



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

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.2379/PUN/2024

Assessment Year : 2013-14

Sandesh Vasanttrao Pawar, 215, Raviwar Peth, Near Khandoba Mandir, Satara - 415 001 Maharashtra PAN : BESPP8793J	Vs.	The Income Tax Officer, Ward-2, Satara
Appellant		Respondent

Assessee by	:	Shri Rahul Kavale
Revenue by	:	Shri Vinod Pawar
Date of hearing	:	24.12.2024
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 03.07.2024 of the National Faceless Appeal Centre, Delhi 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, I find the appeal is time barred by 76 days before the Tribunal. The assessee has filed an affidavit stating that he is unaware of the procedures of law and it took some time to consult legal consultant in the matter. This is the precise reason which led to delay in filing the appeal.

3. Having gone through the averments made in the affidavit and in the absence of anything contrary to disbelieve the assessee's version made therein, I am of the opinion that there was 'reasonable cause' which prevented the assessee in filing the appeal before the Tribunal within the stipulated time. I therefore in the larger interest of justice condone the delay of 76 days and proceed for adjudication of appeal.

4. Assessee has raised following grounds of appeal :

*"1. The provision of Section 2(47)(v) in reference to Section 53A of the Transfer of Property Act, 1882, does not apply here, as the developer has not undertaken any construction-related work under the development agreement. Activities such as demolishing old structures, fencing, and installing bore-wells do not qualify as "part performance." Part performance requires substantial construction actions, such as laying the foundation or obtaining construction plan approvals from the Municipal Corporation. Additionally, the developer has not demonstrated a clear Will to perform the Contract.*

*2. Provision of section 2(47) r.w.s. 45 is not applicable in this case, as per section 45(5A) the appellant will acquire the flat in consideration for the transfer of land. The capital gain will arise only when the Certificate of Completion is issued.*

*3. As per sec 149(1)(a), notice u/s 148 cannot be issued after lapse of four years from the end of relevant Assessment Year.*



ITA No.2379/PUN/2024  
Sandesh Vasantryao Pawar

4. *As per sec 139(1), the filing of Income Tax Return is mandatory only when the total income exceeds maximum amount which is not chargeable to tax.*

*The appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the Grounds of Appeal on or before the final hearing, if necessity so arises.”*

5. Facts of the case in brief are that the assessee is an individual and is running a Gift Articles Shop. The assessee has not filed regular return of income under the provisions of section 139(1) of the Act. Based on the information that 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/-, out of which the share of the assessee comes to Rs.46,03,414/- and the fact that the assessee has not filed the return of income, it was opined by the AO that income escaped assessment to tax. The case was reopened by issuance of notice u/s.148 of the Act. Pursuant to notice u/s.148, the assessee filed the return of income furnished on 25.04.2018 declaring income of Rs.60,800/-. The assessee submitted that even after lapse of five years the Developer has not started the work. Some dispute arose between the Developer and the assessee & the co-owners. A public notice was issued in daily newspaper 'Dainik Pudhari' on 14.03.2016 for cancellation of the



Joint Development Agreement. The Developer filed a civil suit before the Civil Court, Satara and the case was dismissed the suit vide order dated 17.12.2016 because the plaintiff (Developer) could not prove the possession of the property as per the Joint Development Entered into between assessee & co-owners with the Developer.

6. During the course of assessment proceedings before the AO, the assessee furnished all the requisite details in response to various notices. However, ld. AO was not satisfied with the submissions putforth by the assessee and came to conclusion that *“the assessee has entered into development agreement on 02/03/2013 which was duly registered before Sub Registrar; Satara by paying appropriate stamp duty and registration charges, and also vacant, exclusive and peaceful possession of the property has been handed over to the developer. The owners had also issued irrevocable power of attorney in favor of the developer to enable the builder to sell its shares of flats. Therefore, such transfer of possession and other rights of development during the year amounted to a valid transfer u/s.53A of the Transfer of Property Act and thus, the assessee is liable to capital gains tax u/s. 2(47) read with section 45 of the Act”*.



7. Dissatisfied assessee preferred appeal before the Id.NFAC who vide impugned dismissed the appeal on the ground that the assessee has not complied with notice u/s.142(1) by submitting the valuation report as called for by the AO by observing as under :

*“2. Ground no.1 objects to computation of long term capital gain out of sale of immovable property. The assessee was asked to submit the valuation report but the assessee failed to comply with the notice u/s 142(1). It is accepted fact that the land which was transferred is a capital asset. In the absence of supporting evidence, the cost of acquisition is worked out on the basis of circular issued by Inspector general of Registration and Stamp dated 22.03.1993 and accordingly the LTCG is computed at Rs.42,68,533/- as per the details given in para 7 of the assessment order. The assessment of LTCG is confirmed.”*

8. Now the aggrieved assessee approached the Tribunal challenging the order passed by the Id.CIT(A).

9. Ld. Counsel for the assessee at the outset submitted that the Joint Development Agreement entered into between the assessee & the co-owners and the Developers led to some litigation. The Developer filed a civil suit before the Civil Court, Satara and the case was dismissed by the Court vide order dated 17.12.2016 because the plaintiff (Developer) could not prove the possession of the property as per the Joint Development Entered into between assessee & co-owners with the Developer. It is clear that by virtue of Court order no transfer has taken place as per



*ITA No.2379/PUN/2024*  
*Sandesh Vasant Rao Pawar*

provisions of section 2(47) of the Act and therefore no capital gain could arise in the hands of assessee & the co-owners as no consideration has been passed to them. He also referred to couple of decisions viz., M/s. Agnus Holding Pvt. Ltd. vs. DCIT - ITA No.410/Bang/2016 dated 01.09.2021 and Union of India & Others Vs. Ashish Agarwal and others - Civil Appeal No. 3005/2002 order dated 04.05.2022.

10. 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.

11. I have heard the rival contentions and perused the record placed before me. The issue for my consideration is whether the ld.NFAC was justified in confirming the action of the AO making addition on account of long term capital gain amounting to Rs.42,68,533/- in the hands of assessee for the alleged transfer of property u/s.2(47) of the Act r.w.s.45 & 53A of the Income-tax Act, 1961.

12. 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 Pvt. Ltd. on 02.03.2013. Some dispute arose between the Developer and the assessee & co-



*ITA No.2379/PUN/2024*  
*Sandesh Vasantrao Pawar*

owners. 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 regarding property dispute and nullification of the Joint Development Agreement. The Developer filed a civil suit before the Civil Court, Satara and the case was dismissed by the Court vide order dated 17.12.2016 because the plaintiff (Developer) could not prove the possession of the property as per the Joint Development Entered into between assessee & co-owners with the Developer. In the hue of these facts, the assessee claims that possession of the immovable property has not been given to the Developer and still the assessee & co-owners enjoy the possession of the property.

13. Firstly, a mere perusal of the impugned order indicated that Id. NFAC has also not passed any speaking order on merits as contemplated u/s.250(6) of the Act but simply dismissed the appeal of the assessee for non-compliance of the notice issued u/s.142(1) and for submission of Valuation report.

14. Secondly, 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 the property, two ingredients are to be fulfilled, (1)



*ITA No.2379/PUN/2024*  
*Sandesh Vasantrao Pawar*

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 ld. AO shall decide in accordance with law after providing opportunity of being heard



ITA No.2379/PUN/2024  
Sandesh Vasant Rao Pawar

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

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

Order pronounced on this 06<sup>th</sup> day of January, 2025.

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 06<sup>th</sup> January, 2025.  
Satisfy

**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