

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.-6593/Del/2017  
(Assessment Year: 2014-15)**

Sunil Kumar Suman Ganga Valley Hospital, Opp. Desh Rakshak Aushdhalaya, Kankhal Road, Kankhal, Haridwar, Uttarakhand. <b>PAN No. AGPPS3086D</b>	vs	ITO, Ward 1(3)(3), Haridwar.
<b>Assessee by</b>	<b>Sh. Gautam Jain, Adv.</b>	
<b>Revenue by</b>	<b>Sh. K. Tewari, Sr. DR</b>	

<b>Date of Hearing</b>	<b>12.07.2018</b>
<b>Date of Pronouncement</b>	<b>12.07.2018</b>

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Challenging the order dated 19.09.2017 in appeal no. 10509/CIT(A)/DDN/2016-17 passed by the Commissioner of Income Tax (Appeals)-Dehradun ("Ld. CIT(A)") for A.Y. 2014-15.

2. Entire dispute in this matter revolves around the question as to whether unpaid sale consideration could be brought to tax in the hands of the assessee. Brief facts of the case are that the assessee is an individual and deriving income from medical profession. He filed his return of income on 27.11.2014 declaring a total income of Rs. 10,17,000/-. During the scrutiny proceedings, the Assessing Officer ("the AO") observed that the assessee sold a landed property for a sum of Rs. 48 lakhs on

14.06.2013 through a sale deed, whereas its circle rate as on the date was Rs. 94,28,000/-. Assessee admitted the transaction, but pleaded that the sale consideration was not received in total. Ld. AO, however, took the sale consideration u/s 50C of the Income Tax Act, 1961 ("the Act") at Rs. 94,28,000/- and after reducing the sale same by the indexed cost of the acquisition i.e. Rs. 3,38,464/-, determined the long term capital gain at Rs. 90,89,536/- and added it back to the income of the assessee.

3. In appeal Ld. CIT(A) concurred the finding of the Ld. AO that inasmuch as the assessee delivered the physical possession of the property pursuant to the registered conveyance deed having received a part of consideration, the transfer in relation to the capital asset as per Section 2(47)(v) of the Act was complete. Ld. CIT (A) further observed that before the sub-judge, Patna the assessee filed a suit praying for the recovery of money of Rs. 38,40,000/- with 18% compound interest and sought the relief of realization of the same by way of sale of the properties of the purchaser. Basing on this Ld. CIT(A) fortified his conclusion that there is valid transfer of property. He, therefore, dismissed the appeal sustaining the addition.

4. Hence, the assessee is in this appeal before us stating that the non-receipt of the entire sale consideration does not admit of any doubt and the issue of sale of land is sub-judice. It is further stated that in the absence of the receipt of sale consideration there is no real income to be brought to tax. The assessee further challenged the action of the AO in invoking the provisions u/s 50C of the Act to adopt the full value of consideration at Rs.

94,28,000/- despite the fact that actual agreed consideration was Rs. 48 lakhs out of which only Rs. 9,60,000/- was received.

5. Ld. AR basing on his argument on two aspects. Firstly, that the properties do not necessarily passed as soon as the instrument is registered, for the true test is the intention of the parties. Next, he submitted that the income from capital gain on a transaction which is not finalized is at best a hypothetical income and cannot be brought to tax. For the purpose, he placed a reliance on the decisions reported in Smt. Raj Rani Devi Ramana (1993) 201 ITR 1032 (Patna) and CIT vs. Balbir Singh Maini (2017) 398 ITR 531 (SC).

6. Per contra, the Ld. DR submitted that in this matter having received a part of consideration the assessee delivered the possession of the property and also executed the registered instrument, as such, as rightly pointed out by the authorities below the transfer u/s 2(47)(v) of the Act. He further submitted that the decisions relied upon the assessee have no application to the facts of the case.

7. We have gone through the record in the light of the submissions on either side. In this matter the sale deed is to be found at page no. 109 of the Paper Book. It clearly shows that in view of the urgent need of money the plaintiff took the property to sale and pursuant to the agreement settled with one New Tech Residency Pvt. Ltd. for Rs. 48 lakhs the plaintiff received one cheque bearing no. 129 dated 13.06.2013 for Rs. 9,60,000/-, executed the sale deed dated 14.06.2013 and received the balance

sale consideration by way of post dated cheques each for Rs. 9,60,000/-.

8. Both the authorities below recorded in their respective orders that the plaintiff produced the documents establishing the litigation between the assessee and the purchaser in relation to the land and the impugned sale, and as a matter of fact the plaintiff filed a suit with file on this sub-court-1, Patna City in Title Suit no. 12 of 2017, where under he prayed to pass a decree for annulment of the sale deed and to declare that the defendants therein did not acquire any right title interest and possession on the basis of such sale deed. Though the plaintiff prayed for the alternative relief of decree for money the fact remains that the plaintiff did not receive the fulfill consideration. In Smt. Raj Rani Devi Ramana (supra) the Hon'ble Patna High Court held that the properties do not necessarily pass as soon as the instrument is registered, but the real test is the intention of the parties. So also, in Balbir Singh Maini's case it was held that the income from capital gain on a transaction which never materialized is a hypothetical income.

9. In this case also, the assessee pleads that he has received any income except Rs. 9,60,000/- towards the sale consideration and the entire balance sale consideration is in litigation and the alleged transfer is also directly and substantially involved in the sub-court, Patna. In the circumstances, according to us factual findings are necessary as to the intention of the parties, namely, whether they really intend the transfer to be finalized. Since mere reading of the sale deed does not make the things clear, we deem it just and necessary that the examination of parties is necessary

to cull out such an intention to be acted upon. For this fact finding, we deem it necessary to remand this matter to the file of the AO for examination of the parties and to read the sale deed in the light of such statements to decide the fact whether the sale is intended to be finalized by the parties or not. This is more particularly in view of the fact that no sale consideration was received by the assessee except Rs. 9,60,000/-.

10. In these circumstances and for this purpose, we set aside the impugned order and remand the issue to the file of the AO for determining the question of fact as to the transfer of property after affording an opportunity to the assessee. We answer the issue accordingly.

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

Order pronounced in the open court on 12.07.2018

Sd/-

**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 12.07.2018

\*Kavita Arora

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	12.07.2018
Date on which the typed draft is placed before the dictating Member	12.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	12.7.18
Date on which the fair order is placed before the Dictating Member for pronouncement	12.7.18
Date on which the fair order comes back to the Sr. PS/PS	12.7.18
Date on which the final order is uploaded on the website of ITAT	12.7.18
Date on which the file goes to the Bench Clerk	12.7.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	