

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE – VIRTUAL COURT**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA Nos.495 & 496/PUN/2018**

**निर्धारण वर्ष / Assessment Years : 2012-13**

|  |     |                     |
|--|-----|---------------------|
| Sudhir Angre<br>At Post Vengaon Mothe,<br>Karjat, Dist. Raigad-410201<br>PAN: AFWPA4084K | Vs. | ITO, Ward-4, Panvel |
| Appellant  |     | Respondent          |

**आयकर अपील सं. / ITA Nos.497 & 498/PUN/2018**

**निर्धारण वर्ष / Assessment Years : 2012-13**

|   |     |                     |
|---|-----|---------------------|
| Sunil Angre<br>At Post Vengaon Mothe,<br>Karjat, Dist. Raigad-410201<br>PAN: AFXPA2201B | Vs. | ITO, Ward-4, Panvel |
| Appellant   |     | Respondent          |

|                       |                   |
|-----------------------|-------------------|
| Assessee by           | None              |
| Revenue by            | Shri S.P. Walimbe |
| Date of hearing       | 10-01-2022        |
| Date of pronouncement | 10-01-2022        |

**आदेश / ORDER**

**PER R.S.SYAL, VP :**

This batch of four appeals - having two quantum and equal number of penalty appeals - by two different but related assessees relate to the A.Y. 2012-13. Since some common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

**Sudhir Angre:**

2. The assessee in his quantum appeal is, firstly, aggrieved by the confirmation of addition of Rs.21,25,000.

3. Briefly stated, the facts of the case are that the assessment proceedings of Shri Sunil Dattatray Angre, brother of the assessee and the appellant in other two appeals, transpired that an immovable property was sold jointly by them on 29.08.2011 for a sum of Rs.50 lakhs. No capital gain was offered for taxation. The assessee was further found to have purchased a property worth Rs.50 lakhs on 13.09.2011, which was not declared. As the assessee had not declared any capital gain on the transfer of the land or the source of the purchase of the new property, a notice u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was issued. The AO issued certain notices to the assessee which remained un-complied with. While completing assessment u/s 144 of the Act on 29.02.2016, the AO made an addition of Rs.25 lakhs on the ground that the assessee's share in the purchase of property at worth Rs.25 lakhs, out of total purchase consideration of Rs.50 lakhs along with Shri Sunil Angre on 13.09.2011, was not substantiated by any source of investment. He also made another addition of Rs.25 lakhs on account of sale of property along with Shri Sunil Angre, with the

assessee's share at Rs.25 lakhs. This was done on the ground that it was short term capital gain which was not offered by the assessee. The ld. CIT(A) observed that the property sold by the two brothers to M/s. Rahul Land Pvt. Ltd. for a total consideration of Rs.50 lakhs, was a piece of land which was purchased by them just four months ago for total consideration at Rs.7,50,000, resulting into profit of Rs.42,50,000. The ld. CIT(A) held that transaction as an adventure in nature of trade and the assessee's share in profit of Rs.21,25,000 liable to be taxed as business income. As regards remaining addition of Rs.25 lakhs made on account of unexplained investment in purchase of another immovable property, the ld. CIT(A) accepted the assessee's contention and deleted the addition. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the ld. DR through the Virtual Court and scanned through the relevant material on record. The appeal was originally fixed for hearing on 07.09.2021 and it was adjourned at the request of assessee for 21.10.2021. On such date, none appeared, the matter was again adjourned for 01.12.2021. Again on 01.12.2021, none appeared and the matter was adjourned for today. Today, again the assessee has chosen to remain un-represented. In

such circumstances, we are proceeding to decide the appeal *ex-parte qua* the assessee on merits.

5. It is seen that the assessee sold a piece of land for Rs.50 lakhs within period of four months from the date of its purchase at Rs.7,50,000. The land in question was sold to M/s. Rahul Land Pvt. Ltd. There is no evidence to show that the purchase and sale of the property was with an intention of Investment. The ld. CIT(A) has treated the transaction to be an adventure in the nature of trade. The facts and circumstances, as obtaining in this case, do show the intention of assessee to resell the land and not to hold the same. It was just within a period of four months from the date of purchase that the assessee sold the land. Considering the intention of the assessee as emanating from the above circumstances, we uphold the action of the ld. CIT(A) in treating the sale transaction as an adventure in the nature of trade. The impugned order is therefore, confirmed on this score.

6. The second ground is about the confirmation of an addition of Rs.2,25,000, being, unexplained cash deposits into bank account. The AO observed from the ITS system information that the assessee deposited cash of Rs.3 lakhs in IDBI bank account. In the absence of any explanation forthcoming from side of the assessee, the AO

made an addition of Rs.3 lakhs. The ld. CIT(A) accepted the contention of assessee about having such money out of past savings only to the extent of Rs.75,000 and sustained the remaining addition of Rs.2,25,000.

7. Having regard to the facts of the case and considering the quantum of amount involved with reference to other attending circumstances, we are satisfied that the deposit of Rs.3 lakhs cannot be considered as emanating from any undisclosed sources, for which the ld. CIT(A) has accepted the explanation only to the extent of Rs.75,000. There is no reason as to how this magical figure of Rs.75,000 came into being. As such, we order to delete the remaining addition of Rs.2,25,000.

8. In the result, quantum appeal is partly allowed.

9. In so far as the penalty appeal is concerned, it is seen that the AO imposed penalty of Rs.14,85,260 on the additions made by him totalling to Rs.53 lakhs. The ld. CIT(A) sustained the penalty on the amount of quantum additions upheld by him, against which the assessee has come in appeal before the Tribunal.

10. Having heard the ld. DR and gone through the material on record, it is seen that the assessment order in this case was passed *ex-parte qua* the assessee. The position continued to remain the

same even during the penalty proceedings, which resulted into imposing penalty *ex parte*. The ld. CIT(A) however, reduced the penalty to the extent of additions deleted by him. While disposing of the quantum appeal, we have deleted the addition of Rs.2,25,000 sustained in the appeal on account of cash deposit in the bank account. In so far as the sustenance of addition by the ld. CIT(A) amounting to Rs.21,25,000 is concerned, we find that the assessee has not been provided an adequate opportunity of hearing to show cause as to why the penalty should not be imposed. A case was made out before the ld. CIT(A) that some dispute was going on between the assessee and his counsel representing the matter before the AO, as a result of which proper representation could not be made before the AO. Considering the entirety of the facts of the case, we are of the considered opinion that it would be in the fitness of things if the impugned order is set aside and the matter is restored to the AO. We order accordingly and direct him to provide an opportunity to the assessee for putting forth his point of view before imposing the penalty.

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

**Sunil Angre:**

12. The assessee in question is brother of Sudhir Angre, whose appeals have been disposed off hereinabove. Two additions of Rs.25 lakhs each were made by the AO in the hands of the assessee towards undisclosed income on purchase of property and short term capital gain. The ld. CIT(A) deleted the addition of Rs.25 lakhs in the hands of the assessee as well as his brother and sustained the addition to the extent of Rs.21,25,000 towards sale of property.

13. It is seen as also admitted by the ld. DR that the facts and circumstances of the addition are *mutatis mutandis* similar to those obtaining in the case of the assessee's brother, Sh. Sudhir Angre. While disposing of the said appeal, we have uphold the action of ld. CIT(A) in treating the amount of addition as 'Business income', being, profit from an adventure in the nature of trade. Same position is applied herein also. This ground is not allowed.

14. The second ground is against the confirmation of addition of Rs.46,02,400, being, unexplained cash deposits into the bank account. The AO noticed that various transactions of cash deposits totalling a sum of Rs.47,92,400 were made by the assessee in his bank account as tabulated in para 6 of the order. This assessee did not appear before the AO, as a result of which, the AO made

addition of equal sum on the ground that the source of cash deposits was not explained. It was argued before the Id. CIT(A) that the actual amount of cash deposits in bank was Rs.47,52,400 and not Rs.47,92,400, which contention got accepted by the Id. CIT(A). The assessee further submitted that he was engaged in works contract, agricultural operations and sale of snacks since last 20 years and cash was lying in his hands which was deposited in the bank account. The Id. CIT(A) partly accepted the contention of the assessee to the tune of Rs.1,50,000 and sustained the addition for the remaining amount of Rs.46,02,400, against which the assessee has come in appeal before the Tribunal.

15. Having heard the Id. DR and gone through the material on record, we find that the AO has picked up only cash deposits entries from the bank account. There is no reference to any withdrawals or re-deposits in the bank account. The assessee also contented before the Id. CIT(A) that he was into business for the last 20 years. No cognizance of that fact has been taken. In view of the fact, the addition was made one-sided only without considering the assessee's contention and further that the Id. CIT(A) accepted the genuineness at Rs.1.50 lakhs without any elaboration, we are of the considered opinion that it would be in fitness of things if the



impugned order on this score is set aside and the matter is restored to the file of the AO. We order accordingly and direct the AO to decide the issue afresh as per law after affording reasonable opportunity of hearing to the assessee to explain the source of deposits into the bank account and also consider the withdrawals made from the bank account, if any.

16. In the result, the appeal is partly allowed for statistical purposes.

17. The second appeal is against the imposition of penalty u/s 271(1)(c) amounting to Rs.29,34,692 *qua* the three additions made by the AO. The Id. CIT(A), however, restricted the penalty to the extent of the additions sustained by him.

18. Having regard to the facts of the case, we find that the assessment proceedings as well as penalty proceedings in this case also went *ex-parte* as the assessee could not participate in such proceedings because of some dispute going on with his counsel. Taking into consideration the facts and circumstances of the case, we are of the considered opinion that it would just and proper if the penalty order is set aside and the matter is restored to the file of the AO. We order accordingly and direct him to decide the penalty

afresh as per law after providing reasonable opportunity of hearing to the assessee.

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

Order pronounced in the Open Court on 10<sup>th</sup> January, 2022.

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 10<sup>th</sup> January, 2022  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Thane
4. The Pr.CIT-2, Thane
5. DR, ITAT, 'A' Bench, 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                                | 10-01-2022 | Sr.PS |
| 2.  | Draft placed before author                       | 10-01-2022 | 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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