

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

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

आयकर अपील सं. / ITA No.275/PUN/2021

निर्धारण वर्ष / Assessment Year : 2012-13

Anandrao Sheshrao Bharose, Rani Laxmibai Road, Parbhani – 431 401 Maharashtra PAN : AHQPB3651B	Vs.	Pr.CIT-1, Nashik
Appellant		Respondent

Assessee by Shri Bhuvanesh Kankani  
Revenue by Shri Kalika Singh

Date of hearing 05-07-2022  
Date of pronouncement 05-07-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 09-03-2021 passed by the CIT(A)-1, Nashik u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the Assessment year 2012-13.

2. There is a delay of 45 days in filing the appeal before the Tribunal. The ld. AR submitted that the delay pertains to Covid-19 pandemic period. Ergo, the delay is condoned by virtue of

judgment of the Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314* and the instant appeal is admitted for disposal on merits.

3. Briefly stated, the facts of the case are that the assessee filed his original return declaring total income of Rs.3,21,640/-, which was processed u/s 143(1) of the Act. Information was received by the AO leading him to believe that certain income escaped assessment. Notice u/s 148 was issued, pursuant to which the assessee requested that the return originally filed may be taken as the return in response to notice. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had, *inter alia*, not disclosed the long term capital gain. In the assessment made u/s.143(3) r.w.s.147, the AO, amongst others, added a sum of Rs.32,59,900/- as long term capital gain (net of exemption u/s.54B of the Act amounting to Rs.20,09,600/- towards the value of new agricultural land purchased). The Id. Pr. CIT observed that the assessee was not entitled to exemption u/s.54B of the Act since such a claim was not made in the return

of income but only during the course of assessment proceedings. For this proposition, he relied on the judgment of Hon'ble Supreme Court in the case of *Goetz India Ltd. Vs. CIT (2006) 284 ITR 232 (SC)*. This, in his opinion, rendered the assessment order erroneous and prejudicial to the interest of revenue. He, therefore, set-aside the assessment order and directed the AO to frame the assessment afresh accordingly. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Having heard the rival submissions and gone through the relevant material on record, it is seen as an admitted position that the assessee, in response to notice u/s.147, did not disclose any long term capital gain on account of this transaction. It was only during the course of re-assessment proceedings that the AO detected non-declaration of long term capital gain at the net level of Rs.32,59,900/-, after allowing exemption u/s.54B of the Act. The Id. Pr.CIT has not disputed the otherwise admissibility of exemption u/s.54B of the Act. His opinion was that such a claim could not have been made before the AO for the first time during the course of re-assessment proceedings otherwise than through filing a revised return. This, in his opinion, ran contrary to the

judgment of the Hon'ble Supreme Court in the case of *Goetz India Ltd. (supra)*. Clearly, the *ratio* of this decision is that the AO has no power to entertain a claim made otherwise than by way of revised return. However, it is worth mentioning that in this judgment itself, the Hon'ble Supreme Court has held that the power of the appellate authorities will not be affected by non-making of a claim in the return and the Tribunal has power to allow relief on a point for which no deduction was made in the return of income. In that view of the matter, it gets graphically clear that even though the AO is not empowered to allow exemption/deduction under the relevant provision unless a specific claim is made in the return of income, but such a claim can be entertained at the appellate stage, if it is really sustainable. Thus, the embargo is only on the AO and not on other higher authorities.

5. Adverting to the facts of the instant case, it is found that the ld. Pr.CIT has nowhere disputed the otherwise eligibility of the assessee to claim exemption u/s.54B of the Act. His only objection has been that the AO could not have allowed this claim during the course of assessment proceedings without filing of a

revised return. Albeit, technically the AO was not competent to entertain such a claim, but legally the Id. Pr. CIT was duty-bound to accept it, when he was satisfied with its otherwise eligibility. Since the Id. Pr. CIT has not disputed the eligibility of the claim in law, we hold that the assessment order, seen in totality, cannot be declared as erroneous and prejudicial to the interest of the Revenue. The impugned order is set-aside.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 05<sup>th</sup> July, 2022.

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

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

पुणे Pune; दिनांक Dated : 05<sup>th</sup> July, 2022  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-1, Nashik
4. The Pr.CIT-1, Nashik
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	05-07-2022	Sr.PS
2.	Draft placed before author	05-07-2022	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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