

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'B',  
NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 430/DEL/2013  
Assessment Year: 2009-10

The I.T.O  
Ward - 34 (2),  
New Delhi

Vs.

Shri Chander Shekar  
C - 166, Sector 51,  
Noida, U.P.

PAN No. AMHPS 9399 B

(APPELLANT)

(RESPONDENT)

Appellant by

: Ms. Ashima Neb, Sr. DR

Respondent by

: Shri Rajan Gupta, CA

Date of hearing: 28/02/2019

Date of Pronouncement: 04/03/2019

**ORDER**

**PER N. K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 27, New Delhi dated 06.11.2016 pertaining to A.Y 2009-10.

2. The substantive grievances of the Revenue read as under :

"2 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the A.O. u/s 50 C on the ground that lease holdright hold right are not covered under the purview of this section."

3. On the facts and in the circumstances of the case, the Ld. CIT(A) ignored the fact that transfer of the property took place in the year under consideration on 01.10.2008."

4. On the facts and in the circumstances of the case, the Ld.CIT(A) ignored the fact that during the course of assessment proceedings, the appellant failed to file any detail of the purchase of the property."

5. The Ld. CIT (A) failed to appreciate the fact that it is the owner of the property who can sell the same. Before becoming the owner of a property, the same cannot be sold.

3. Briefly stated, the facts of the case are that as per information with regard to sale of property for a consideration of Rs. 99.20 lakhs, the Assessing Officer selected the return of income for scrutiny assessment. During the course of scrutiny assessment proceedings, the assessee was asked to explain the source of investment in the said property.

4. The assessee replied that it had executed an agreement to sell on 28.12.2004 to M/s Rosebud Construction Pvt. Ltd. It was further explained that the said property was allotted to the assessee by Noida Authority for a consideration of Rs. 16.75 lakhs and the assessee gave all the rights in the said property to M/s Rosebud Construction Pvt. Ltd. for a consideration of Rs. 16.75 lakhs out of which he has received Rs. 1.30 lakhs and the balance amount was to be paid by the vendee M/s Rosebud Construction Pvt. Ltd. to Noida Authority.

5. The assessee contended that since he has relinquished all the rights in the said property in 2004, no capital gains tax liability arose during the year under consideration.

6. The contention of the assessee was dismissed by the Assessing Officer who was of the firm belief that the provisions of section 45(1) r.w.s 2(47) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] squarely apply on the facts of the case and since the sale deed was executed in 2008, the provisions of section 50C of the Act will determine the full value of consideration and since the stamp duty valuation authority has taken sale price at Rs. 99.20 lakhs, the

same will be long term capital gain and accordingly, added Rs. 99.20 lakhs.

7. The assessee carried the matter before the ld. CIT(A) and reiterated its claim that the right in the said property was extinguished in 2004 and, therefore, no liability arose during the year under consideration.

8. After considering the facts and submissions of the assessee, the ld. CIT(A) deleted the impugned addition by holding as under:

*"I have carefully considered the submissions of the appellant, the observations made by the A.O. in the Assessment Order and the facts of the case. The appellant was allotted a residential plot on 19.01.2004 in Sector-105, Noida through lottery on payment of allotment money of Rs. 1,30,000/-. The total purchase price of the plot was Rs. 16,75,000/-. The appellant on 28.02.2004 entered into an Agreement to sell in respect of this plot with M/s Rosebud Construction Pvt. Ltd through its director Sh. Rajeev Sharma. The appellant received an amount of Rs. 1,30,000/- from the company in lieu of agreeing to sell this plot to the company. The balance amount to be paid for the acquisition of the plot i.e. Rs. 15,45,000/- was agreed to be paid by the Company directly to*

the Noida Authority. Further, on the same date i.e. on 28.02.2004 the appellant appointed Sh. Sanjay Kumar who was known to the company M/s Rosebud Construction Pvt. Ltd, as his GPA in respect of this property. Later on, Sh. Sanjay Kumar, the GPA holder of the appellant entered into the sale deed (Transfer of lease hold rights in respect of the property in the name of the company). Thus, as far as the appellant was concerned he had transferred all his rights in the property on 28.02.2004 by signing an Agreement to sell and receiving the payment of Rs. 1,30,000/- from the company M/s Rosebud Construction Pvt. Ltd and by appointing Sh. Sanjay Kumar known to the company as his GPA. Sale of property through GPA was a prevalent practice till 2011 when it was specifically banned by the Hon'ble Supreme Court. The fact that Sh. Sanjay Kumar ultimately transferred the lease hold rights through transfer deed dated 01.10.2008 in the name of the company further supports the appellant's contention that he had sold all his rights in the property on 28.04.2004 by appointing Sh. Sanjay Kumar as his GPA according to which the GPA appointed by the appellant on **28.02.2004** continued to be valid and was not revoked till 01.10.2008. On that date it was the GPA, Sh. Sanjay Kumar who signed the deed of Transfer of lease hold rights in favour of the company M/s Rosebud Construction Pvt. Ltd. and not the appellant. The appellant's name in the deed of Transfer of lease hold rights was mentioned only because the original allotment was in his

*name. Therefore, as far as the appellant is concerned, he did not have ownership of the said property during the year under consideration and therefore, there is no question of any transaction of sale of the said property during the year under consideration. Therefore, there was no question of any capital gains in the appellant's hands. The addition of Rs. 99,20,000/- made by the A.O. on this account is therefore, deleted."*

9. Before us, the ld. DR strongly relied on the findings of the Assessing Officer stating that the date of execution of sale deed is the determinative factor for the transfer of property and since the sale deed was executed during the year under consideration, capital gain tax liability arose during the year under consideration.

10. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

11. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. There is no dispute that a registered agreement to sell was executed on 28.02.2004 between the assessee and M/s Rosebud Construction Pvt. Ltd. The said agreement to sell is exhibited at pgs 98 to 101 of the paper book.

12. A perusal of the said agreement to sell clearly shows that the assessee has relinquished all his rights in the said property in favour of the vendee. As per the definition of transfer u/s 2(47) of the Act, transfer in relation to any capital asset means “extinguishment of any rights therein”. In our considered opinion, this clause clearly applies on the facts of the case in hand.

13. Since the transfer has taken place in the year 2004, basis of charge i.e. 45(1) of the Act arose in the year 2004 as the said provision as well as any profits or gains arising from transfer of capital asset effected in the previous year shall be chargeable to income tax under the head capital gain and shall be deemed to be income as previous year in which transfer took place.

14. Since the transfer has taken place in the year 2004, capital gains tax liability, if any, arose in that year. We, therefore, do not find any error or infirmity in the findings of the Id. CIT(A).

15. For the sake of completeness, the long term capital gain liability, as determined by the Assessing Officer is 99.20 lakhs, 20% of tax on which comes to Rs. 19.84 lakhs. Therefore, this appeal by the Revenue is also hit by the CBDT Circular No. 3/2018 dated 11.07.2018 by which

the Board has revised the monetary limit for filing of appeals by the department before the ITAT and the monetary limit has been fixed at Rs. 20 lakhs. The Board at Clause 13 of the said Circular has clarified as under:

*“This Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in Supreme Court/High Court/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. The pending appeals below the specified tax limit in para 3 above may be withdrawn/not pressed.”*

16. In the light of the aforesaid CBDT Circular, the appeal filed by the Revenue is dismissed.

17. In the result, the appeal of the revenue in ITA No. 430/DEL/2013 is dismissed.

**Order pronounced in the open court on 04.03.2019.**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Date: 04<sup>th</sup> March, 2019.

VL

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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