

आयकरअपीलीयअधिकरण " बी" न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.807/PUN/2023
निर्धारण वर्ष / Assessment Year : 2009-10

Vithaldas Tribhuwandas Bagadiya, 2-14-10, M.B.Agecies, Nehru Road, Kaderabad, Jalna – 431203. PAN: ADYPB 5508 K	V s	The Income Tax Officer, Ward-1, Jalna.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri M.K.Kulkarani – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	04/10/2023
Date of pronouncement	05/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] under section
250 of the Income Tax Act, 1961 for A.Y.2009-10 dated
18.05.2023 emanating from the assessment order under section 144
r.w.s 147 of the Income Tax Act, 1961 dated 17.03.2016 for
A.Y.2009-10.

2. Heard both the parties and perused the records.

3. The assessee is an individual having income from salary and other sources. The assessee had filed return of income for A.Y.2009-10 under section 139(1) of the Income Tax Act, 1961 on 26.10.2010 declaring total income at Rs.4,85,410/-. The Assessing Officer(AO) received information that Government of Maharashtra through Land Acquisition Officer, Jalna had acquired land of the assessee for the purpose of setting up Industrial Zone. The Land Acquisition Officer, had awarded compensation to the assessee of Rs.3,11,38,075/- for the assessee's Land at Gat No.22, Village Nagewadi, District Jalna. The AO accordingly initiated proceedings under section 148 of the Act by issuing notice under section 148 of the Act dated 20.06.2014 for A.Y. 2009-10. The AO completed ex-party assessment and calculated the Long Term Capital Gain at Rs.1,53,52,952/-. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) upheld the assessment order, ignoring the submission of the assessee which has been reproduced by the Id.CIT(A) in the order.

4. The assessee had filed Writ Petition before the Hon'ble' Bombay High Court regarding the Land Acquisition Award. The

Hon'ble Bombay High Court in Writ Petition No.285/2012 in paragraph 87 held as under :

“i. The validity of the acquisition proceedings culminating into an award dated 2nd February 2010 is upheld.

ii. Amount of compensation finally determined by the respondents including the Collector without rendering an opportunity to the petitioners contemplated under Section 33(4) of the Maharashtra Industrial Development Act, 1961 is set aside.”

5. Thus, it is observed that the Land Acquisition Officer, Jalna had given the award on 02.02.2010 and land was taken over by Land Acquisition Officer by 8th Sep, 2010. These facts are also mentioned at page no.6 of the ld.CIT(A)'s order. Thus, there is no activity in F.Y.2008-09 i.e. A.Y.2009-10 regarding acquisition. As per Section 45 profit or gain from the Transfer of Capital Asset shall be deemed to be income under the head “Capital Gain” in the previous year in which transfer took place. Therefore, there is no question of Long Term Capital Gain for A.Y.2009-10, accordingly, the AO is directed to delete the Long Term Capital Gain for A.Y.2009-10.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 5th October, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 5th Oct, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.