

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1727/PUN/2015

निर्धारण वर्ष / Assessment Year : 2005-06

Arun Keshavrao Narwade (HUF), Plot No.12, Raj Nagar, Station Road, Aurangabad PAN : AAHHA8135K	Vs.	ITO, Ward-2(1), Aurangabad
(Appellant)		(Respondent)

Appellant by Shri M.K.Kulkarni &
Ms. J.R. Chandekar
Respondent by Shri S.P. Walimbe

Date of hearing 28-03-2022
Date of pronouncement 29-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(Appeals)-2, Aurangabad on 16-09-2015 in relation to the assessment year 2005-06.

2. This appeal is time barred by 31 days. The assessee has filed a condonation application with necessary affidavit giving the reasons for the delay. I am satisfied with the same. The delay is condoned and the appeal is admitted for disposal on merits.

3. The Id. AR did not press Ground no.2 challenging the initiation of re-assessment proceedings, which is hereby dismissed. Ground No.3 challenging the granting approval for re-assessment is connected with Ground No.2. The same is also consequently dismissed.

4. The assessee is aggrieved by certain aspects of the computation of capital gain made by the Assessing Officer (AO) as sustained in the first appeal.

5. Briefly stated, the facts of the case are that the AO received information that the assessee and five other persons jointly selling a plot of land on 30-06-2004 for a total consideration of Rs.2,34,53,460/- to M/s. Bhosale Builders & Developers Pvt. Ltd. The assessee's share in the aforesaid consideration was Rs.28,35,160/- This transaction was not disclosed in the return of income. Notice u/s.148 was issued, pursuant to which the assessee filed return declaring long term capital gain from the transfer of the above property to the tune of Rs.3,46,760/-. In such computation, the assessee claimed, *inter alia*, exemption u/s.54F of the Act amounting to Rs.16,03,920/-; deduction towards indexed cost of improvement; and amount spent on construction of wall compound at the time of sale. The AO rejected all such claims. The assessee made an additional claim before the AO towards payment of Rs.25.00 lakh to

other co-owners. The AO rejected that claim as well for the reasons given in the order and consequently computed long term capital gain by taking full value of consideration at Rs.28,59,402/-, being, the amount of stamp value u/s.50C in respect of the actual amount of consideration received by the assessee at Rs.28,35,160/- and thereafter, granted deduction towards indexed cost of acquisition at Rs.2,36,860/-. The ld. CIT(A) dismissed the appeal of the assessee. Aggrieved thereby, the assessee has come up in appeal before the Tribunal challenging the non- granting of exemption u/s.54F and not granting deduction of Rs.25.00 lakh which was paid by the assessee to other co-owners.

6. I have heard both the sides and gone through the relevant material on record. The first issue taken up by the assessee is about non-granting of deduction of Rs.25.00 lakh which the assessee claimed to have paid to other co-owners in connection with the property transferred. The facts apropos this issue are that the assessee sold plot of land along with other five co-owners having total area of 24 Acres 4 Gunthas. The six co-owners, in total, are as under :

1. Mr. Arun Keshavrao Narwade, Raj Nagar, Station Road, Aurangabad.
2. Mr. Mohd. Khan Raje Khan Pathan, Chikalhana, Aurangabad.

3. Mr. Nasib Khan Raje Khan Pathan, Chikalhana, Aurangabad.
 4. Mr. Amarsingh G. Hazari, Nawabpura, Aurangabad.
 5. Mr. Haji Atikullab Baig Fasiullah Baig, Murginala, Aurangabad.
 6. Mr. Vilas Keshavrao Autade, Harsul, Aurangabad.
7. During the course of the proceedings before the authorities below, the assessee claimed that he paid a sum of Rs.25.00 lakh as compensation to certain other co-owners on behalf of M/s. Bhosale Builders & Developers Pvt. Ltd., the purchaser, for the reason of delay in the transaction and increase in the value of land. The said compensation was claimed to have been paid by account payee cheques and in pursuance of the Compromise deed before the Civil Court and the Hon'ble Bombay High Court, Aurangabad Bench. The assessee stated that he along with Sh. Vilas Keshavrao Autade, another co-owner transferring the property to M/s Bhosale Builders, paid a total sum of Rs.50.00 lakh (the assessee's one half share at Rs.25.00 lakh) to the remaining four co-owners given at Sl.Nos. 2 to 5 above. The ld. CIT(A), on perusal of the Compromise deed, recorded that the payment was made in respect of Gut No. 222/13 as against the property having Gut Nos. 222/1 to 222/6 actually transferred by the assessee to M/s Bhosale Builders resulting in the receipt of consideration of Rs.28.35 lakh by the assessee. Since the full value of

consideration, subject matter of the capital gain under consideration, did not have any relation with Gut No.222/13 in respect of which the assessee along with Sh. Vilas Keshavrao Autade paid a total sum of Rs.50.00 lakh to the other four co-owners, this transaction of payment in my opinion has rightly been disassociated from the computation of capital gain from transfer to Gut Nos. 222/1 to 222/6. The compromise deed dated 19-11-2011 also mentions in para 4(a) that the aforesaid amount of Rs.50.00 lakh was given to Plaintiff Nos. 2, 3, 4 and 5 towards their ownership, possession and right in the land at Gut No.222/13. Thus, it becomes evident that a sum of Rs.25.00 lakh paid by the assessee had no connection with the land transferred to M/s. Bhosale Builders & Developers Pvt. Ltd. with Gut Nos.222/1 to 222/6. It can be gathered from the impugned order *qua* the Gut No.222/13 that Sh. Vilas Keshavrao Autade entered into agreement for jointly developing and selling the land which covered Gut No.222/13. Other four co-owners had some right and interest in the said land at Gut No.222/13. To purchase their right, a total sum of Rs.50.00 lakh was paid by the assessee and Sh. Vilas Keshavrao Autade. On 17-08-2013, Sh. Vilas Keshavrao Autade entered into sale deed for transfer of his land admeasuring 80R out of Gut No.222/13 in favour of two sons of the assessee and no payment was

made by the assessee or his sons towards acquiring the share in Gut No.222/13 along with Vilas Keshavrao Autade. This shows that sum of Rs.25.00 lakh paid by the assessee along with Sh. Vilas Keshavrao Autade to the other co-owners was a consideration for transfer of Gut No. 222/13, *inter alia*, in the name of two sons of the assessee. Notwithstanding this factual aspect, since the payment of Rs.25.00 lakh made by the assessee to other co-owners has no relation whatsoever with the property transferred that became subject matter of computation of long term capital gain under consideration, there can be no question of allowing any deduction in respect of this sum. The impugned order is countenanced on this score.

8. The other contention raised by the assessee is about non-granting of exemption u/s.54F of the Act. The assessee claimed that he purchased a residential house on 04-10-2004 for a sum of Rs.16,03,820/- and thus claimed exemption in the computation of income filed by him in response to notice u/s.148. This claim was jettisoned by the AO on the ground that the assessee did not purchase a new residential flat but only an “office premises” and hence, section 54F could not apply. It is apparent from bare reading of section 54F that the exemption becomes available towards capital gain arising from the transfer of any long term capital asset on purchasing or

constructing one residential house in India. Thus, it is patent that in order to qualify for exemption u/s.54F, it is necessary that the new asset must be a 'residential house'. Turning to the facts of the instant case, it is seen that the new asset purchased by the assessee is an 'office premises' and not a 'residential premises'. In that view of the matter, the inescapable conclusion is that the authorities below were justified in repelling the assessee's contention on this issue.

9. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 29th March, 2022.

Sd/-

(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th March, 2022

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Aurangabad
4. The Pr.CIT-2, Aurangabad
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
5. / 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	28-03-2022	Sr.PS
2.	Draft placed before author	29-03-2022	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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