IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No. 2956/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Mrs. Mangala Dnyaneshwar Pathare,
Punya Tara Bungalow, Kharadi Gaon,
Chandan Nagar, Nagar Road,
Pune-411 014.
PAN : AYYPP2921R ....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 7(3), Pune ......प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 2957/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Mr. Dnyaneshwar Punaji Pathare,
Punya Tara Bungalow, Kharadi Gaon,
Chandan Nagar, Nagar Road,
Pune-411 014.
PAN : AATPP9111G ....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 7(3), Pune ......प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 14.08.2019
घोषणा की तारीख / Date of Pronouncement: 16.08.2019

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by different but related assessees arise out of the orders passed by the CIT(A), Pune-5, Pune on 30.08.2017 in relation to the assessment year 2011-12.

2. Since common issue is raised in both the appeals, I am, therefore, proceeding to dispose them off vide this consolidated order for the sake of convenience.

3. These appeals are time-barred by 3 days. The ld. AR stated reasons which led to the late filing of the appeals. I am satisfied with such reasons. The delay is accordingly condoned and the appeals are admitted for hearing on merits.

ITA No.2957/PUN/2017
A.Y. 2011-12

4. Succinctly, the facts of this case are that the assessee sold agricultural land at Survey No.69, Hissa No.4 at Kharadi, Pune on 27.10.2010 along with other co-owners, including the other assessee in this batch of appeals. The assessee declared net sale consideration at Rs.1,18,85,302/- plus cost of flat of Rs.13,38,033/- in the computation of long term capital gain. The AO observed on perusal of part III of

the Conveyance deed executed on 27.10.2010 that the assessee and family of Yashwant Punaji Pathare were entitled to two flats of 1600 sq. ft. The value of such flats in the conveyance deed was mutually agreed at Rs.2550/- per square feet. The AO adopted the same value of flat of 1600 sq.ft @ Rs.2550/- which worked out to Rs.40,80,000/-. Thereafter, he recomputed the amount of capital gain. The ld. CIT(A) upheld the action of the Assessing Officer in adopting the rate of Rs.2550/- per sq. ft, against which the assessee is in appeal before the Tribunal.

5. I have heard both the sides and gone through the relevant material available on record. The dispute in the appeal is only on the value of flat taken by the assessee at Rs.13,38,033/- in the computation of capital gain, which the authorities below took at Rs.40,80,000/-. The ld. AR contended that value of the flat was erroneously taken by the AO @ Rs.2550/- per sq. ft. and actual value of the flat was @ Rs.832/- per sq. ft. On being called upon to substantiate the basis for adopting value of flat @ Rs.832/- per sq. ft, the assessee submitted that it was on estimation basis. In my considered opinion, the contention raised on behalf of the assessee is bereft of merit.

6. It is seen that the assessee entered into Conveyance deed, whose copy has been placed in the paper book. The relevant clause of the Conveyance deed reads as under:

> "……it is agreed by and between the vendors and the Purchasers pertaining to allotment of the said two residential Flats to Nos. (I) and (III) of the Vendor each as follows :
>
> *(a) That the agreed price of the said Residential Flats between the Vendors and the Purchasers shall be @ of Rs.2550/- per sq. ft saleable area thereof.*
>
> (b) That in the event of the saleable area of any of the such Flats being found to be less than 1600 sq. ft, the Purchasers shall make payment to the vendors of an amount to be arrived at by multiplying such shortfall in the saleable area by Rs.2550/-.
>
> (c) That in the event the saleable area of any of the said flats being found to be more than 1600 sq. ft. then in such event the allottee Vendors of such flats shall make payment to the purchasers of an amount to be arrived @ by multiplying such incremental area by Rs.2550/-."

7. It is obvious from the Conveyance deed that price of the said residential flats was agreed between the Vendors and the Purchasers (including the assessee) at Rs.2550/- per sq.ft. In other words, the assessee received sale consideration in two parts viz. Rs.1,18,85,302/- in cash and the remaining part in the shape of flat whose value was mutually agreed @ Rs.2550/- per sq. ft. Once the value of the flat has been

agreed at the rate of Rs.2550 per square feet, there can be no question of resiling from the same for the purposes of income tax assessment. It is obvious that there can't be two values of the same flat at the same time, viz., one for actual transaction and another for the purpose of showing capital gain. The reliance of the ld. AR on certain decisions is misplaced inasmuch as instantly, there is no dispute on any other aspect of the computation of capital gain except the value of flats. The assessee offered and the Revenue accepted that the value of flat was to be considered for the purposes of inclusion in the full value of consideration. The dispute is only on the value of the flats to be adopted. As admittedly the value of flat was agreed between the assessee and vendor at Rs.2550 per square feet, I uphold the action of the authorities below on this count. The impugned order is therefore, upheld.

ITA No.2956/PUN/2017
A.Y.2011-12

8. The facts and circumstances of this appeal are admittedly similar to those in ITA No.2957/PUN/2017. The instant assessee is one of the co-owners of the same property transferred as the first assessee in this batch of appeals. Since the dispute is confined to the determination of the value of the same flat to be taken for the purposes of

computation of capital gains, following the above view taken in the above case of Sh. Dnyaneshwar Punaji Pathare, I uphold the impugned order.

9. In the result, both the appeals are dismissed.

Order pronounced on 16th day of August, 2019.

Sd/-
R.S. SYAL
उपाध्यक्ष /VICE-PRESIDENT

पुणे / Pune; दिनांक / Dated : 16th August, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-5, Pune.
4. The Pr. CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “**एक-सदस्य**” बेंच, पुणे / DR, ITAT, “**SMC**” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	14.08.2019	Sr. PS/PS
2	Draft placed before author	16.08.2019	Sr. PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr. PS/PS
6	Kept for pronouncement on		Sr. PS/PS
7	Date of uploading of order		Sr. PS/PS
8	File sent to Bench Clerk		Sr. PS/PS
9	Date on which the 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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