



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

आयकरअपीलसं. / ITA No.2121/PUN/2024

निर्धारणवर्ष / Assessment Year: 2012-13

Shri Sunil Nana Kadam, Vaishnavi Chowk, Shrirampur Road, Delivali Pravara, Rahuri, Ahmednagar – 413716. PAN: AGEPK3824A	V s	The Income Tax Officer, Ward-4, Ahmednagar.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Rishabh Jain – AR(Virtual)
Revenue by	Dr.Shashank Ojha – DR
Date of hearing	11/11/2024
Date of pronouncement	12/11/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] dated
09.08.2024 for A.Y.2012-13, emanating from assessment order
dated 25.12.2019 passed by ITO, Ward-4, Ahmednagar u/sec.144
of the Act. The assessee has raised the following grounds of
appeal :



“Based on the facts and circumstances of the case, Mr. Sunil Nana Kadam, PAN : AGEPK3824A (hereinafter referred to as 'the Appellant') respectfully craves leave to prefer an appeal with Your Honours under section 253(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as 'Act'), against the order dated 09th August 2024, passed by the Commissioner of Income-tax (Appeals) at the National Faceless Appeal Center (NFAC, Delhi) (hereinafter referred to as 'CIT(A)') under section 250 of the Act, confirming the assessment order under section 147 r.w.s 144 of the Act, dated 25th December 2019 passed by the Income-tax Officer, Ward-4, Ahmednagar (hereinafter referred to as the 'AO') and, on the following grounds which are independent of and without prejudice to one another:

- 1. The Learned CIT(A) erred in law and on facts in confirming the addition of Rs.44,00,000/- made by the AO on account of Long-Term Capital Gains (LTCG) without calling for proper verification of the actual cost of acquisition of the property or lending credence to the area of the property, year of acquisition, location etc. and instead confirming the arbitrary estimation of the cost of acquisition at Rs.2,00,000/- without any basis or supporting evidence, and terming it 'reasonable'*
- 2. The Learned CIT(A) erred in not considering the documentary evidence submitted by the Appellant during the Appellate proceedings which clearly established that the Appellant's share in the sold property was less than 1/4th and not 1/2 as wrongly considered in the Assessment Order passed. In fact, the Assessment Order appealed against alluded to 'verification of sale deed' in its Para 6 and yet the share considered by the AO was 1/2 (which should have been less than 1/4th as per the Sale Deed). Further, this documentation was already available on record with the Income-tax Department from the previous assessment of AY 2011-12, which had arisen on account of the same issue*
- 3. The Learned CIT(A) erred in upholding the best judgment assessment under section 144 without consideration of the fact that the Appellant had filed a return of income on 22/11/2019 during the re-assessment proceedings*
- 4. The Learned CIT(A) erred in law by failing to provide sufficient opportunity of being heard to the Appellant, by passing the appeal order on 09th August 2024 before the response from the Appellant was due (12th August 2024), and without any opportunity for personal hearing to plead the case, which is against the principles of natural justice and established judicial precedents*



5. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable Your Honours to decide this appeal according to law.”*

Submission of Id.AR :

2. Ld.AR submitted that Assessing Officer(AO) has not considered the Return of Income filed by the assessee in response to notice u/sec.148 of the Act as it was delayed by few days. Ld.AO should have considered the Return of Income filed. In this case, assessee and his brother jointly sold a land at Gat No.569/1/1, Devulali, Ravuri District, Ahmednagar. The AO received this information and issued notice u/sec.148 of the Act. Assessee filed a Return of Income in response to notice u/sec.148 of the Act on 22.11.2019. The notice u/sec.148 was issued on 28.03.2019. The Assessing Officer has not considered the Return of Income and passed an order u/sec.144 of the Act. While passing the order u/sec.148 of the Act, the AO considered assessee's share as 50%, whereas assessee's share is less than 25%. As per the sale deed dated 10.05.2011, assessee with his brother sold a land admeasuring "1 hectare 55 R" and "45 R" for a total consideration of Rs.90 lakhs. Out of this, assessee is owner of only "45 R". Therefore, proportionate consideration should have been calculated



by Assessing Officer. Ld.AR further submitted that the exact details of consideration and cheque numbers are also mentioned in the sale deed and agreement to sale. Ld.AO also erred in not calculating the cost of acquisition properly. Ld.AR also submitted that the same Assessing Officer has accepted assessee's brother's Return of Income. Therefore, the AO cannot adopt two different approaches for the same transaction.

Submission of ld.DR :

3. Ld.DR relied on the order of AO and ld.CIT(A).

Findings & Analysis :

4. We have heard both the parties and perused the records. It is an admitted fact that assessee had not filed any Return of Income for A.Y.2012-13 under section 139(1) of the Act. The AO received information regarding sale of immovable property for Rs.90 lakhs by the assessee. Assessing Officer issued notice u/sec.148 followed by notice u/sec.142(1) of the Act. AO has not referred to the Return of Income filed by the assessee. Assessing Officer passed an order u/sec.144 of the Act. In para 6 of the assessment order, the AO held that assessee's share was 50%



which comes to Rs.45 lakhs. Assessing Officer presumed cost of acquisition of land at Rs.2 lakhs. Then, calculated the Long Term Capital Gain at Rs.44 lakhs.

4.1 Ld.CIT(A) merely confirmed the addition without understanding the facts of the case.

4.2 In this case, the AO in para 6 of the assessment order, has referred to the sale deed dated 10.05.2011. It means, Assessing Officer was having copy of the sale deed dated 10.05.2011. We have perused the registered sale deed dated 10.05.2011 which is at page no.26 to 33 of the paper book, filed by the assessee. It is clearly mentioned in the impugned sale deed that assessee sold only “45 R” Land which is situated at Gat No.569/1/1, Devulali, Ravuri District, Ahmednagar. The other land belongs to his brother which is “1 hectare 55 R”. This division is specifically mentioned in the sale deed. The sale deed also categorically mentions that Rs.90 lakhs was paid by the purchaser to the seller, i.e.Dilip Nanasaheb Kadam and Sunil Nanasaheb Kadam, for the total land i.e. 1 hectare 55R + 45R”.



4.3 Therefore, AO should have calculated assessee's share based on the above land ownership. It is observed that assessee has sold only 22.5% i.e. 45R of the total land. Therefore, assessee's share in total consideration of Rs.90 lakhs will be only Rs.20,25,000/- (22.5% of Rs.90 lakhs). Therefore, the AO is directed to recalculate the capital gain considering assessee's share as Rs.20,25,000/-. The AO has not referred the issue of deciding cost of acquisition to the Valuation Officer. In this case, the impugned land is an inherited land. Therefore, cost of acquisition will be calculated as per Section 49 of the Act. The AO needs to arrive at accost of acquisition as on 01.04.2001 by referring the issue to the Valuation Officer. AO has also not given benefit of Indexation. Since it is a Long Term Capital Gain, as per section 48 of the Act, sale consideration is reduced by Index Cost of Acquisition. Therefore, Assessing Officer shall grant benefit of Indexation to the Assessee. Accordingly, the Assessing Officer is directed to calculate the Long Term Capital Gain by considering the sale consideration at Rs.20,25,000/- and reducing the Index Cost of Acquisition as decided by DVO. The issue is set-aside to the Assessing Officer. Accordingly, grounds of appeal raised by the assessee are allowed for statical purpose.



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

Order pronounced in the open Court on 12th November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 12th Nov, 2024/ 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, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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