

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1516/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Hariom Associates, Shop No.3, Shrinarpure Appartment, Shivaji Road Line, Panvel, Dist. Raigad-410 206 PAN : AAGFH4993R	<b>Vs.</b>	ITO, Ward-2, Panvel
(Appellant)		(Respondent)

Appellant by Shri Hari Krishan  
Respondent by Shri M.G. Jasnani

Date of hearing 14-03-2022  
Date of pronouncement 15-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Thane on 31-05-2016 in relation to the assessment year 2009-10. It is a recalled matter inasmuch as the earlier *ex parte* order passed on 26.02.2018 was subsequently recalled on 26.04.2021.

2. The first ground about the confirmation of addition of Rs.5.00 lakhs was not pressed by the Id. AR. The same is, therefore, dismissed as 'not pressed'.

3. The only other ground which survives in this appeal is against treating the long term capital gain at Rs.4,13,324/- returned

by the assessee, as 'Business income' amounting to Rs. 22,81,610/-. Briefly stated, the facts of the case are that the assessee, a partnership firm, came into existence for undertaking construction and development work. A piece of land was purchased on 07-07-2005 for Rs.19,53,390/-. Development expenses of Rs.2.00 lakh were incurred on the said land. The assessee, on transfer of this land in the year under consideration, offered long term capital gain thereon. The AO held that the land was purchased for the purpose of carrying on business and not as an investment. He, therefore, computed business income of Rs.12,81,610/- as against the long term capital gain shown by the assessee at Rs.4,13,324/-. The Id. CIT(A) confirmed the order of the AO. Aggrieved thereby, the assessee has approached the Tribunal.

4. I have heard both the sides and gone through the relevant material on record. It is seen that the assessee purchased the land in the financial year ending 31-03-2006. Development expenses amounting to Rs.2.00 lakh were also incurred in that year. Before the close of the year ending on 31.3.2006, the assessee came to know about a litigation going-on on this plot. Development cost of Rs.2.00 lakh incurred from August, 2005 to October, 2005, was

before the assessee coming to know of the litigation on the plot. The assessee did not undertake any business activity. Before close of the very first year itself, the assessee declared the cost of purchase of land and development expenses as 'Investment' under the head 'Fixed Assets' in its balance sheet. The position continued to remain the same in its balance sheets on 31-03-2007, 31-03-2008, during which the assessee continued to declare such Plot as 'Investment'. In the year under consideration, the assessee could manage to sell the property by involving the other party to the litigation on the same property, namely, Maruti Builders and Developers, signing as a 'Consenting Party'. Thus it is clear that the assessee continued to treat such land as Investment *ab initio*, by showing it under the head 'Fixed assets' in its balance sheets from year to year and not as 'Stock in trade', which position has not been disputed by the AO in any of the earlier years. In the given peculiar facts and circumstances of the case, I am of the considered opinion that the land purchased by the assessee in the year 2005 has rightly been treated as Capital asset by the assessee, income from whose transfer is liable to be taken under the head 'Capital Gains' and not as Business Income. I, therefore, overturn the

impugned order and restore the assessee's point of view on this issue.

5. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 15<sup>th</sup> March, 2022.

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

पुणे Pune; दिनांक Dated : 15<sup>th</sup> March, 2022  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Thane
4. The Pr.CIT-2, Thane  
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
5. / DR 'SMC', ITAT, 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	14-03-2022	Sr.PS
2.	Draft placed before author	15-03-2022	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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