

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.993/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Vinny Sawhney,
Prop: T.N. Marketing,
3B, D Block, Venus Colony,
Alwarpet, Chennai - 600 018.

v. The Income Tax Officer,
Business Ward XV(3) /
Non-Corporate Ward 3(5),
Chennai - 600 034.

PAN : AAAPV 4423 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. Guru Bashyam, JCIT

सुनवाई की तारीख/Date of Hearing : 19.01.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 4, Chennai, dated 27.02.2015 and pertains to assessment year 2010-11.

2. Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that the only issue arises for consideration is with regard

to computation of capital gain. The assessee claims the profit on sale of the land at Plot 33, VGP Golden Beach Layout, Part 2, Injambakkam, Chennai, as long term capital gain. However, the Assessing Officer treated the same as short term capital gain. It is also to be considered whether the assessee is eligible for indexation of cost or not. According to the Ld. counsel, the land in question was shown as stock-in-trade in the balance sheet. Subsequently, the land in question was converted into investment / capital asset. Thereafter the property was sold. The assessee computing the period of holding from the initial date of acquisition, returned the income on sale of the land as long term capital gain. However, the Assessing Officer has taken the date of conversion of the land as capital asset for the purpose of treating the same as short term capital gain. Consequently, he rejected the indexation of the cost. According to the Ld. counsel, a land cannot be acquired firstly as stock-in-trade and secondly as capital asset. According to the Ld. counsel, a property can be acquired only once irrespective of the character at the point of acquisition. Placing reliance on the decision of the Pune Bench of this Tribunal in Kalyani Exports & Investment (P.) Ltd. v. DCIT (2001) 78 ITD 95 (TM), the Ld.counsel submitted that whether the property in question becomes capital

asset by the act of the assessee or amendment to the law is irrelevant. According to the Ld. counsel, there can be one date of acquisition. This decision of the Pune Bench of this Tribunal was followed by this Bench of the Tribunal in ACIT v. Integrated Enterprises Ltd. in I.T.A. Nos.1837 & 1841/Mds/2011 dated 09.12.2015. Therefore, according to the Ld. counsel, the original date of acquisition of the property has to be taken into consideration once the profit on sale of the land is treated as long term capital gain. Accordingly, the assessee is eligible for deduction under Section 54F of the Income-tax Act, 1961 (in short 'the Act').

3. On the contrary, Shri Guru Bashyam, the Ld. Departmental Representative, submitted that the assessee acquired the plot at VGP Golden Beach, Chennai, as stock-in-trade. Subsequently, the same was converted into capital asset. The Assessing Officer found that the property was sold for total consideration of ₹1,07,50,000/-. Accordingly, by adopting the market value of the land at ₹1,84,20,000/-, the Assessing Officer computed the capital gain at ₹1,42,94,840/-. The Ld. D.R. further submitted that the Assessing Officer treated the capital gain as short term capital gain by taking the holding of the land from the date of conversion into

capital asset. According to the Ld. D.R., for the purpose of computation, the period of holding, the date on which the asset became capital asset in the hands of the assessee, has to be considered and not the date of original acquisition. According to the Ld. D.R., irrespective of the original acquisition of the property, the property was converted into capital asset during the year 2009 and the property was actually sold on 21.01.2010. Therefore, the asset has to be treated as short term asset. Hence, the Assessing Officer has rightly classified the profit on sale of the land as short term capital gain. Accordingly, he rejected the claim of the assessee for deduction under Section 54F of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. "short-term capital asset" is defined in Section 2(42A) of the Act as follows:-

"short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer."

The assessee acquired the land at VGP Golden Beach Layout on 20.12.2006 for a total consideration of ₹41,25,160/-. Initially the property was sold as stock-in-trade and the same was subsequently converted into capital asset during the year 2009. The assessee

sold the property on 21.01.2010 and claimed the profit on sale of the land as long term capital gain by taking the acquisition of the land as on 20.12.2006. The question arises for consideration is whether the profit on sale of land has to be assessed as long term capital gain or short term capital gain? If the date of acquisition of the property is taken as 20.12.2006, then the profit has to be treated as long term capital gain. If the date of acquisition of the property is taken as 01.04.2009, the date on which the land was converted into capital asset, then it has to be treated as short term capital gain.

4. We have carefully gone through the decision of Pune Bench of this Tribunal in Kalyani Exports (supra). The Pune Bench, by majority opinion, found that irrespective of the character of the asset at the point of acquisition, be the “capital asset” within the meaning of 2(14) of the Act or not, the cost of acquisition of the asset has to be treated on the date on which the property was actually acquired. The Tribunal has also found that the asset cannot be acquired first as non-capital asset at one point of time and again as capital asset at different point of time. The Tribunal further observed that there can be only one acquisition of asset, i.e. when the assessee

acquired it for the first time irrespective of the character at that point of time. In fact, the Tribunal has observed as follows:-

"19. On a careful consideration of the issue, my answer to the first question is in the affirmative. The matter appears to me to be concluded by the judgment of the Hon'ble Bombay High Court in Keshavji Karsondas'; case (supra). It was held therein that an asset cannot be acquired first as a non-capital asset at one point of time and again as a capital asset at a different point of time. There can be only one acquisition of an asset and that when the assessee acquires it for the first time, irrespective of its character at that point of time. It was therefore, held that what is relevant for the purpose of capital gains is the cost of acquisition and not the date at which the asset became a capital asset. The decision of the Gujarat High Court in Ranchhodbhai Bhajibhai Patel';s case (supra) was followed by the Bombay High Court. In the decision of the Gujarat High Court, it was held that the only condition to be satisfied for attracting section 45 is that the property transferred must be a capital asset at the date of transfer and it is not necessary that it should also have been a capital asset at the date of acquisition. The Bombay High Court also held that the words "the capital asset" in section 48(ii) are identificatory and demonstrative of the asset, intended only to refer to the property that is the subject of capital gains levy and not indicative of the character of the property at the time of acquisition. It was clearly held that there cannot be two dates of acquisition of the same asset one as non-capital asset and again as capital asset. The earlier judgments of the Supreme Court in Bai Shirinbai K. Kooka';s case (supra) and Miss. Dhun Dadabhoy Kapadia';s case (supra) were noticed by the Bombay High Court and held to be of no relevance to the question. Towards the end of the judgment, the Bombay High Court observed that a similar view has also been taken by the High Courts of Madras, Karnataka, Kerala and Punjab & Haryana.

20. In my view, the matter having been concluded by the judgment of the Hon'ble Bombay High Court, which is the

jurisdictional High Court, the contention of the assessee that the shares having been purchased in 1977 March, it must be allowed the option of the substituting the fair market value as on 1-4-1981, must be upheld. I am unable to appreciate the distinction sought to be made by the Id. Sr. DR on the ground that the decision cannot be applied to a case where the asset has become a capital asset by the act of assessee (say, by conversion, as in the present case) and it must be confined to a case where the asset has become a capital asset by legislative intervention. The true ratio of the decision is that there is only one point of acquisition of an asset and the cost on that date has to be reckoned, irrespective of the character of the asset at that point of time, be it capital asset within the meaning of section 2(14) or not. If that is the true ratio and I firmly believe it is then the question whether it became a capital asset by the act of the assessee or by an amendment to the law is, in my humble opinion, irrelevant."

5. In view of the above, the first date of acquisition, i.e. 20.12.2006, has to be treated as date of acquisition of capital asset. The actual date of sale of the property is 21.01.2010, which is beyond 36 months from the date of original acquisition. Hence, the asset has to be treated as long term capital asset. Therefore, the profit on sale of such land has to be treated as long term capital gain. Hence the assessee is eligible for deduction under Section 54F of the Act subject to the compliance with the conditions prescribed in Section 54F of the Act. In view of the above, we are unable to uphold the order of the lower authority. Therefore, the orders of the lower authorities are set aside. The Assessing Officer is directed to treat the profit on sale of the land as long term capital

gain and examine whether the assessee has complied with the conditions prescribed in Section 54F of the Act. If the assessee has complied with the conditions prescribed in Section 54F of the Act, then the assessee is eligible for deduction under Section 54F of the Act.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on 19th February, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai
4. आयकर आयुक्त/CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.