

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.31/NAG./2020  
Assessment Year – 2009-2010

M/s. Om Developers, K.H.No.162, Collector Colony, Godhani, Nagpur – 440 013 Maharashtra. PAN AABFO3754C	vs.	The Income Tax Officer, Ward-3(5), Saraf Chambers, Nagpur.
(Appellant)		(Respondent)

For Assessee :	Shri Abhay Agrawal
For Revenue :	Shri Sanjay Agrawal

Date of Hearing :	01.09.2023
Date of Pronouncement :	13.10.2023

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's appeal for assessment year 2009-2010 arises against the CIT(A)-2, Nagpur's Order in case No.CIT(A)-2/82/2016-17-ITBA No.11259, dated 22.11.2019, involving proceedings u/s.143(3) r.w.s.263(1) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Learned counsel representing assessee submits at the outset that the CIT(A) has erred in law and on facts in restoring the assessee's corresponding substantive ground back to the Assessing Officer for afresh factual verification as under :


**5.1 Ground No.1 to 5 challenge the addition of Rs.1,26,51,931/- on account of Short Term Capital Gain (STCG).**

**5.1.1 In this regard, the Ld. AO made the following relevant discussion in para no. 3.1 to 3.5 (page no. 4 to 6) of the impugned Assessment Order:-**

"During the course of assessment proceedings, the assessee, vide notices u/s. 142(1) issued and duly served, from time to time, was requested to furnish the complete list incorporating therein complete postal addresses and telephone numbers of the prospective buyers of the plots and to whom plot advances were returned to them, as claimed. In response, the assessee vide written submission dated 08.03.2016 received in this office on 08.03.2016 has submitted as under:

"That in respect of the documents called for as mentioned in your notice u/s. 142(1). We have to submit that the said documents have already been submitted during the course of hearing of the original assessment proceeding completed u/s.143(3) vide order dated 2<sup>nd</sup> May, 2012. The documents already on record may please be treated as submitted against your notice u/s. 142(1) to avoid the duplication of the same"

On perusal of the agreement to sale, available on record, made with the prospective buyers it is noticed that some of the agreements are executed after knowing the fact that the land is vested with the ministry of coal and reserved for coal mining activity from Town Planning department i.e. after 12.01.2006. The details of the same are as under:



Sr. No.	Name of the Buyer	Date of agreement
1.	Smt. Udrakabai U. Parteti	07.07.2006
2.	Smt. Meerabai H. Ukey	07.07.2006
3.	Shri Premal M. Dongre	07.07.2006
4.	Smt. Kalpana B. Mehta	06.06.2006
5.	Shri Madan K. Ganvir	27.09.2006

The assessee had purchased land vide sale deed executed on 30.08.2006 and 07.10.2006. On perusal of the agreement to sale, available on record, made with the prospective buyers it is noticed that some of the agreements are executed before the execution of sale deed i.e. 30.08.2006 and 07.10.2006. The details of the same are as under:

Sr. No.	Name of the buyer	Date of agreement
1.	Smt. Sangeeta P. Sharma	06.04.2005
2.	Smt. Swati V. Awale	07.04.2005
3.	Shri O.S. Chouhan	14.03.2005
4.	Shri D.M. Chavare	15.04.2004
5.	Shri M.S. Arora	16.03.2005
6.	Shri S.S. Arora	16.03.2005
7.	Shri Sukhdayal L. Arora	16.03.2005
8.	Shri R.G. Meshram	07.02.2005
9.	Shri Jagdish S. Arora	16.03.2005
10.	Shri Pradeep S. Arora	16.03.2005
11.	Smt. Anuradha A. Arora	16.03.2005
12.	Smt. Sushama Ratu Arora	16.03.2005
13.	Shri Vinod N. Gourkhede	23.12.2005
14.	Shri S.V. Deshmukh	23.12.2005
15.	Smt. Jeejabai P. Kapse	11.04.2005
16.	Smt. Sushilabai R. Thakare	11.04.2005
17.	Shri S.D. Jibhe	18.05.2005
18.	Smt. S.A. Kalamkar	18.05.2005
19.	Shri V.S. Maidalkar	27.08.2005
20.	Smt. Meen Chinchmalatpure	24.03.2005
21.	Shri M.L. Amte	21.03.2005
22.	Shri N.P. Wakodkar	02.03.2005
23.	Smt. U.R., Jawade	18.05.2005
24.	Shri B.S. Mehta	19.05.2004
25.	Smt. S.R. Dhoble	12.03.2005
26.	Shri S.V. Patil	23.03.2005

From the above, it is revealed that the agreements with the prospective buyers executed after knowing the fact that the land is vested with the ministry of coal and reserved for coal mining activity from Town Planning department i.e. after 12.01.2006. This conduct of assessee itself proves that alleged agreements on the stamp paper of Rs.100/- are not for booking of plots as assessee was not authorized to do so before purchase of land or after coming to know from the town planning department that the land is not tradable land. Thus, all the agreements are after thought to claim the expenditure and to reduce the tax liability. Moreover, The assessee, vide notices u/s. 142(1) issued and duly served from time to time, was requested to furnish the complete list incorporating therein, complete postal addresses and telephone numbers of the prospective buyers of the plots and to whom plot advances were returned to them, as claimed. But the assessee has not furnished the details, in this regard.

In view of the above discussion, the compensation of Rs.1,27,02,874/- paid to the so called alleged buyers is nothing but the interest paid on the advances and is not allowable expenditure.

The assessee purchased land on 30.08.2006 and 07.10.2006 and sold the same on 25.08.2008. thus, the land was held by the assessee for less than 36 months. Thus, the asset is a short term capital asset. Hence, the Short Term Capital Gain arises on such transfer."

#### 5.1.2 Brief facts of the case as emanate from the reply of the Ld. Counsel and the impugned Assessment Order are as under:-

- i. The assessment of the Appellate Firm for the A.Y. 2009-10 was completed u/s 143(3) read with section 147 of the Income Tax Act, 1961, vide Assessment Order dated 02/05/2012 by the Income Tax Officer, Ward-7(2), Nagpur, thereby accepting the long-term capital loss of Rs.50,943/- claimed in the return of income.
- ii. Thereafter, the Hon'ble Principal Commissioner of 'Income Tax II (Pr. CIT-II), Nagpur passed the Order u/s 263 dated 24/02/2015 setting aside the assessment order dated 02/05/2012, with a direction to pass fresh assessment order denovo after giving opportunity of being heard to the appellant.



- iii. The appellate firm had preferred an appeal before the Hon'ble Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, against the Order of the Pr. CIT-II, Nagpur. The Hon'ble Nagpur Tribunal vide order dated 31/05/2016 upheld the order passed under section 263 by Pr. CIT-II.
- iv. In the meantime, pursuant to the order of the Pr. CIT-II u/s 263(1), the consequential assessment order u/s 143(3) r.w.s 263 dated 29/03/2016 was passed by learned ITO Ward3(5) thereby determining assessed income at Rs.1,26,51,931 and raising a demand of Rs.79,12,730/-.
- v. In view of above, the appellant has submitted that, "the capital asset was held for more than 36 months and hence, resultant gains will be long term capital gains/ loss, as the case may be."
- vi. Further, the appellant has prayed before this office that, deduction towards compensation paid of Rs.1,27,02,874 be granted as per Section 48(i) of the Act while computing LTCG on sale of agricultural lands.
- vii. Alternatively, compensation paid be treated as cost of acquisition/ cost of improvement of the agricultural land as per Section 48(ii) of the Act since, the appellant regained part of the rights and there was extinguishment of rights in the hands of buyers pursuant to cancellation of agreements to sale.



**5.1.3** All the facts and circumstances of the impugned addition are considered and it is found that the written arguments of the appellant have force in it. The facts stated by the Ld Counsel and case laws relied on are also in support of the stand taken by the appellant. However, since it is a matter of verification, the Ld. AO is directed to examine and verify and thereafter give relief to the appellant. While doing so the alternative prayer of the appellant that compensation paid be treated as cost of acquisition/ cost of improvement of the agricultural land as per Section 48(ii) of the Act since, the appellant regained part of the rights and there was extinguishment of rights in the hands of buyers pursuant to cancellation of agreements to sale, must be kept in mind.

2.1. Learned counsel's next contention is that such a course of action at the CIT(A)'s behest to "set-aside" any issue back to the Assessing Officer is no more sustainable as per the statutory amendment in sec.251(1)(a) of the Act vide Finance Act, 2001 w.e.f. 01.06.2001.

3. Faced with this clinching factual position, we find part merit in assessee's contentions to this limited extent to hold that the learned CIT(A)'s foregoing directions to the Assessing Officer are not sustainable in law. The assessee's all

substantive grounds are accordingly restored back to the CIT(A) only for his afresh factual adjudication as per law in light of sec.250(6) r.w.s.251(1)(a) of the Act in very terms, preferably within three effective opportunities of hearing. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 13.10.2023.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 13<sup>th</sup> October, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-2, 215, Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur – 440 001.
4.	The Pr. CIT-2/3, Nagpur.
4.	D.R. ITAT, Nagpur Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,  
Pune.