



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1753/PUN/2024

Assessment Year : 2013-14

Sachin Ramesh Pawar, 215, Pratibhai Niwas, Raviwar Peth, Satara - 415 001 Maharashtra PAN : AQEPP3391D	Vs.	The Income Tax Officer, Ward-8(2), Satara
Appellant		Respondent

Assessee by	:	Shri Rushabh Shah
Revenue by	:	Shri Sourabh Nayak
Date of hearing	:	17.12.2024
Date of pronouncement	:	06.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal is filed by the assessee pertaining to the assessment year 2013-14 directed against the order dated 25.06.2024 of the ld. Addl/JCIT(A)-2, Kolkata u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') which inturn is arising out of the Assessment Order passed u/s.143(3) r.w.s.147, dated 27.12.2018.



2. At the outset, Ld. Counsel for the assessee did not press Ground of appeal Nos. 1, 2, 3 and 6. Ground of appeal Nos. 7 and 8 are general in nature and needs no adjudication. Accordingly, the above Grounds of appeal raised by the assessee are dismissed.

3. Grounds of appeal No. 4 and 5 are effective which survive for my adjudication. The said grounds raised by the assessee read as under :

“4. Without prejudice to ground no. 3, on facts and circumstances prevailing in the case and as per the provisions and scheme of the Act it be held that the additions in the nature of long term capital gains made by the Ld. AO and upheld by the CIT(A) on alleged transfer of the land as per section 2(47) of the Act read within the meaning of section 53A of the Transfer of Property Act, amounting to INR 25,53,628/- is improper and contrary to the provisions of the Act. Additions made may please be deleted and the Appellant be granted just & proper relief. Tax Effect: 6,84,320/-.

5. On the facts and circumstances of the case, and as per the provisions and scheme of the Income-tax Act, 1961, it be held that the Ld. AO erred in assessing capital gains as escaped income in the hands of the Appellant despite the fact that the development agreement had been cancelled ab-initio and no addition is assessable in the hands of the Appellant for the relevant assessment year. Additions made may please be deleted and the Appellant be granted just & proper relief.”

4. From perusal of the above ground, I notice that the only issue is regarding addition of Rs.25,53,628/- made by the Assessing Officer and confirmed by the ld.CIT(A) observing that



the transfer took place as per provisions of section 2(47) of the Act and the assessee has earned Long Term Capital Gain.

5. Facts in brief are that the assessee is an individual and is engaging the business of running Computer Centre. The assessee has not furnished the Income-tax return for the A.Y. 2013-14. During the year under consideration, the assessee along with other 7 co-owners entered into a Development Agreement with M/s. Shri Nath Builders Promoters P. Ltd. and the consideration receivable was in the form of Residential saleable Built-up area of 1189.59 sq.mtrs having value of Rs.2,31,95,500/-. The ld. AO based on the clauses of the Development Agreement mainly Clause No.13 came to conclusion that since the owners have transferred all their rights of the property to the Developer by transferring the possession of the property, long term capital gain has arisen in the hands of the co-owners and assessee' share being 1/7th, respective amount which comes to Rs.25,53,628/- has been added in the hands of assessee. In the First Appellate proceedings, the finding of the Assessing Officer has been affirmed by the ld.CIT(A).

6. Aggrieved assessee approached the Tribunal challenging the order passed by the ld.CIT(A).



7. Ld. Counsel for the assessee at the outset submitted that the Development Agreement entered into between the assessee and the co-owners and the Developers led to some litigation. There has been amendment in the Development Agreement and till today the matter is under litigation and the ownership of the property rests with the assessee and the co-owners. In support, he has referred to 7/12 extract of the land, electricity bill of the structure of the land. He further submitted that since no transfer has taken place as per provisions of section 2(47) of the Act, no capital gain could arise in the hands of assessee as no consideration has been passed. He also referred to certain decisions mentioned in the case law paper book from pages 1 to 140.

8. On the other hand, the ld. DR vehemently argued supporting the detailed finding of the AO and again asserted that the transfer has taken place and the possession has been given to the Developer.

9. I have heard the rival contentions and perused the record placed before me. The issue for my consideration is whether the ld.CIT(A) was justified in confirming the action of the AO making addition on account of long term capital gain amounting to Rs.25,53,628/- in the hands of assessee for the alleged transfer



of property u/s.2(4&6) of the Act r.w.s.45, 48 and 53A of the Income-tax Act, 1961.

10. I observe that the assessee is stated to be the owner of the land along with 7 other co-owners. The assessee and the co-owners have entered into a Development Agreement with M/s. Shri Nath Builders Promoters P. Ltd. on 02.03.2013. Thereafter, the assessee before the expiry of 2 years and 6 months which is the period given for the Developer for doing the construction, issued a public notice in the Newspaper on 07.04.2014 regarding property dispute and nullification of the Joint Development Agreement. Thereafter, amendment to Agreement was entered into between the parties on 24.09.2014 where the consideration receivable by the assessee and co-owners was increased. Thereafter, again some dispute occurred between the Developers and the assessee and the co-owners. The matter went to the Civil Court, Satara. It is claimed that the possession of the immovable property has not been given to the Developer and still the assessee and co-owners enjoy the possession of the property.

11. I notice that the main premise of the impugned addition by the AO is that the possession has been given to the Developer against the consideration finalized in the form of giving saleable rights for built-up area of 1189.59 sq.mtrs. For the transfer of



ITA No.1753 /PUN/2024
Sachin Ramesh Pawar

the property, two ingredients are to be fulfilled, (1) Possession is handed over from the sellers to the buyer and (2) Consideration is received by the seller. However, in the instant case, the claim of the assessee is that possession has not been given to the Developer since the assessee and co-owners as on date still enjoys possession of the immovable property. Certain documents have been placed before me as proof of the possession of the immovable property by the assessee and co-owners which were not placed before the lower authorities. Under these given circumstances and since the assessee is claiming that ownership of the property in question not been transferred and possession has not been given to the Developer, I deem it appropriate to restore the matter to the file of Jurisdictional Assessing Officer who shall depute an inspector to cause necessary verification or in the alternate ask ITO, Satara where the land in question is situated and get a remand report therefrom and if it is found that the possession of the land in question is still with the assessee and the other co-owners, there being no construction of immovable property on the said land as agreed under the Development Agreement and no consideration has been passed to Land owners. then addition on account of long term capital gain would be uncalled for in the hands of assessee and if found otherwise, then the Id. AO shall decide in accordance with law after providing opportunity of being heard



ITA No.1753 /PUN/2024
Sachin Ramesh Pawar

to the assessee. Effective grounds of appeal raised by the assessee are allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 06th day of January, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th January, 2025.
Satisb

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, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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