

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING
AT INCOME TAX APPELLATE TRIBUNAL : PUNE BENCHES : PUNE]

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

I.T.A.No.91/NAG./2020
Assessment Year 2013-2014

Shri Rajesh Srichand Uttamani, House No.299, Opp. Multani Temple, Itwari, Nagpur – 440 002. Maharashtra. PAN AACPU4803B	vs.	The ACIT, Circle-4, Room No.301, 3 rd Floor, Saraf Chambers, Sadar, Nagpur.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Dr. Kaumudi Patil, CIT-DR

Date of Hearing :	20.09.2023
Date of Pronouncement :	28.09.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2013-2014, arises against the CIT(A)-1, Nagpur's Order No.CIT(A)-1/219/2015-16, dated 05.03.2020, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. We have noticed that there is a delay of 59 days in filing the appeal before the tribunal. The Assessee has placed

on record a condonation petition/affidavit dated 24.06.2020 *inter alia* stating therein that the same is attributable to Covid-2019 period and submitted that the delay be condoned as per hon'ble apex court's directions in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314 (SC), excluding the covid-19 pandemic outbreak period from 15.03.2020 to 28.02.2022 for all intents and purposes under the limitation law. We, therefore, condone the delay of 59 days and proceed to decide the appeal on merits, after hearing the Learned DR.

3. We now advert to the assessee's sole substantive issue of sec.50C addition of long term capital gains amounting to Rs.10,47,898/- made in the course of assessment herein dated 21.08.2015 as upheld in the CIT(A)'s order. It emerges during the course of hearing with the able assistance coming from the Revenue side that the assessee had sold/transferred the following capital assets in the relevant previous year as per the Assessing Officer's assessment at page-2 para-3 as under :

Date of Sale Deed	Sale Deed No.	Market Value (as per stamp duty authority) in Rs.	Sale Consideration in Rs.	Difference amount in Rs.
21/07/2012	4006/2012	4,68,00,000/-	4,47,78,000/-	20,22,000/-
21/07/2012	4009/2012	2,35,50,000/-	2,25,33,000/-	10,17,000/-
21/07/2012	4007/2012	10,16,50,000/-	9,72,59,000/-	43,91,000/-
21/07/2012	4005/2012	4,98,00,000/-	4,76,49,000/-	21,51,000/-
21/07/2012	4008/2012	17,84,50,000/-	17,07,40,677/-	77,09,323/-
Total		40,02,50,000/-	38,29,59,677/-	1,72,90,323/-
Assessee's Share 1/16.5		2,42,57,575/-	2,32,09,677/-	10,47,898/-

4. The Revenue could hardly dispute that none of the foregoing transfer(s) executed at the assessee's behest involved more than 10% difference as per sec.50C in light of the 3rd proviso to sub-sec.(1) thereof. Ms. Patil vehemently argued at this stage that neither of the three statutory proviso(s) in sec.50C(1) of the Act inserted in Finance Act, 2016 onwards covers the assessee's case as we are in assessment year 2013-2014 only. We find no merit in Revenue's instant arguments in light of Dharamshibhai Sonani vs. ACIT [2016] 161 ITD 627 (Ahd.) and Maria Fernandez Cheryl vs. ITO (International Taxation) [2021] 187 ITD 738 (Mum.-Tribu.) holding that the legislature has inserted [1st and 2nd proviso(s) and [3rd proviso] respectively; to sec.50C(1) as curative measures which carry retrospective effect. We accordingly accept the assessee's instant sole substantive grievance challenging the learned lower authorities action making long term capital gains addition of Rs.10,47,898/- since falling within the tolerance margin of 10% u/sec.50C(1) (3rd) proviso of the Act in very terms. Ordered accordingly.

5. This assessee's appeal is allowed.

Order pronounced in the open Court on 28.09.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER
Pune, Dated 28th September, 2023
VBP/-

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-1, Nagpur.
4.	The PCIT concerned, Nagpur.
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.

S.No.	Details	Date	
1	Draft dictated on	25.09.2023	Sr.PS
2	Draft placed before author	26.09.2023	Sr.PS
3	Draft proposed & placed before the Author	.09.2023	J.M.
4	Draft discussed/approved by Second Member	.09.2023	A.M.
5	Approved Draft comes to the Sr. PS/PS	.09.2023	Sr.PS
6	Kept for pronouncement on	.09.2023	Sr.PS
7	Date of uploading of Order	.09.2023	Sr.PS
8	File sent to Bench Clerk	.09.2023	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		