आयकर अपीलीय अधिकरण "एक सदस्य मामला" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

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

आयकर अपील सं. / ITA No.608/PUN/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Rajani Prakash Kashid, 1513 B Ward, Jarag Galli, Mangalwar Peth, Kolhapur – 416012 PAN : AMYPK9982D	**Vs.**	Income Tax Officer, Ward – 1(4), Kolhapur
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

Assessee by :	Shri Nikhil Pathak
Department by :	Shri A.D. Kulkarni
Date of hearing :	10-07-2024
Date of Pronouncement :	01-10-2024

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")** 2011-12.

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

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in confirming the charge of capital gain when the machinery provision of computing capital gain fails in the absence of cost of acquisition incurred in obtaining land in Inam.

2. On the facts and in the circumstances of the case and in law, the indexed cost of acquisition be allowed while calculating long term capital gain.

3. The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal."

3. Briefly stated, the facts of the case are that the assessee is an individual. From the NMS Cycle-2, Priority-3 for FY 2010-11, it was noted that during FY 2010-11 relevant to AY 2011-12 the assessee has sold immovable property on 20.05.2010 valued at Rs.5 lakhs or more i.e. of Rs.1,41,00,000/-. The case of the assessee was therefore reopened u/s

147 of the Income Tax Act, 1961 (**the "Act"**) by issuing notice u/s 148 on 22.03.2018 which was served on the assessee on 02.04.2018. However, the assessee failed to respond to the said notice. Hence, another notice u/s 142(1) of the Act was issued on 19.10.2018 and served upon the assessee requesting to file compliance by 30.10.2018. In response thereto, the assessee submitted a copy of return filed on 21.11.2018 showing the long term capital loss of Rs.54,25,628/- as against sale consideration of Rs.70,50,000/- being half share of the assessee to total consideration of Rs.1,41,00,000/- as per the sale deed dated 20.05.2018. The total sale consideration shown by the assessee was Rs.5 lakhs as against Rs.70,50,000/-. Accordingly, the Ld. Assessing Officer **("AO"**) issued a show cause notice asking the assessee as to why the sale consideration of Rs.70,50,000/- should not be considered to compute long term capital gain. Thereafter, the assessee filed the revised return of computation of income showing the long term capital gain of Rs.49,32,500/-.

3.1 During the assessment proceedings, the assessee submitted details regarding the history of property sold and the development agreement with M/s. Raj Developers executed on 19.05.2010 in respect of sale of the property. The submission of the assessee in this regard reads as under :

> *"1. History of Property:-*
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> *The property situated at R S No 1092 A Ward Kasaba Karveer Sane Guruji Vasahat Kolhapur is a agricultural land. The said property is a Inam land received by the assessee ancestors. The ancestors of the assessee were Inamdars of the said land having right of cultivation.*
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> *2. Development Agreement:*
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> *During the year 2002 the assessee Father in Law and Husband got expired. The above property by way of inheritance got transferred to the assessee and his son in the financial year 2003-04.*
>
> *The assessee along with his son had entered into development agreement with M/s Raj Developers a partnership firm. The development agreement was signed on 19-05-2010 for a consideration of Rs.1.41,00,000/-. The assessee share in the above agreement was 50% i.e. Rs.70,50,000/-. As on date the assessee have received Rs.40, 00,000/- against his share of income.*
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> *The total stamp duty paid was amounting to Rs.7,05,000/- in which assessee share was Rs.3,52,500/- and registration fee amounting to Rs.30460/- in which assessee share was Rs 15.230/- In addition to stamp duty and registration charges the assessee had paid Inam amounting to Rs.17,50,000/- as his share. The total Inam paid for the above property amounts to Rs.1,16,20,000/-."*

3.2 The assessee further submitted that the sale consideration of Rs.70,50,000/- should not be considered for computation of long term

capital gain tax as property in question is a Inam/Inami land which was received by the ancestors of the assessee and has no cost of acquisition. Relying on the decision of Hon'ble Supreme Court in the case of CIT Vs. B. C. Shrinavasa Shetty (1981) 128 ITR 294 (SC), the assessee contended that no capital gain tax liability would arise in the hands of the assessee. The Ld. AO disregarded the above submission of the assessee holding that the said decision of the Hon'ble Supreme Court is not applicable to the facts of the present case as the same was rendered in the context of goodwill. The Ld. AO therefore completed the assessment u/s 143(3) r.w.s. 147 of the Act on 20.12.2018 on total income of Rs.49,41,380/- including therein an addition of Rs.49,32,500/- on account of long term capital gain.

4. Aggrieved, the assessee filed an appeal before the Ld. CIT(A)/NFAC who dismissed the appeal of the assessee and endorsed the findings of the Ld. AO by observing as under :

> *"5.1 I have gone into the facts and circumstances of the case findings of the AO as well as the pleas contentions and submissions by the appellant. As gathered from the facts stated in the assessment order, the appellant shown long term loss of Rs.5,25,628/- as against sale consideration of Rs.70,50,000/- being half share out of the total sale consideration of Rs.1,41,00,000/- as per sale deed no. 3098/2010 dtd 20.05.2018 in the computation of income, total sale consideration shown by the appellant is Rs.5,00,000/- as against Rs.70,50,000/- Accordingly, the AO confronted the appellant as to why sale consideration amount of Rs.70,50,000/- be not considered to compute the long term capital gain. The appellant ultimately submitted revised computation of income as indicated above in the facts of the case in the revised computation of income filed by the appellant before the AO on 27.11.2018 the long term capital gains were shown at Rs.49,32,500/-.*
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> *5.2 In the grounds of appeal, the appellant has agitated that the nature of land being Inam land, there is no cost of acquisition to the appellant and hence consideration thereon could not be taxed as long term capital gain. It is pertinent to mention here that the ratio of judgment of Hon'ble Court is not applicable in the case of the appellant as the facts involved in that case are different and distinguishable.*
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> *5.3 The appellant ultimately submitted revised computation of income as indicated above in the facts of the case. In the revised computation of income filed by the appellant before the AO on 27.11.2018, the long term capital gains were shown at Rs.49,32,500/- which controvert the assertion of the appellant that there is no element of cost as the appellant himself adopted some cost to arrive at the capital gain.*
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> *5.4 In view of the facts of the case, addition of Rs.49,32,500/- made by the AO and also computed by the appellant in the revised computation of income, is confirmed."*

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

6. The Ld. AR submitted that the Ld. AO has not appreciated that the property in question is Inam land which has been received by ancestors of the assessee and hence the said land has no cost of acquisition. Referring to the decision of Hon'ble Supreme Court in the case of CIT Vs. B. C. Shrinavasa Shetty (supra) he submitted that in the absence of cost of acquisition, capital gain computation mechanism fails and hence there cannot be any capital gain tax liability arisen in the hands of the assessee. He submitted that the Ld. AO failed to appreciate the nature of land is Inam land and the principle laid down by the Hon'ble Supreme Court in the case of CIT Vs. B. C. Shrinavasa Shetty (supra) squarely apply to the facts of the present case. He further relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Pashu Mohammed Zainuddin in ITA No. 1453/PUN/2009 for AY 2005-06 dated 22.07.2011 and Manohar Pyarelal Sadane (2012) 26 taxmann.com 17 (Pune-Trib.) wherein under the identical set of facts the Tribunal has decided the impugned issue in favour of the assessee.

7. The Ld. DR strongly supported the order of Ld. CIT(A).

8. We have heard the Ld. Representatives of the parties and perused the records. The facts are not in dispute. The property in question is a Inam land situate at R S No. 1092 A Ward Kasaba Karveer Sane Guruji Vasahat Kolhapur and is an agricultural land. The said property is Inam/Inami land received by the assessee's ancestors. The ancestors of the assessee were Inamdars of the said land having right of cultivation. The assessee inherited the said property in the FY 2003-04. The assessee has 50% share in the said land. The land was sold for total consideration of Rs.1,41,00,000/- out of which the assessee's share comes out to Rs.70,50,000/-. We find that the Ld. AO has rejected the plea of the assessee for the reason that the decision of the Hon'ble Supreme Court in the case of B. C. Shrinavasa Shetty (supra) is not applicable to the facts of the assessee's case as the said decision was rendered in the context of goodwill. The Ld. CIT(A) has upheld the order of Ld. AO by endorsing his views. However, both the Ld. AO and the Ld. CIT(A) have failed to appreciate that the land in question is Inam/Inami land which was the ancestor's property and received by the assessee by way of inheritance and therefore it has no cost of acquisition. In our considered view the principle laid down by the Hon'ble Supreme Court in the case of B. C. Shrinavasa Shetty (supra) are applicable to the facts of the present case and in the

absence of cost of acquisition, capital gain cannot be computed. We, therefore, find merit in the arguments advanced by the Ld. AR that since the machinery provision for computing capital gain fails, no capital gain tax liability would arise on transfer of Inam land by the assessee in the relevant AY.

9. We find an identical issue had come up before the Co-ordinate Bench of the Pune Tribunal in the case of Pashu Mohammed Zainuddin (supra). In that the case too the land in question was acquired by the assessee's ancestors free of cost as Inami land and the Tribunal held that in the case of Inam land there being no cost of acquisition, the question of capital gain does not arise. The relevant observations of the Tribunal are as under :

> *"3. We have heard both the parties and perused the material on record. The stand of the assessee was that the deposits were made out of sale proceeds of Dargah land. It was further explained that the assessee sold the said land in the representative capacity of Dargah Peer Bahuddin Pashu M Zainuddin A.Y. 2005-06 Bhandari Shah and the amount deposited in the bank belonged to the Dargah. It was further explained that land was received in gift by the assessee's ancestors and no capital gain was assessable on account of transfer of such "Inami land". However, the Assessing Officer was of the view that since the assessee was entitled to receive the rent and other benefits derived from such land, the transfer of such land was assessable under the head capital gain and taken the entire sale value of the land at Rs.53,00,000/- for the purpose of computation of capital gain inspite of admitted position that only Rs. 15.41.550/- was received by the assessee on transfer of such land.*
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> *4. We find that for charging of capital gain, the assets referred to in section 45 of the Act have to be such, in the acquisition of which, the assessee had incurred a cost. Admittedly, the assessee has not incurred any cost for acquisition of assets under consideration. The Assessing Officer has not brought anything on record to show that the assessee had incurred any cost for acquisition of the land in question. The Hon'ble Supreme Court in the case of CIT Vs. B.C. Srinivasa Shetty (1981) 128 ITR 294 that the liability to tax on capital gain would arise in respect of only those capital assets in the acquisition of which, an element of cost is either actually present or is capable of being reckoned and not in respect of those assets in the Pashu M Zainuddin A.Y. 2005-06 acquisition of which, the element of cost is altogether inconceivable. In the present case, the land was acquired by the assessee's ancestor free of cost as Inami land as Choli Bangdi for maintenance and services of Dargah Peer Bahuddin Bhandari shah. Therefore, any element of cost in an acquisition of aforesaid land by the ancestors of the assessee is inconceivable. Further in case of Inami land as Choli Bangdi there being no cost of acquisition, the question of capital gain does not arise. In this view of the matter, the order of the CIT(A) does not call for any interference at our hand. We uphold the same and dismiss the grounds raised by the Revenue.*
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> *5. In the result, the appeal of the Revenue is dismissed."*

10. In the case of Mahohar Pyarelal Sadane (supra), the Pune Tribunal relying on the decision of Co-ordinate Bench in Pashu Mohammed

Zainuddin's case (supra) once again decide the similar issue in favour of the assessee observing as under :

> *"6. After going through the above submissions and material on record, we find that the ITAT Pune Bench 'A' in the case of Pashu Mohammed Zainuddin (supra) has decided similar issue in favour of the assessee by observing as under:*
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> > *"4. We find that for charging of capital gain, the assets referred to in section 45 of the Act have to be such, in the acquisition of which, the assessee had incurred a cost. Admittedly, the assessee has not incurred any cost for acquisition of assets under consideration. The Assessing Officer has not brought anything on record to show that the assessee had incurred any cost for acquisition of the land in question. The Hon'ble Supreme Court in the case of CIT v. B.C. Srinivasa Shetty [1981] 128 ITR 294 that the liability to tax on capital gain would arise in respect of only those capital assets in the acquisition of which, an element of cost is either actually present or is capable of being reckoned and not in respect of those assets in the acquisition of which, the element of cost is altogether inconceivable. In the present case, the land was acquired by the assessee's ancestor free of cost as Inami land as Choli Bangdi for maintenance and services of Dargah Peer Bahuddin Bhandari shah. Therefore, any element of cost in an acquisition of aforesaid land by the ancestors of the assessee is inconceivable. Further in case of Inami land as Choli Bangdi there being no cost of acquisition, the question of capital gain does not arise. In this view of the matter, the order of the CIT(A) does not call for any interference by the Revenue. at our hand. We uphold the same and dismiss the grounds raised by the Revenue.*
> >
> > *5. In the result, the appeal of the Revenue is dismissed."*
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> *7. Nothing contrary was brought to our knowledge on behalf of Revenue in this regard. According to us for charging capital gains, the assets must have been acquired by incurring cost. In the instant case, the assessee has not incurred any cost for the acquisition of asset because the same was allotted to the assessee's father by Government of India being refugee from Pakistan at relevant point of time. We also find that Hon'ble Gujarat High Court in the case of Manoharsinghji P. Jadeja (supra), wherein the assessee sold inherited property which was acquired by forefathers by conquest. The property did not have any cost of acquisition. Capital gain was held not assessable in respect of sale of such properties. Provisions relating to deeming cost of acquisition was held at nil for the purpose of computation of capital gain because deeming provision applies only to the specified item. Though provision of section 45 of the Act is charging section, the legislation has enacted detailed provisions in order to compute capital gain under that head and no provision on variance to such compotation provisions can be applied for determining chargeable profits and gains. The assets referred to in section 45 of the Act has to be*
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> > *(i) in acquisition of which it is possible to envisage cost*
> > *(ii) in acquisition whereof assessee has incurred a cost and onus of showing that assessee had incurred cost is on Revenue, if Revenue failed to show that assessee had incurred a cost, it would be impossible to compute the income chargeable to tax under the head capital gains. By Finance Act, 1987m w.e.f. April 1st, 1988, the amended section 55 of the Act only ropes in taxability of goodwill on transfer of the same even if there is no cost of acquisition. Similarly, section 55 has been amended from time to time to enable taxability of other assets wherein no cost of acquisition is envisaged. Therefore, even if amendment is taken into consideration, section 55 can be invoked in case of nil cost of acquisition for the purpose of bringing tax the entire sale consideration only in relation to specified assets, as*

held in CIT v. Manoharsinhji P. Jadeja (supra), by driving strength from the decision of the Hon'ble Supreme Court in CIT v. B. Srinivasa Setty [1981] 128 ITR 294 (SC). Even the case of the assessee does not fall in the specified assets to attract amended provisions of section 55.

8. In view of the above factual and legal discussion, we hold that the land in question was not having cost because the same was allotted to father of the assessee being refugee from Pakistan by Government of India at relevant point of time which is not in dispute. So the land in question was acquired by father of the assessee free of cost. Therefore, there is no question of capital gain on transfer of such land. More so because it does not fall in specified items under section 49(1) (i to iv) of the Act. Accordingly, the same is not liable for capital gain. The Assessing Officer is directed accordingly."

11. Based on the above factual and legal position and following the decision(s) (supra) of the Co-ordinate Bench of the Tribunal and in the absence of any contrary material brought on record by the Revenue, in our view, the order of the Ld. CIT(A) is not sustainable and therefore, we set aside the order of the Ld. CIT(A) and hold that the no capital gain tax liability arises in the hands of the assessee on transfer of the property being Inam/Inami land in the relevant AY 2011-12. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 01st October, 2024.

Sd/-	Sd/-
(R.K. Panda)	(Astha Chandra)
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 01st October, 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, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" 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