

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.926/PUN/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Sudha Karbhari Nagre B/29, Deepashree, Sahar Road, Andheri East, Mumbai – 400057 PAN: AAJPN3762B	Vs.	ITO, Ward 2(5), Nashik
Appellant		Respondent

Assessee by Shri Sanket Joshi
Revenue by Shri Rajesh Gawali

Date of hearing 30-10-2023
Date of pronouncement 30-10-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 01.02.2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi in relation to assessment year 2011-12.

2. The appeal is time barred by 141 days. The assessee has filed an affidavit stating the reasons, which led to the late filing. I am satisfied with the reasons so stated. Therefore, the delay is condoned and the instant appeal is admitted for disposal on merits.

3. The only issue raised in this appeal is against the addition of Rs.3,78,420/- made by the Assessing Officer (AO) towards Long term capital gains on sale of residential house. The assessee has also challenged the initiation of re-assessment proceedings.

4. Briefly stated, the facts of the case are that the assessee did not file her return of income in relation to the assessment year under consideration. The AO got some information about the assessee having suppressed Long term capital gains on sale of property. Notice u/s 148 of the Income-tax Act, 1961 (hereinafter also called 'the Act') was issued. Again, the assessee did not disclose any Long term capital gain on the transfer of the property in the return filed in response to notice u/s 148. The assessee took a stand that the property was transferred by her husband and she had nothing to do with its ownership. During the course of assessment proceedings, the AO observed from the registered agreement for sale that the assessee was the absolute owner of 50% share. When confronted, the assessee agreed for the addition towards Long

term capital gains subject to the benefit of cost of indexation. That is how, the AO took one-half of the sale consideration treating the same as her share and after reducing the indexed cost of acquisition, worked out the Long term capital gain of Rs.3,78,420/-. The assessee remained unsuccessful before the ld. CIT(A) and has come up in appeal before the Tribunal.

5. I have heard both the sides and perused the record. It is seen as an admitted position that the registered agreement for sale provides for the assessee's 50% share in the property which was transferred. The assessee did not file original return. Thereafter, notice u/s 148 was issued. In response to the said notice, again the assessee did not include Long term capital gains from the transfer of her share in the return of income. The ld. AR contended that the property was transferred in the subsequent year when the husband offered full sale consideration in his hands. This position is not correct because the agreement for sale was registered on 07.02.2011. After the amendment to the Registration Act and the corresponding amendment to the Transfer of Property Act

in 2001, the date of registration is the date of transfer of property and not when the actual possession is handed over. Since the agreement for the sale was registered on 07.02.2011, which falls within the previous year relevant to the assessment year under consideration, taxability has to be examined in the year under consideration only. The contention of the Id. AR that the husband included the entire amount in his return of income again does not support the point of view. The return so claimed by the assessee's husband was actually filed on 12.12.2014, which is admittedly an invalid return. This invalid return has to be presumed as never filed. If this return is excluded, the fact remains that the assessee was one half owner of the property transferred; the transfer took place in the year under consideration; the assessee had not offered income from the transfer of such property either in the original return or in the return filed in response to notice u/s 148. This being a clear-cut case falling within the ambit of section 147, cannot be agitated by the assessee. The additional ground raised by the assessee challenging initiation of re-assessment

proceedings is thus of no consequence. Further, the assessee did not challenge the initiation of re-assessment proceedings before the AO at the stage of issuance of notice. Moreover, the assessee admitted before the AO for the inclusion of Long term capital gain in the total income, which fact was also not challenged in the first appeal. The cases relied upon by the Id. AR are distinguishable on facts. In view of the foregoing discussion, I am of the considered opinion that the addition has been rightly made and sustained.

6. In the result, appeal is dismissed.

Order pronounced in the Open Court on 30th October, 2023.

**Sd/-
(R.S.SYAL)**

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th October, 2023
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	30-10-2023	Sr.PS
2.	Draft placed before author	30-10-2023	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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