

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

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.607/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Jagannath Sambhaji Satav, Fadai Chowk, Nagar Road, Wagholi, Taluka-Haveli, Pune – 412207 PAN : BBTPS3761B	Vs.	Income Tax Officer, Ward – 12(4), Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Digambar Surwase
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	03-07-2024
Date of Pronouncement :	24-09-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 29.01.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["CIT(A)"] pertaining to Assessment Year ("AY") 2014-15.

2. The assessee has raised the following grounds of appeal :-

- “1. On facts and circumstances of case and in law, the order passed under section 250 by CIT(A) NFAC, Delhi dismissing the appeal without granting an adjournment is wholly illegal, unlawful and against the principal of natural justice. The appellant prays for appropriate relief.
2. On facts and circumstances of case and in laws, the order passed under section 250 by CIT(A) NFAC, Delhi dismissing the appeal on ground of non-cooperation by appellant is wholly illegal, unlawful and against the principal of natural justice. The appellant prays for appropriate relief.
3. On facts and circumstances of case and in law, CIT(A) NFAC erred not passing a speaking order on merits of the grounds raised by an appellant and submission made before NAFC. The appellant prays for appropriate relief.
4. On facts and circumstances of case and in law, Learned CIT(A) NAFC erred in confirming the assessment order which was passed on the basis of invalid notice issued under section 148 of the Income Tax Act, 1961.

5. *On facts and circumstances of case and in law, Learned CIT (A) NFAC erred in confirming the assessment completed u/s 143(3) r.w.s. 147 of Act. The assessment was completed without following without providing an copy of reasons recorded and without following the law laid down by Hon'ble Supreme Court in case of GKN Driveshaft India Ltd (2003) 259 ITR 19(SC) and in case of Videsh Sanchar Nigam Ltd (2012) 21 Taxmann 53. Accordingly, it is liable to be quashed.*
6. *On facts and Circumstances of case and in low. Learned CITIAI APAC erred in confirming assessment completed without issuing a valid notice under set 1432) of the Income Tax Act 1963 in accordance the provisions of Act und as held by various judicial pronouncements. The notice issued on public holiday in bad in law. Accordingly, assessment completed on the basis of the said notice is bad in law and liable to be quashed.*
7. *On facts and circumstances of case and in law, learned CITIA) erred in confirming an addition of Rs.2,59,24,500/- to returned income of an appellant.*
8. *On facts and circumstances of case and in law, learned CITIA) erred in confirming the amount received on settlement of dispute as capital gain. The learned CIT (A) erred in confirming that amount received by appellant was on account of a sale of tenancy rights.*
9. *On facts and circumstances of case and in law, the learned, the order passed by learned AO under section 143(3) r.w.s 147 of the Income Tax Act, 1961 is bad in law and void ab initio as such order passed issued without following circular no 19/2019 dated 14/08/2019 issued by the CBDT.*
10. *On facts and circumstances of case and in law, order passed by learned AO under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 is bad in law and void ab intio as such the communication framed contrary to the CBDT Circular no 19/2019 dated 14/08/2019 which mandate the quoting computer generated Documents Identification number (DIN) in the body of communication.*
11. *On facts and circumstances of case and in law, learned CIT(A) erred in confirming an interest charged under section 234A and section 234B of the Income Tax Act, 1961.*
12. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Briefly stated, the facts of the case are that the assessee is an individual deriving income from “income from other sources”. The assessee is not filed regular return of income as per the provisions of section 139 of the Income Tax Act, 1961 (**the “Act”**). During the course of assessment proceedings in the case of Shri Nikhil Jagannath Satav for AY 2014-15, it was noted that the assessee along with five others had surrendered their tenancy rights of land bearing Gat No. 1174 (1/4 Hissa) and Gat No. 1181 (1/4 Hissa) situated at Village Wagholi, Pune as per agreement dated 10.07.2013 for total consideration of Rs.5,25,00,000/- and received

Rs.2,59,24,250/- towards his share. Based on the above information, proceedings u/s 147 were initiated against the assessee. Statutory notice u/s 148 was issued on 22.03.2019 which was served through speed post, in response to which the assessee filed his return of income declaring income of Rs.12,890/-. Thereafter, statutory notice(s) u/s 142(1) and 143(2) of the Act were issued and served upon the assessee requesting to make compliance of the information/document sought thereof. The assessee failed to respond to the said notice(s). On perusal of the income tax return filed by the assessee in response to notice issued u/s 148 of the Act, the Ld. Assessing Officer ("**AO**") noted that the assessee has offered interest income of Rs.22,894/- to tax. However, no capital gain has been disclosed by him for the relevant AY 2014-15 under consideration. Thereafter, two more show cause notices were issued on 19.12.2019 and 25.12.2019 and served upon the assessee through e-mail id asking him to show cause as to why the assessment proceedings should not be finalized ex-parte u/s 144 of the Act and as to why the amount of Rs.2,59,24,250/- should not be brought to tax as undisclosed capital gain of the assessee due to assessee's failure to make compliance. In response to the show cause notice(s), the assessee filed his reply dated 23.03.2019 which is reproduced by the Ld. AO in paras 2.1 and 2.2 of the assessment order.

3.1 Before the Ld. AO, the assessee contended that the assessee received a sum of Rs.2,61,75,000/- in installments under the compromise/settlement agreement entered into with M/s. Agarwal and Gupta Associates on 10.07.2013. The entire compensation was not received in the FY 2013-14. Further, M/s. Agarwal and Gupta Associates failed to comply with the terms of the settlement agreement hence court case was filed against them. Another settlement was thereafter entered into with M/s. Agarwal and Gupta Associates on 06.06.2018. The assessee has received part consideration in FY 2013-14. The assessee contended that the consideration was received on account of settlement of disputes between the parties and accordingly no capital gain was taxable in the hands of the assessee. It was also contended that there no cost of acquisition for inherited possessory rights. Even if it is assumed that it is tenancy rights, the Act does not prescribe the cost of acquisition in case of inherited tenancy rights. Since, the computation mechanism fails, relying on the principle laid down by the Hon'ble Supreme Court in the case of B.C. Shrinivasa Shetty, the assessee contended that the capital gain is not taxable. The Ld. AO observed that the contention of the assessee is devoid

of any merits and proceeded to make addition of Rs.2,59,24,250/- to the returned income of the assessee observing inter alia as under :

“03.2.2 The assessee has stated that as per clause 2 & 3, assessee having right over the property and cancellation of agreement in the event of failure to pay the entire agreed consideration. Further, said right was duly exercised by the assessee. The assessee has not provided any such executed Cancellation deed to support his claim.

03.2.3 As per the terms of agreement, the family members of the assessee had already executed Power of Attorney in the name of the sellers/Developer as follows:

A	Document no. 7807/2010 dated 15.09.2010
B	Power of Attorney Registered document no. 7808/2010 dated 15.01.2010.
C	Agreement document no. 3904/2011 dated 27.04.2011
d	Power of Attorney document no. 3904/2011 dated 27.04.2011

03.2.4 Further as per clause 11 of the agreement, the sellers no. 1 & 2 had entered into a Unregistered Satekhat Agreement dated 15.02.2011 in favour of the consenting party Shri Vijay B Niras and also accepted consideration in lieu of such agreement. This incidence has not been disclosed to the Revenue as no ITRs have been filed for A.Y. 2011-12.

03.2.5 The assessee has claimed that he was having possessory rights on the land by inheritance, and he had received payment of Rs.2,61,75,000/- for transfer of inherited possessory rights. The assessee has brought on records such vital facts at the fag end of the year expecting the accept the versions of the assessee in a hastily manner. The same is not acceptable. During the entire course of assessment proceedings, the assessee preferred to remain silent. The undersigned had given ample of opportunities to the assessee at appropriate period of times. The last minute contention of the assessee is not acceptable.

03.3 As per section 2(47)(v) of the IT Act, any transaction involving the allowing possession of the property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. The assessee had also executed irrevocable general power of attorney in favour of purchasers and the assessee had entered into transaction and had given possession of the property within purview of transfer covered u/s. 2(47)(v) of the Act. It is settled law that part performance of a contract is a transfer within the meaning of provisions of section 2(47) of the Act. Accordingly attracts Long Term Capital Gains on transfer of land during the year under consideration.

03.4 It is sufficient if in the relevant accounting year profits arise out of the sale of capital assets. What the parties did subsequent to the year will not have any bearing on their liability to tax in respect of that year. To attract Capital gain liability, it is sufficient if profits have arisen, that is to say, if the assessee has a right to receive the profits. It is not necessary that the assessee should have actually received them. And undoubtedly the assessee had the right to receive the price and therefore the profits during the relevant accounting year. The situation emerges that the assessee has received whatever consideration was due in a substantive manner and the assessee cannot be allowed to take the plea that since those cheques were dishonoured within the meaning of the agreement, the agreement is invalidated. As per provisions of section 48 of the IT Act, Chargeability of capital gains was based on full value of consideration received/accurring as a result of transfer. The assessee has not brought on record about the instance of cost and date of acquisition. In the absence of such requisite details, such deductions are not ascertainable and hence not considered. The

ratio decided of judicial pronouncements relied upon by the assessee are not squarely applicable to the assessee.”

3.2 He, therefore, completed the assessment u/s 143(3) r.w.s. 147 of the Act vide order dated 28.12.2019 at Rs.2,59,37,140/- comprising of addition of Rs.12,890/- income as per ITR and Rs.2,59,24,250/- addition on account of long term capital gain.

4. Aggrieved, the assessee carried the matter before the CIT(A) challenging the addition of Rs.2,59,24,250/- as long term capital gain arising in the hands of the assessee in the relevant AY 2014-15. Before the Ld. CIT(A) the assessee in his submissions dated 14.11.2023 stated as under :

“Ground No 6, 7, 8 & 9 :

During the financial year 2013-14, the appellant assessee entered into a compromise agreement with Agarwal Gupta Associates & Agrawal family for transfer of possessory rights of agricultural land upon certain terms and conditions As per agreement appellant was entitled to receive a sum of Rs 2,61,75,000/- The said sum was on account of the Compromise Agreement dated 10.07.2013. The history of said compromise agreement as of follows

a) The land located at Gat No: 1174, Mauje Wagholi, Pune admeasuring about 1 hectare and 64 Aares was owned by Smt. Nirabai Kaluram Bhadale.

b) The land was being cultivated by the Satav family from 1950 onwards having possessory rights over the property.

c) By two separate sale deeds dated 19th May 1997, the said 1 hectare and 64 Aares land was purchased by Smt. Barpayidevi Jaikishan Agarwal and the Satav family continue to have the possessory rights.

d) By a Joint Development Agreement dated 15-09-2010 and 27-01-2011, the Agarwal family had entered into an agreement for development of the said land with Agarwal Gupta Associates without the consent of the Satav family.

e) The Satav family filed two separate suits against the Agarwal Family in 2011.

f) A compromise was reached between the Satav family and other parties and a Compromise Deed dated 10th July 2013 executed. The copy of deed is attached herewith for your reference.

Appellant would like to draw your attention towards the page no 7 of Compromise deed. As per the point no 7 to 12 of compromise deed, it was stated that there are various court case filed by Satav Family against the Agrawal Family. None of the case was filed against the M/s Agrawal and Gupta Associates, the developers.

Further, para 13 of agreement on page no 8 state that there was a long dispute pending with Agrawal family and Satav family for ownership and possession. Further, both the parties considering family welfare decided to settle the dispute via compromise agreement. In this regard it is submitted that appellant has received the payment from Agrawal & Gupta Associates (Developers) not from the Agrawal family. Further, the Agrawal and Gupta

Associates have made payment to the assessee and family for settlement of court cases against the Agrawal Family.

It is respectively submitted that in compromise deed dated 10.07.2013, there was no mention about the tenancy rights of Satav Family.

The clause no 13 of agreement on page no a clearly specify that payment has been made to settle the Dispute between the two families. In the compromise deed dated 10.07.2013, there is no clause about the purchase of tenancy rights. Al no place, the agreement says that Satav family was having tenancy nights on the tand or land was transferred by the Satav Family.

The learned AC has made an addition under section 45 of IT Act 1961 on the ground that appellant has transferred the immovable property and handed over the possession of the property. However, the appellant has received a sum for the settlement of the dispute.

The agreement dated 10.07.2013, nowhere states that appellant has sold/transferred the immovable property. The learned AO has made the addition on the presumption that appellant has transferred the immovable property. The appellant has received amount for the settlement of the court cases. Even an agreement dated 10.07.2013 is called as TADJOD KARARNAMA meaning Compromise Agreement.

The assessing officer had taken shelter of the definition of Transfer as per section 2(47)(v) of the Income Tax Act, which states that transfer, in relation to a capital asset, includes, any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882).

In the present case there was no part performance by the assessee in giving possession of the property to the other party on account of any agreement referred to in section 53A of the Transfer of property Act. Hence the amount received by the appellant as part of the Compromise Agreement in settling the court cases cannot be considered as amount received for transfer of property.

On the contrary, the learned Assessing Officer himself at Paragraph No: 03.2.1 (Page Nos 9 & 10) of the assessment order had stated that at the time of making the Compromise Agreement itself, the property was transferred in the name of Purchasers (who made the purchase transaction with the land owners) and produced the copy of 7 x 12 extract of the revenue records. On one side the AO is of the opinion that the land was already transferred to the Purchaser (with whom the Appellant had not entered into any agreement for transfer of the property or any rights thereon) and on the other side is of the opinion that the appellant had handed over the possession.

In the assessment order at Paragraph No: 3.2.3 (Page No:11), the assessing officer had observed there were some agreements made by the appellant on 15-09-2010 and 27-04-2011. In the opinion of the assessing officer, even if the amount is not received, the capital gain is taxable in the year in which the right to receive the amount was established. In the opinion of the assessing officer, the property was transferred (with reference to the agreement made in 2013) in the name of the Purchaser much before the agreement itself. If the analogy of the assessing officer is accepted, the alleged capital gain can be taxed in the assessment year 2011-12 or 2012-13 and not in A.Y.2014-15 at all.

The assessing officer at Paragraph 3.2.4 (Page No:11) of the assessment order had observed that the assessee had entered into a Unregistered Satekhat Agreement on 15-02-2011. Also at Paragraph No:2 of the

assessment order, the assessing officer is confirming that the document under the core argument of the assessment is "registered agreement (Compromise deed) No:3219/2013 dated 10.07.2013". Thus the agreement of 2013 is a compromise deed and not an agreement to sell or sale deed. As per the assessing officer himself, the agreement was made on 15-02-2011. Even if we accept for the sake of argument that the appellant had given possession of the property in part performance of the agreement of 15-02-2011, the same cannot be considered as "Transfer" as the said agreement is an Unregistered agreement.

Without prejudice to para 4 above, appellant would like to submit that even if it is assumed that appellant has received a payment for transfer of tenancy rights, the capital gain is not taxable for the reasons specified below:

- i. Appellant's father was having possessory rights on the land situated at Village Wagholi*
- ii. After a death of father appellant's mother and appellant received possessory rights by inheritance.*
- iii. Appellant have received payment of Rs.2,61,75,000/- in for transfer of inherited possessory rights."*

5. The Ld. CIT(A) issued final show cause notice dated 17.01.2024 requiring the assessee to file the following clarifications/documents in furtherance of his above written submissions to decide the appeal :

- i. Documentary proofs in support of assessee's possessory rights in case of the property in question;*
- ii. A copy of the compromise deed; and*
- iii. Information and evidence regarding any cost incurred by the assessee or his father in getting these possessory rights on the said property.*

6. The assessee was required to comply with the said show cause notice before 25.01.2024. The assessee failed to comply. However, he filed an adjournment request on 25.01.2024 which was not considered by the Ld. CIT(A). The Ld. CIT(A) therefore proceeded to decide the appeal observing as under :

"But the Appellant Assessee has not provided any of the submissions or specific documentary evidences as asked for by this Appellate authority till date. However, the appellant filed an adjournment request dated 25.01.2024 citing some letter attached, but no such letter was found attached in the submissions and neither were any valid reasons. Further, it was made pretty clear to the Appellant vide this office notice dated 17.01.2024 that, "...based on the same/ failing which (ie: his submissions) your appeal shall be decided on merits or on basis of the material available on records". Hence, in view of the specific notice incase the Appellant wished he could have taken the proceedings seriously. Now, without the necessary documentary evidences as sought from the Appellant assessee, this Appellate authority is not able to decide the case on merits and this negligent behaviour on the part of the Appellant assessee, shows that, the assessee is not ready to co-

operate with this Appellate authority and not ready to pursue his appeal seriously.

- iv. The above facts, make it evident that, the Appellant is not really serious about its appeal/hearing and is simply wasting time. Further, the AO has mentioned in its assessment order that, during the entire course of assessment proceedings, the assessee preferred to remain silent. The undersigned had given ample of opportunities to the assessee at appropriate period of times. The last-minute contention of the assessee is not acceptable". It appears the Appellant assessee is attempting repeat pattern when it comes to compliance. Hence, the above mentioned circumstances show that, the Appellant is not interested in pursuing its appeal. The maxim 'vigilantibus non-dormientibus jura subvenunt' i.e. the law assists those who are vigilant and not those who sleep over their right, is applicable in this case. Further, the Hon' ITAT in the case of M/s Chhabra Land & Housing Ltd. ITA No. 1025-1027/CHD/2005 for the AY 2002-03 after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee & other 118 ITR 461 [SC] held that, the appeal does not mean merely filing of the appeal but effectively pursuing the same.*
- v. Lastly, even the additional ground w.r.it DIN, is rejected as not acceptable. The same can be an irregularity, but not an illegality. The Appellant had a choice to pursue it administratively with the jurisdictional PCIT, but no such proof has been brought to notice.*

In view of the above unique facts of the case & discussions made from point no.-(i) to (vi) and grossly negligent behavior of the Appellant assessee, the grounds of appeal of the Appellant assessee are not found acceptable. The Appellant is observed to be trying to play around with the law and on the other hand seeks natural justice. Hence, if the Appellant expects fairness be doled to him then he too should extend the same sentiment to the AO and the law and not try and blink when it is his turn to co-operate with the authorities. This Appellate authority thus finds no infirmity in the AO's order and thus upholds the addition made by the Assessing Officer amounting to Rs2,59,24,250/- under the head Long Term Capital Gain."

7. The Ld. CIT(A) concluded that the assessee is not interested in pursuing his appeal and proceeded to pass the impugned order on the ground that the assessee is non-cooperative in the assessment as well as in the appellate proceedings. Dissatisfied, the assessee in appeal before the Tribunal.

8. The ld. AR submitted that the decision of the Ld. CIT(A) is factually incorrect as the assessee presented his case before the Ld. CIT(A) by filing written submission and also submitting the relevant documents. As regards the additional clarification/information sought by the Ld. CIT(A) the assessee sought additional time by filing an adjournment letter which was denied by the Ld. CIT(A). He, further submitted that the assessee raised various grounds in Form No. 35 and made written submissions thereof however the Ld. CIT(A) has not decided each of the grounds/points arising out of the appeal. The assessee was co-operative in the appellate proceedings as the assessee submitted the required information,

documents and filed written submission before the Ld. CIT(A). The Ld. AR, therefore, urged that the matter may be sent back to the file of Ld. CIT(A) for adjudication afresh on merits.

9. The Ld. DR opposed the above contentions of the Ld. AR and submitted that the assessee was given adequate opportunity to present his case before the Ld. AO/CIT(A), however the assessee failed to do so. The Ld. CIT(A) was fully justified in upholding the addition(s) made by the Ld. AO and dismissing the appeal of the assessee.

10. We have heard the Ld. Representatives of the parties and perused the records. On the facts and in the circumstances of the case, we are of the view that the order of Ld. CIT(A) deserves to be set aside for afresh adjudication. We, therefore, restore the matter back to the file of Ld. CIT(A) with a direction to him to pass a speaking order on merits of the case after allowing reasonable opportunity of being heard to the parties. The assessee shall co-operate fully in appellate proceedings. We order accordingly.

11. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 24th September, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th September, 2024.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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