

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.590/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Mohanrao Vishwanath Gaikwad, Vs. ITO, Ward-5,
At. Ashta (Jahangir), Osmanabad
Taluka Omerga, Dist Osmanabad
PAN : AGLPG3994L

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Hari Krishan
Ms. Nishtha Tiwari &
Shri Prathamesh J.Lawand

Date of hearing 08-06-2020
Date of pronouncement 08-06-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Aurangabad on 24-10-2016 in relation to the assessment year 2012-13.

2. This appeal is time-barred by 76 days. The assessee has filed condonation application stating the reasons for late filing of the appeal. I am satisfied with the same. The delay is condoned and the appeal is admitted for hearing.

3. Before taking up the issue on merits, it is expedient to note that the assessee initially raised certain grounds in the Memorandum of Appeal. Thereafter, revised grounds were filed and still thereafter, certain additional grounds were also filed. In the course of virtual hearing before the Tribunal today, the ld. AR pressed only one issue which I will advert to later. All other grounds, including the additional grounds, except the one issue pressed before me during the course of virtual hearing, are ergo dismissed as 'Not pressed'.

4. Succinctly, the facts of the case are that the Assessing Officer (AO) received AIR information that the assessee sold certain immovable property along with co-owners for a consideration of Rs.50.00 lakh, which was not disclosed in the return of income. A notice u/s.148 was issued. The assessee filed a return pursuant to the notice, still not disclosing profit from the transfer of land at Plot No.360 sq. meters under Survey No.66 in Khadgaon Area, Latur. This property was purchased in the F.Y. 2011-12 jointly with 4 other persons for Rs.4,15,000/- on 23-06-2011 and in the month of December 2011 itself, the assessee entered into a

Development Agreement of the same plot with a builder for a sum of Rs.50.00 lakh. The assessee submitted before the AO that he did not receive his share of Rs.9,91,250/- which was referred to in the development deed dated 02-12-2011. The AO observed that the land in question was already handed over to the purchaser. Invoking the provisions of section 2(47), the AO treated the said plot as short term capital asset and computed assessee's share at 1/5th as short term capital gain amounting to Rs.9,02,440/-. The ld. CIT(A) did not allow any relief, against which the assessee has come up in appeal before the Tribunal.

5. I have heard both the sides and gone through the relevant material on record. As noted above, the only issue pressed by the ld. AR is non-receipt of the sale consideration by the assessee. Thus, all other issues, namely, taxation of the capital gain in the hands of AOP rather than individual owners or the taxation of the amount as business income rather than capital gain or non-service of notice etc. have become academic. The only issue which now survives for consideration is the taxability of the amount of gain from the

transfer of plot pertaining to assessee's share as short term capital gain. The ld. AR contended that though the development agreement was entered into in the year 2011 but no amount of consideration was actually received and the same position continues till date as well. It was submitted that in the absence of receipt of sale consideration, no capital gain can be taxed. For this proposition, he relied on the judgment of the *Hon'ble Supreme Court in CIT Vs. Balbir Singh Maini (2017) 398 ITR 531 (SC)*.

6. In the aforementioned judgment, their Lordships, applying real income theory in the context of capital gain as well, have held that since the assessee did not acquire any right to receive income under the JDA, no profits or gains arose from the transfer of a capital asset attracting sections 45 and 48 of the Income Tax Act. In view of the position stated by the ld. AR that no part of the consideration has been received till date and the assessee will be offering the amount of capital gain as and when the sale consideration is actually received, I set-aside the impugned order and remit the matter to the file of AO for verifying the assessee's contention about non-

receipt of sale consideration. In case such contention is found to be correct, then nothing should be charged to tax in the hands of the assessee for the year under consideration and the resultant computation of capital gain should be made and included in the total income for the year in which the assessee actually receives the consideration.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 08th June, 2020.

Sd/-

(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 08th June, 2020

सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-2, Aurangabad
4. The Pr.CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	08-06-2020	Sr.PS
2.	Draft placed before author	08-06-2020	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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