

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 909/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Sh. Pawan Kumar Bansal, SCO 171, Sector 38C, Chandigarh	Vs. बनाम	The ITO, Ward 4(5), Chandigarh
स्थायी लेखा सं./PAN NO: ABJPB2545F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ajay Jain, Advocate

राजस्व की ओर से/ Revenue by : Sh. N.D. Gupta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19.12.2018

उदघोषणा की तारीख/Date of Pronouncement : 19.12.2018

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 24.4.2018 of the Commissioner of Income Tax(Appeals)-2, Chandigarh [hereinafter referred to as 'CIT(A)'].

2. The sole dispute raised in this appeal is regarding the treatment of the head of the income of Rs. 16,50,000/-, whether the same falls under the head 'capital gains' or 'income from other sources' .

3. The brief facts relating to the issue are that the assessee purchased a house on 28.2.2014 at the cost of Rs. 2.86 crores. However, within a short span, the assessee has sold the aforesaid house on 18.3.2014 for a consideration of Rs. 2.90 crores. In the Income tax return, the assessee claimed that it had also earned an amount of Rs. 16.50 lacs towards the

sale of dilapidated super structure bricks and other material. The plea of the assessee has been that in fact the assessee firstly sold the deplicated super structure for a sum of Rs. 16.50 lacs and thereafter the plot was sold vide sale deed dated 18.3.2014. That though in the sale deed, the nomenclature was mentioned as 'house' as the same was mentioned as such in the earlier purchase deed of dated 28.2.2014. However, that was required to be mentioned so due to some technical difficulty as the detail of the property has been computerized in the office of the Estate officer and until and unless there is some change in the record brought out by specific orders, such as, by way of applying for change of map etc., the detail of property will remain such. It has been further contended that since the sale was effected within one month of the date of purchase which was too short a period to effect the change brought in the property in the official record, hence, office of the Estate officer picked up the same dimensions including covered area while registering the sale deed on 18.3.2014. The Ld. Assessing officer further held that since in the sale deed was effected on 18.3.2014, the covered area was identically mentioned in the purchase deed dated 28.2.2014, hence, it was doubtful that the assessee had earned the income of Rs. 16.50 lacs from the sale of deplicated super structure over the property in question. She, therefore, treated the aforesaid declared income of Rs. 16.50 lacs as 'income from other sources' and charged tax thereupon accordingly.

4. The assessee unsuccessfully contested the matter before the CIT(A).

5. Before this Tribunal, the Ld. Counsel for the assessee has reiterated the contention as was raised before the lower authorities.

6. On the other hand, the Ld. DR has relied on the findings of the lower authorities and has further submitted that, even otherwise, the assessee had not received the aforesaid payment of Rs. 16.50 lacs through banking channel, rather, the same was shown to be received in cash, therefore, the assessee has failed to prove that the aforesaid receipt was on account of sale of debris.

7. I have considered the rival submissions and have gone through the record. Admittedly, the house in question was sold within the period of 18 days from the date of purchase. It can safely be assumed that such type of sale in short span of time is generally done to earn profit / appreciation in price. The plea of the assessee is that after purchase of the property in question, he firstly sold the super structure / debris and thereafter sold the vacant plot and thereby he not only earned a sum of Rs. 16.50 lacs from the debris but also a gain of Rs. 4 lacs from the sale of the property in question. However, after excluding the stamp duty charge and other expenses net gain earned by the assessee is of Rs. 6 lacs. The assessee has also given a reasonable explanation that since the sale deed was affected only after 18 days of the date of purchase, hence, under the circumstances, the details regarding affecting the changes, removal of the super structure were not incorporated in the records of the Estate office. Another fact on the file is that the Assessing officer had no evidence of receipt of any income by the assessee from any other source. It was only when the assessee declared the aforesaid receipt of Rs. 16.50 lacs, that the Assessing officer treated the same as 'income from other sources'. If the above treatment of the Assessing officer for the sake of arguments is taken

as correct, then, the resultant effect will be that the assessee would have sold the house in question at a loss after including the stamp duty charges into the purchase price of the house at Rs. 2.86 crores. Generally, a prudent man will not sale a property within 18 days of purchase at a loss. The assessee has shown a reasonable gain of Rs. 6 lacs upon the aforesaid property sold within 18 days of the purchase. Moreover, the Assessing officer did not make any inquiry by sending any inspector etc. to see the actual position of the property which he may have conveniently verified. Under the circumstances, it would be unreasonable to assume that the assessee had earned the aforesaid income of Rs. 16.50 lacs as ‘income from other sources’. I do not find any justification on the part of the lower authorities in taking the above amount of Rs. 16.50 lacs under the head ‘income from other sources’ instead of taking it as part of the capital gain received by the assessee. Therefore, the order of the lower authorities in treating the aforesaid addition of Rs. 16.50 lacs as ‘income from other sources’ is not tenable and the same is set aside. The Assessing officer is directed to treat the amount of Rs. 16.50 lacs as part of the capital gains earned by the assessee. The appeal of the assessee is accordingly allowed.

In the result, the appeal of the assessee stands allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 19.12. 2018
“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar