

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 430/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2012-13)

Shri Devendrasingh A. Jadeja 17/8, Darbar Compound, Near Santoshimata Temple, GIDC, Vithalnagar Tekra, Vatva, Ahmedabad	बनाम/ Vs.	Income Tax Officer Ward - 7(1)(4), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGGPJ0907K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mahesh Varjani, A.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri Virendra Singh, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	06/03/2019
घोषणा की तारीख /Date of Pronouncement	13/03/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-7, Ahmedabad ('CIT(A)' in short), dated 19.12.2016 arising in the assessment order dated 27.03.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the assessee read as under:

- “1. *The learned Commissioner of Income Tax has erred in facts and law by considering land of 492 sq. Yard as short term capital asset which is actually a long term capital asset.*
2. *The learned Commissioner of Income Tax has erred in facts and law by making addition in respect of Short Term Capital Gain of Rs.14,41,450/-.*
3. *The learned Commissioner of Income Tax has erred in facts and law by considering date of sale deed for calculating the period of holding, he ought to have considered the date of agreement to sale for the same.”*

3. Briefly stated, the assessee is a retired Army Officer. The assessee is stated to have entered to an agreement of sale with a party named Saroj Bhagwat Dhake (SBD) for purchase of piece of land of 1065 sq. yards situated at Ghodasar having Revenue Survey Nos. 40 to 43, 169, 172, Part No. 16 in Dist. Ahmedabad-5, Narol on 12th May, 2007. The sale consideration of the land was fixed at Rs.10 Lakhs. As per the agreement to sale deed, the assessee paid Rs.2Lakhs as earnest money in consideration of which the assessee claims to have received possession of the property from the proposed seller (SBD). As per the paragraph 3 of the earnest deed, the possession was obtained by the assessee owing to family relations. Similarly, the earnest deed provided for execution of sale deed up to FY 2010-11. The parties to the agreement to sale executed the sale deed of a part of aforesaid land i.e. 208 sq. yards on 2nd April, 2008 as per the sale deed. However, the Seller of the land is claimed to have disobeyed the mutual agreement and revised price to carry out the sale deed of the remaining land. The sale deed of 492 sq. yards was eventually made on 20th July, 2011 at a revised purchase consideration of Rs.9,36,000/-. The assessee sold the aforesaid land of 700 sq. yards for a consideration of Rs.35 Lakhs in FY 2011-12 relevant to AY 2012-13 in question and claimed gains thereon as long term capital

gain arising from sale of long term capital asset towards property of 700 sq. yards so sold. It is further case of the assessee that against the sale consideration of 700 sq. yards, the assessee purchased the remaining piece of land of 365 sq. yards and a residential property. It was thus essentially the claim of the assessee before the AO that agreement to sale was made in FY 2007-08 and the property was sold in FY 2011-12 and thus held for more than three years in the possession of the assessee and consequently, in these circumstances, the assessee is entitled for benefit attributable to sale of long term capital assets. It was further claimed that the assessee has invested the sale consideration in a residential property and consequently, exemption under s.54F of the Act is available to the assessee. The AO however was not satisfied with the claim of the assessee and considered the capital gains arising on sale of land parcels to the extent of 492 sq. yards as short term capital gain on the ground that sale deed was executed in July 2011 in favour of the assessee. The AO accordingly observed that the holding period of the land was less than 3 years and thus the gains arising on sale of such land is chargeable to tax as short term capital gains at normal rate. The AO accordingly denied the concessional treatment attributable to long term capital gains and also disallowed the exemption under s.54F of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A) without any success.

5. Further aggrieved, the assessee knocked the door of the Tribunal.

6. The learned AR for the assessee at the outset referred to the earnest deed and submitted that the possession of the piece of land

was duly taken in pursuance of the earnest deed way back in May 2007. It was thus claimed that the rights of the seller were extinguished in favour of the assessee as per Section 2(47) of the Act. It was further claimed that the assessee has duly received possession of the land parcels and therefore, contract between the assessee and the seller was in the nature of part performance as contemplated in Section 53A of the transfer of properties Act, 1882. The learned AR accordingly contended that notwithstanding the execution of sale deed at a later date, the right and interests in the capital asset (land parcels) accrued in favour of the assessee from the date of first agreement i.e. earnest agreement. For this purpose, the learned AR relied upon the decisions of the Hon'ble Supreme Court in the case of Sanjeev Lal vs. CIT Civil Appeal No. 5899-5900 of 2014. The learned AR pointed out that the Hon'ble Supreme Court in Sanjeev Lal (supra) has observed that consequences of agreement to sale are very clear and they are to the effect that the assessee could not have sold the property to someone else. The learned AR for the assessee thus contended that the assessee got a right to get the property transferred in his favour by filing a suit and therefore, some definite rights were created in favour of the assessee transferee when the agreement to sale was executed. This right in respect of the capital asset i.e. land parcel in question has been transferred by the assessee in favour of the purchaser after the completion of the holding period of 3 years. The learned AR accordingly submitted that in the light of the decision of the Hon'ble Supreme Court in Sanjeev Lal (supra) the transfer of the land relates back to the date of earnest agreement and consequently, the assessee is entitled for concessional tax treatment available to gains arising on sale of long term capital gains and also is entitled to benefit of deduction under s.54F of the Act.

7. The learned DR for the Revenue, on the other hand, relied upon the orders of the AO and first appellate authority. The learned DR

also pointed out that the assessee has sold only 700 sq. yards against the purchase of 1065 sq. yards claimed as per earnest deed and therefore, the doctrine of relation back would not apply to the transaction in question. The learned DR also claimed that no evidence of possession of land in favour of the assessee is on record. The learned DR thus urged that no interference with the order of the CIT(A) is called for.

8. We have carefully considered the rival submissions. On a perusal of the earnest deed, we observe that the proposed seller had acquiesced to hand over the possession of the land to the assessee way back in May 2007 against receipt of part of the total consideration, the land parcel has eventually been transferred in favour of the assessee by a formal sale deed executed in July 2011. Therefore, the mutual understanding between the seller and assessee ultimately stood ratified. Considering the circumstances of the case, we are of the view that the date of agreement to sale/Banakhat/earnest agreement should be reckoned for the purposes of determination of period of holding of the land parcel. Thus, when the facts are construed in the light of the judgment rendered in the case of Sanjeev Lal (supra), we believe that the benefit of longer holding period should be given to the assessee. Therefore, the gains arising on sale of land deserves to be treated as long term capital gains. As a sequel thereto, the assessee would be entitled for benefit of deduction under s.54F of the Act.

9. Noticeably, the assessee has claimed the possession of the land right from the inception of the assessment proceedings. The Revenue authorities have not rebutted this crucial aspect by any cogent evidence. The payment to the seller and ultimate execution of sale deed somewhat proves the case of the assessee. Consequently, we set

aside the order of the CIT(A) and direct the AO to allow the claim of the assessee as long term capital gains and also allow the deduction claimed under s. 54F of the Act in accordance with law.

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

This Order pronounced in Open Court on 13/03/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 13/03/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।