

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI

सर्व श्री राजेन्द्र, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2739/M/2012
(निर्धारण वर्ष / Assessment Year: 2009-10)

Mr. Arvind Vasant Pendse, 1301, D Wing, Balaji Garden CHS, Koparkhairane, Navi Mumbai – 400 701 PAN: AACPP 2486P	बनाम/Vs.	ACIT-10(3), Aayakar Bhavan, M.K. Road, Mumbai – 20
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Present for:

Assessee by

: Shri S.K. Mulsaddi, A.R.

Revenue by

: Shri Raghuvveer Madnappa, D.R.

सुनवाई की तारीख/Date of Hearing : 11.03.2016

घोषणा की तारीख /Date of Pronouncement : 31.03.2016

आदेश / ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 18.01.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee has taken the following grounds of appeal:

"1. Rejecting the appellant's claim that he along with his mother & wife are the joint owner of the property situated at Ambarnath (Factory building) in the ratios of 1: 1:1. In doing so, the CIT(A) has further erred in taxing the entire rent received of Rs. 14,69,664/- from this property in the appellant's hands as against his share being Rs.5 Lacs as reflected in the return of income filed by him.

2. Rejecting the appellant's claim of Long Term Capital Gains arising out of transfer of tenancy rights owned by the appellant in Room No.: 60 at Ismail Building, Dadar. In doing so, the CIT(A) has further erred in upholding:-

- a) that the consideration received of Rs.2 1,30,000/- on account of transfer of tenancy rights in Ismail Building was income from other sources as against capital gains shown by the appellant. In doing so, the CIT(A) has further erred in not admitting the evidences put forth by the appellant in the context of the tenancy being long term capital asset.
 - b) In rejecting the appellant's claim for exemption of Rs.21,30,000/- made u/s.54EC of the Income Tax Act.
3. The appellant reserves his right to add to, amend, alter, modify or delete any of the grounds taken in this appeal."

3. A perusal of above grounds of appeal reveals that the assessee has taken two effective grounds of appeal.

Ground No.1

4. Vide ground No.1, the assessee has agitated the taxing of the entire rent of Rs.14,69,664/- in respect of property at Ambernath in the hands of the assessee as against Rs.5 lakhs shown by the assessee.

The brief facts of the case are that during the assessment proceedings, the Assessing Officer (hereinafter referred to as the AO) noted that the assessee had shown the receipt of rent of Rs.5 lakhs from M/s. Electric Engineers Ltd. for renting out his property at Ambernath, however as per TDS certificate the rent was shown at Rs.14,69,664/-. The assessee explained that the assessee was having 1/3rd share in the property and hence 1/3rd rent was shown as income of the assessee. It was submitted that the property was jointly owned by the assessee along with Mrs. Shakuntala V. Pendse and Mrs. Purna A. Pendse. The AO further observed from the balance sheet of Mrs. Purna A. Pendse that the said property at Ambernath or the share thereof was not shown by her in the schedule of fixed assets. Therefore the claim that she was a joint owner of the property at Ambernath remained unsubstantiated. The assessee, however, submitted copies of deeds of conveyance dated 17.07.03, 19.12.03 and 09.12.02 showing the purchase of the Ambernath land in the joint name of the assessee, Mrs. Purna A. Pendse and Mrs. Shakuntala V. Pendse. The AO, however, observed that the copies of deeds submitted by the assessee showed purchase of agricultural land and not the factory at Ambernath. Even

the property was not shown in the schedule of fixed assets in the balance sheet of Mrs. Prerna A. Pendse. The balance sheet of Mrs. Shakuntala V. Pendse was also not filed with the AO. He observed that the entire cost of the property for building the factory premises had been borne by the assessee himself. He accordingly taxed the entire rent of the property in the hands of the assessee.

5. The Ld. CIT(A) confirmed the above findings of the AO. The assessee, thus, has come in appeal before us.

6. The Ld. A.R. of the assessee has submitted that the property was jointly purchased in the name of the assessee, his mother Mrs. Shakuntala V. Pendse and his wife Mrs. Prerna A. Pendse. He has submitted that assessee along with his mother and wife was the joint owner of the property. He has further submitted that wife of the assessee namely Mrs. Prerna A. Pendse is assessed at the maximum slab/rate of tax, hence there was no attempt to avoid the tax by bifurcating the income in two hands.

7. We have considered the overall facts and circumstances of the case. It has been claimed that the ownership of the property is in the joint name of the assessee, his wife and his mother. However, the AO has not given a specific finding as to whether the assessee, his wife or his mother actually stood joint owners of the property in record. The AO has written that as per records what has been purchased/allotted to the assessee and his wife and mother was the agricultural land. He has not given a finding that it was the same land upon which the factory premises was constructed. The AO has also not examined as to whether any cost by the wife and the mother of the assessee has been borne in raising the building over the land. Both the Ld. Representatives of the parties have submitted that the matter be restored to the file of the AO for giving a definite finding in this respect. We accordingly restore this issue to the file of the AO to record a finding in this respect and decide the issue afresh

as per the provisions of section 27 and section 64 of the Act and any other relevant provision and the case laws that may be cited before him.

Ground No.2

8. The second ground is relating to the taxability of long term capital gains arising out of transfer of tenancy rights. The Ld. A.R. of the assessee has submitted that though the assessee could not produce the relevant documents before the AO regarding the term of tenancy; that the relevant documents to show that earlier the assessee's parents levied in the said property; the rent receipts and other documents to show that the asset surrendered/sold was a long term asset. He has stated that the above documents were produced before the Ld. CIT(A). However, the Ld. CIT(A) has failed to take into consideration the said documents.

The Ld. D.R. has also fairly agreed that the above documents are required to be looked into for the just decision of the case. In view of this, the present issue is also restored to the file of the AO for deciding it afresh after considering the relevant evidences/documents, if any, furnished by the assessee. Needless to say that the AO will give proper opportunity to the assessee to present his case and furnish the necessary documents.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 31.03.2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 31.03.2016 को की गई ।

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(संजय गर्ग / Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated 31.03.2016

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai