



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

आयकर अपील सं. / ITA No.475/PUN/2025

निर्धारण वर्ष / Assessment Year: 2011-12

Shailesh Thaksen Bankhele (Legal heir of Late Thaksen Sopan Bankhele), Sai Namdeo Park, Flat No.12 B-II, Near MHADHA Housing Society, Morwadi, Pimpri, Haveli, Pune – 411018.	V s	The Income tax Officer, Ward-10(2), Pune.
PAN: AGFPB8295D		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Sharad Shah – AR
Revenue by	Shri Harish Bist – Addl.CIT(DR)
Date of hearing	01/04/2025
Date of pronouncement	23/04/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee is against the order of
ld.Additional/Joint Commissioner of Income Tax(Appeals)-[NFAC],
passed under section 250of the Income Tax Act, 196, Ludhiana
23.02.2024for Assessment Year 2011-12. The assessee has raised
the following grounds of appeal :

“1. The Ld. AO erred in (Ld. CIT-A erred in confirming) addition of Rs.24,75,000/- on account of Long-term Capital Gain.

2. The Ld. AO erred in (Ld. CIT-A erred in confirming) not considering the fact that the property was Agriculture Land NIL not considered as Capital Asset in terms of Section 2(14) of the Income Tax Act and therefore, not liable to tax.

3. The Ld. AO erred in (Ld. CIT-A erred in confirming) in applying the provision of section 2(47)(v) and considering the Capital Gain for AY 2011-12.

4. The Ld. AO ought to have appreciated the fact that by executing the joint development agreement, mere license to construct was given and no possession of the land was handed over. The Land Possession will be handed over on receipt of constructed area. Therefore, no capital gain is taxable in this year.

5. The appellant craves its right to add to or alter the Grounds NI of Appeal at any time before or during the course of hearing of the case.”

Findings & Analysis :

2. We have heard both the parties and perused the records. In this case, assessment order for A.Y.2011-12 was passed under section 143(3) r.w.s. 147 of the Act. The date of order is 29.11.2018. Aggrieved by the assessment order, assessee filed appeal before the ld.CIT(A).

2.1 The Legal Heir of the assessee filed an Affidavit stating that his father i.e. Thaksen Sophan Bankhele was critically ill since 2015 and died on 30.07.2024. The assessee was bedridden since 2018. In the Affidavit, it has been pleaded that therefore no submission could be made before ld.CIT(A).



2.2 It is observed that Id.CIT(A) has dismissed the appeal on the ground that there was no submission filed by the Assessee.

2.3 We have perused the assessment order and it is observed that nowhere Assessing Officer has mentioned regarding providing reasons recorded to the Assessee. In this case, notice u/s.148 was issued on 27.03.2018. Assessee filed Return of Income in response to Notice under section 148 of the Act. Therefore, it was mandatory for the Assessing Officer to provide the copy of the reasons recorded and copy of the approval of the Competent Authority obtained to issue notice u/s.148 of the Act. However, in this case, apparently it seems that AO has not provided these details to the assessee.

3. The Hon'ble Bombay High Court in the decision of Sahebrao Deshmukh Co-op Bank Ltd., Vs. ACIT [2023] 149 taxmann.com 248(Bombay) held as under :

“18. The matter is now remanded back to the Assessing Officer, who shall provide the Petitioner with the satisfaction note of the Principal Commissioner of Income Tax, granting approval for issuance of Notice under section 148 of the Act, the appraisal report from DDIT(Inv), and bank statement of M/S Sanyam Gems Pvt. Ltd., the statement of Shri Shripal Vora at Bhavnagar, recorded under section 131 of the Act, and all other documents and material, which form the basis of the reasons recorded by the Assessing Officer for issuing notice under section 148

of the Act. After furnishing all these documents to the Petitioner, the Assessing Officer shall comply with the specific directions laid down by this Court in paragraph 8 in Tata Capital Financial Services Ltd. (supra), and after giving an opportunity of hearing to the Petitioner, shall proceed to pass its orders.”

4. In the case of the assessee, we have already mentioned that copy of the reasons and copy of the approval was not provided to the assessee. In these facts and circumstances of the case, we set-aside the order of the Assessing Officer for denovo adjudication with the direction to provide copy of reasons recorded, copy of approval of the Competent Authority to the assessee. The Assessee shall be allowed to file objections if any against the reasons recorded. The AO shall pass order after giving opportunity of being heard. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open Court on 23rd April, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd April, 2025/ 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.