



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥



**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE
BEFORE HON’BLE SHRI S. S. GODARA, JUDICIAL MEMBER**

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 838/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-2013

Dilip Bhattu Karanjule

482/B, Audumber, Suraj Nagar,

Shirur (Ghodnadi), Pune - 412210

PAN:ACDPK5361M

..... अपीलार्थी / **Appellant**

बनाम / V/s

Income Tax Officer,

Ward 11(1), Pune

..... प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : Shri Deepak Sasar

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 27/09/2022

घोषणा की तारीख / Date of Pronouncement : 28/11/2022

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal challenges the order of Commissioner of Income Tax (Appeals), Pune-1 [for short “**CIT(A)**”] dt. 24/10/2016 passed u/s 250 of the Income-tax Act, 1961 [for short “**the Act**”], which arose out of assessment order dt. 23/03/2015 passed u/s 143(3) by the Income Tax Officer, Ward 11(1), Pune [for short “**AO**”] for assessment year [for short “**AY**”] 2012-13.

2. The present litigation hinges around determination as to what constitutes 'adventure in the nature of trade' and its taxability.

3. The grounds raised for adjudication are;

1. The Ld. CIT-Appeal has erred in confirming the assessing officer's decision that the profit arose on sale of rural agricultural land not falling within the definition of capital asset u/s 2(14), should not have been assessed to tax as the income is exempt from income tax.

2. The Ld. CIT-Appeal has erred in confirming the assessing officer's decision that the profit arose on sale of rural agricultural land erroneously declared by the appellant as short term and long term capital gain as business income overlooking the fact that the dominant intention was all along to acquire this land for agricultural purpose. The CIT-A overlooked the fact that the appellant by profession is an advocate and barred from doing any business and in any case, appellant has not done this activity of purchasing and selling of agricultural land as business activity nor it falls in the description of adventure in the nature of trade.

3. The appellant craves leave to add, amend, alter or delete any or all above grounds of appeal.

4. Briefly narrated the related facts of the case are;

4.1 The appellant assessee is an individual engaged in the legal profession as a Lawyer and the



partner of M/s Sri Kubera Associates which is engaged in the business of construction, has for the AY 2012-13 filed his return of income [for short **"ITR"**] on 30/11/2013 declaring total income of ₹31,27,474/- pre-dominantly comprising of capital gains, income from legal profession and other sources. The ITR of the appellant was initially processed summarily and then subjected to scrutiny under CASS u/s 143(3) of the Act, wherein the Ld. AO disapproving the claim of alleged exempt income and alleged capital gains completed the assessment at ₹94,07,120/- by bringing to tax the a surplus of ₹89,51,715/- arose from trading in lands u/s 28 of the Act, finding that, parcels of lands acquired by the assessee were not with any intention to hold it for capital accretion, enjoyment or for cultivation, but with a sole motive of trading therein and earning profits therefrom.

4.2 Aggrieved by the aforesaid addition, the assessee carried the matter before the first appellate authority [for short **"FAA"**], who revisited



the entire issue and declined to interfere with the order of Ld. AO elaborating that, the intention of the assessee was never to purchase the aforesaid lands with a view to cultivate them but activities of purchase and sale of land(s) was **'adventure in nature of trade'** and thus income therefrom exigible to tax u/s 28 of the Act.

4.3 On a failure to prove the case before both the tax authorities below [for short **"TAB"**], the appellant assailed the orders thereof by the present appeal on the grounds set in para 2 hereinbefore.

5. During the course of physical hearing, the learned representative of the assessee [for short **"AR"**] at the outset referring to affidavit and application filed for condonation of delay in instituting the appeal, reiterated its contents and prayed for condonation. Before racing over the merits of the case, it was also brought to our notice that, an application for admission of additional evidences is filed u/r 29 of the



Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT Rules"**] and prayed accordingly. On the count of merits, the Ld. AR recapping all the propositions laid before Ld. **TAB** vociferously summed up the argument orbiting around the ground that, the assessee by raising loans had purchased the impugned agricultural lands in question primarily for the purposes of cultivation, however finding it difficult to repay the existing loan had to dispose-off the said holding and there was no intention of selling it immediately for profits although the circumstances led to such eventuality. The Ld. AR also emphasized that, in changed circumstances the transaction of sales were triggered and there was no pre-intention to earn profits by its sale and therefore transactions cannot be treated as an 'adventure in the nature of trade' as incorrectly held by the Ld. **TAB**. On the other hand learned departmental representative [for short **"DR"**] objecting the admission of additional evidences for unconvincing reasons, placed strong reliance on the orders of **TAB** insofar as the merits is concerned.



6. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of **ITAT Rules**, perused the material placed on record, case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to parties present.

7. **First thing first**, in so far as delay of 240 days in instituting present appeal is concerned, having regards to facts & circumstance, we find merits in the submission of the appellant in establishing sufficiency of reason in delayed filing, consequently in the light of decision of Hon'ble Apex Court in "**Collector Land Acquisition Vs MST Katiji and Others**" reported at 167 ITR 5 (SC) & Hon'ble Bombay High Court in "**CIT Vs Velingkar Brothers**" reported at 289 ITR 382 (Bom), we condone the delay in the larger interest of justice.

8. Inasmuch as the admission of additional evidence is concerned, it shall suffice to state that, rule 29 of



ITAT Rules is embedded negatively by restricting rights of either party to produce additional oral or documentary evidence without the reasoned warrant from the Tribunal, consequently the question of the appellant claiming a right to adduce additional evidence finds no merit. ***Per contra***, in the present case without the direction and leave from the Tribunal, the appellant adduced the additional evidences which ***de-facto*** are inconsonance with rule 18(3) and rule 29 of ITAT Rules, for that count alone it deserves refutation, however in the event of failure of the part of appellant to establish with the evidential documents as to what precluded him to adduce such additional evidences before the TAB, we find no support to entertain the same in the light of decision rendered by Hon'ble Bombay High Court in "**CIT Vs Kamal C Mehboobani**" reported at 214 ITR 15.

9. Now coming to merits of the case, the appellant carried the surplus or income of ₹36,14,129/- to capital account claiming as exempt from tax on the pretext that, alleged lands situated beyond 8 kilo-



meters of the municipal limits, being rural agricultural in character falls out of the ambit of section 2(14) hence inexigible to tax and whereas the surplus of ₹62,79,469/- is offered to tax u/s 45 of the Act contenting that, the dominant nature of purchase and sale of alleged lands were to carry out agricultural operation, hence for circumstantial eventualities same should not coloured into '**adventure in the nature of trade**'. Per contra, the Ld. TAB in the light of frequency and intention of the appellant in undertaking the transactions, brought to tax both the aforestated surplus u/s 28 after allowing the deduction toward interest on loan availed in connection with the transactions of land undertaken by the appellant.

10. **Evidently**, perusal of case records showcased that, from past many years, the appellant has been actively engaged in similar transactions of purchase and sale of agricultural lands beside being partner in construction firm and engaging himself in the profession of law. On a specific query from the bench,

the Ld. AR candidly solidified that, the similar contentions of the appellant were rejected in an appeal by the co-ordinate bench for the AY 2009-10 in ITA No. 1960/PUN/2014 whereby it has confirmed the findings of the Ld. TAB in bringing the surplus or income from the said transactions u/s 28 holding the activities as **'adventure in the nature of trade.'**

11. The facts and circumstance of the impugned year are also identical to AY 2011-12 wherein the Revenue taking similar view has taxed the surplus arisen on trading in lands u/s 28 of the Act and same remained undisputed by the appellant. All the more the Ld. AR put forward no reasons via-a-vis support to divert from the view of the co-ordinate bench in appellant own case (supra) vis-à-vis department's stand for the immediate preceding assessment year.

12. **Undisputedly** in the year under consideration, the appellant generated surplus of ₹36,14,129/- from the transaction of four lands tabulated (Table 1) at Page 4 vide para 5 of the assessment order which is claimed



as exempt by the appellant and whereas surplus of ₹62,79,469/- arisen from the transaction of four lands tabulated (Table 2) on Page 5 vide para 5 of the assessment order is offered to tax u/s 45 of the Act. These all transaction of sale and purchases where found undertaken within a period ranging from 8 days to 8 month and the entire gamut of undisputed action of the appellant in engaging himself in such sizable tickets of land purchases for almost immediate re-sale thereof clearly demonstrates the implicit intention that, the transactions entered were nothing but **'adventure in the nature of trade'** i.e. a business transactions under extended definition of section 2(13) of the Act, consequently, profits arising therefrom partakes the character of 'business income' exigible to tax u/s 28 of the Act. When the cumulative facts and circumstances seen holistically and read in conjunction with the tests and judicial precedents laid by the Hon'ble Apex Court in **"G. Venkatswami Naidu Vs CIT"** reported in 35 ITR 594 gives a sound basis to infer the intention of commercial gain in the

impugned trading transactions, and in holding so it is apt to reproduce the text therefrom as;

“where purchase has been made solely and exclusively with intention to resell at a profit and the purchaser has no intention of holding property for himself or otherwise enjoying or using it, presence of such an intention is a relevant factor and unless it is offset by presence of other factors, it would raise a strong presumption that transaction is in the nature of trade”,

13. In light of aforesaid discussion, we have no hesitation to vouch that, the impugned lands were purchased with an intention to sell to identified buyers to en-cash outright commercial objectives in terms of section 2(13) of the Act which seek to explain the term of 'business' by way of inclusive definition by the expression '**business**' include not only trade or commerce, etc. but encompassing 'adventure in the nature of trade' within its ambit, for the reason we find no infirmity in the action of Ld. TAB in bringing to



tax the income or surplus arising on sale of lands under the head 'business income' u/s 28 of the Act, ergo both the grounds raised by the appellant stands adjudicated against.

14. Resultantly, the appeal of the appellant assessee is DISMISSED in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this MONDAY, 28th day of November, 2022.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 28th day of November, 2022.

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

- | | |
|-----------------------------------|----------------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. |
| 3. The Pr. CIT-1, Pune (MH-India) | 4. The CIT(A)-1, Pune (MH-India) |
| 5. DR, ITAT, Pune Bench 'B', Pune | 6. गार्डफ़ाइल / Guard File. |

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.