2(47) of the Act, the gain arising out of the said transfer of capital asset chargeable to tax. The AO considering the cost of acquisition added capital gain Rs.30,69,57,165/- to the total income of the assessee vide its order dated 25-03-2015 passed u/s. 143(3) of the Act.

7. Before the CIT(A), it was contended that the AO did not refer matter to DVO for determining fair market value and taking into the same, the CIT(A) referred to DVO. Further, it was contended that there was no sale

effected as there was dispute between the assessee and purchaser which lead to filing the civil dispute before the Civil Judge, Thane. Further, the assessee furnished additional evidences by way of a paper book which is evident from para 6 of the impugned order and the CIT(A) sought remand report from the AO of which is evident from para 6.1 of the impugned order. The AO in the remand report observed that an agreement of sale is entered into possession of the property is given to the purchaser which will be deemed that a transfer has taken place u/s. 2(47) of the Act. In the rebuttal, the assessee contended no transfer u/s. 2(47) of the Act nor under Transfer of Property Act has taken place, no income under any of the head Income Tax has arisen/accrued in the year under consideration. Further, it was contended no possession was given nor full consideration received by the assessee, no income is chargeable to tax. Considering the same, the CIT(A) held that no provisions u/s. 2(47) of the Act is attracted as neither the entire sale consideration was paid by the purchaser nor possession was given by the assessee arising capital gains in the hands of the assessee. As aggrieved by the order of CIT(A), the Revenue is before us.

8. The ld. DR supported the order of AO and ld. AR prayed to dismiss the grounds of appeal raised by the Revenue.

9. Heard both the parties and perused the material available on record. We note that the AO held that the assessee extinguished its rights vide irrevocable power of attorney by agreeing to sale the subjected property vide agreement of sale for a consideration. Admittedly, as on the date of hearing before us the ld. AR supported the finding of CIT(A) in holding that the assessee received only Rs.13 crores from the purchaser, remaining Rs.7 crores is still payable. Further, the contention of ld. AR is that there is a dispute pending before the Hon'ble High Court of Bombay regarding Special Civil Suit arising out of Civil Judge Senior Division, Thane in

relation to subject property, but no evidences whatsoever furnished by the assessee the actual position of the said dispute before the Hon'ble High Court of Bombay, like how the matter reached to the Hon'ble High Court of Bombay, what was the judgment of the Trial Court, the copy of judgment etc. of the Trial Court. The CIT(A) stated that the assessee filed a copy of Special Civil Suit No. 394/2015 filed by the purchaser company against the assessee regarding handing over the possession of the lands and removal of the encroachments from the property vide para 8.5 of the impugned order. There was no such details filed before us supporting the order of CIT(A) in holding that there was no transfer u/s. 2(47) of the Act. The Id. AR except showing that there is a dispute still on between the assessee and purchaser and nothing as such brought on record to show the civil dispute still pending before the Hon'ble High Court of Bombay. In order to come to a conclusion as there was no transfer in view of non-payment of sale consideration, non-delivery of possession, civil litigation etc., the CIT(A) rightly relied on the provisions u/s. 2(47) of the Act which is evident from pages 14 and 15 of the impugned order and by placing reliance in the case of Seshasayee Steels (P.) Ltd. in Civil Appeal No. 9209 of 2019 of Hon'ble Supreme Court which held capital gain was brought to the tax when on transfer of immovable property, rights were extinguished on the receipt of the last cheque. On an examination of the impugned order, the fact remain admitted a civil litigation pending before the Hon'ble High Court of Bombay, remaining part payment of Rs.7 crores out of Rs.20 crores still payable and no possession was delivered to the purchaser on account of unauthorized hutments in the subjected property. It is noted from page 105 of the paper book, wherein, the purchaser Bluestar Infra Housing Private Limited filed Suit for specific performance of contract and injunction against the assessee. On perusal of the relief sought before Civil Court at pages 198 and 199 of the paper book which clearly shows seeking relief of removing all the encroachments, impediments, hindrances,

obstructions, etc. from the suit properties and hand over the quiet, peaceful physical, legal and constructive possession of the suit properties which clearly shows that as on the date of filing of Suit on 10-07-2015 there was no possession delivered to the purchaser and non-applicability of provisions u/s. 2(47) of the Act, in our opinion, as held by the CIT(A) is justified. It is also clear from page 181 of the paper book vide para 13 of the said copies of plaint which clearly shows that the assessee received Rs.13 crores out of Rs.20 crores of sale consideration. Therefore, taking into account the facts and circumstances of the case, we hold that the provisions u/s. 2(47) of the Act are not attracted and the finding of CIT(A) is justified. Thus, the grounds raised by the Revenue fails and are dismissed.

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

**11. Now, we shall take up the Cross Objection filed by the assessee in CO No. 50/PUN/2022 for A.Y. 2012-13.**

12. The assessee challenging the action of CIT(A) in not giving finding as to whether the subjected property is stock-in-trade or not. The main contention of the ld. AR is that the assessee raised ground Nos. 2 and 4 before the CIT(A) treating the subjected property as stock-in-trade and the ld. AR argued that the CIT(A) failed to give any finding on this. On perusal of Form 35 consisting of grounds raised by the assessee against the order of AO before the CIT(A), we find no ground challenging the action of AO in not treating the subjected property as stock-in-trade. Further, the CIT(A) reproduced the grounds raised by the assessee in pages 3 and 4 of the impugned order. On perusal of the same, we find as contended by the ld. AR ground Nos. 2 and 4 are not at all related to seeking treatment of the subjected property as stock-in-trade. Further, on an examination of

assessment order vide para 6 it is clear that the assessee filed a letter dated 10-03-2015 stating that no conversion of the said land into stock-in-trade has been made. Further, as discussed above, the AO clearly on an examination of the balance sheet found the subjected property was shown as fixed capital asset under the head fixed asset. Thus, the cross objection filed by the assessee fails and it is dismissed.

13. In the result, the cross objection filed by the assessee is dismissed.

14. To sum up, the appeal of Revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 21<sup>st</sup> September, 2023.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> September, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune