

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2317/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Baban Genuji Kumbharkar,
Rukmini Niwas, Sinhagad Road,
Vadgaon Kurd, Pune - 411041

PAN : AULPK3261G

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Central Circle-2(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ajay Singh and
Shri Deepak S. Sasar
Revenue by : Shri Shivraj B. Morey

सुनवाई की तारीख / Date of Hearing : 02-06-2022
घोषणा की तारीख / Date of Pronouncement : 01-08-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 28-07-2016 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)'] for assessment year 2010-11.

2. The ld. AR drew our attention to additional grounds and prayed to take up the said additional grounds. Upon hearing both the parties, we proceed to hear the additional grounds as preliminary issue.

3. The assessee raised additional ground Nos. 1 to 3 amongst which the only issue emanates for our consideration is as to whether the authorities justified in treating the receipt of advance as business income instead of capital gain as claimed by the assessee.

4. We note that the assessee and his family entered into a Joint Venture Agreement with M/s. Darode Jog & Associates for development of 5500 sq. mtrs. of land owned by the assessee. The said Joint Venture Agreement has been registered on 15-07-2008, from which the assessee is to get 40% of gross sales proceeds. In pursuance of such understanding the assessee received Rs.55,00,000/- during the year as advance. The AO held Rs.50,00,000/- as business income considering the cost of land as on 01-04-1981 for Rs.5,00,000/-. Having aggrieved by the order of AO, the assessee raised said issue before the CIT(A) but however the CIT(A) dismissed the said issue as not pressed vide Para No. 39 at Page No. 40 of the impugned order. The ld. AR submits that by inadvertent mistake the said ground stated to have been not pressed before the CIT(A) and the assessee intends to prosecute the said ground before this Tribunal. The ld. AR submits that the assessee held the said property as capital asset and for A.Y. 2007-08 the same was assessed as Long Term Capital Gain. He drew our attention to sub-section (2) of section 45 and argued that if investment is converted into stock-in-trade, gains on such investments is to be assessed u/s. 45(2) of the Act and referred to case laws compilation. The ld. AR submits that the AO has not appreciated the provisions of section 45(2) of the Act and wrongly charged as business income. He prayed to remand the issue to the file of AO with a direction to examine the issue with correct provisions of law u/s. 45(2) of the Act. The ld. DR vehemently opposed the same and argued that the assessee did not prosecute the said ground before the CIT(A) and intentionally withdrew the

same. He submits that there is no point in remanding the issue to the file of AO as the issue attained finality by withdrawal before the CIT(A). We find force in the arguments of ld. AR and we deem it proper to remand the issue to the file of AO for its fresh consideration in determining the capital gains u/s. 45(2) of the Act. The assessee is liberty to file evidence, if any, in support of its claim. Thus, the additional grounds raised by the assessee are allowed for statistical purpose.

5. In view of our decision in additional grounds of appeal, the main grounds raised by the assessee becomes academic, requiring no adjudication.

6. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 01st August, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune
4. The Pr. CIT-III, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune