

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

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA.No.3518/Del/2016  
Assessment Year: 2012-13**

**ACIT, Circle 45 (1)  
New Delhi,  
New Delhi.**

**vs**

**Ms. ShailjaPasricha,  
D-1/28, Rajouri Garden  
New Delhi  
PAN AGBPP2704R**

(Appellant)

(Respondent)

Appellant by: Shri Salil Agrawal, Advocate

Respondent by: Sh. Shailesh Gupta, Sr. DR.

Date of hearing:11/7/1919

Date of order :16 /7/2019

**ORDER**

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

Aggrieved by the common order dated 10/3/2016 passed by the learned Commissioner of Income Tax (Appeals)-15, New Delhi ("Ld. CIT(A)"), the assessee, namely M/s Shailja Pasricha("the assessee") filed these appeals in respect of the Assessment Year 2012-13.

2. Briefly stated relevant facts are that one Jeewan Lal Virmani was the owner of about 5077 square yards of plot which he gave on lease for 99 years to M/s ESS ESSMetals and Electricals through one

BansariLal Pasricha in the year 1975. Subsequently assessee purchasing the same under three sale deeds dated 13.6.1997, 26.4.2007 and 19.10.2010 respectively from the children of Jeewan Lal after his death. Subsequently, on 9.2.2015 the property was sold to M/s HH Buildtech Private Ltd. for sale consideration of Rs. 35 crores, out of which the assessee received Rs.18 crores and M/s ESS ESS Metals and Electricals received Rs.17 crores towards the surrender of leasehold rights and cost of construction/Malba of the leased land to the vendee.

3. Assessee filed the return of income for the Assessment Year 2012-13 on 28/7/2012 declaring a total income of Rs.9,76,19,520/-. During scrutiny, learned Assessing Officer held that the ownership right of the property under consideration was wholly and exclusively with the assessee through three of the sale deeds executed and therefore, whole of the amount of sale consideration of Rs.35 crores should have come to the assessee and accounted for computation of capital gain. He, therefore, held that taking only Rs.18 crores into consideration for computation of tax liability had resulted in short computation of tax.

4. Learned Assessing Officer, therefore held that the minimum amount that must have been received by the assessee, being the sole owner of the property, should not have been less than the circle rate of property which was Rs.27,60,03,387/-and accordingly computed the long-term and short-term capital gains having regard to the dates of purchase of the land under three sale deeds.

5. When the assessee preferred appeal to the Ld. CIT(A), Ld. CIT(A) had gone through the record and held that the learned Assessing Officer committed error in treating the assessee as the sole owner of the property and therefore, the whole of the amount of sale consideration should have been received by her alone and accounted for computation of capital gain. He held that the leasehold rights continue to be with the M/s ESS ESS Metals and Electricals through Sh. Bansari Lal Pasricha cannot be ignored because both the assessee and M/s ESS ESS Metals and Electricals held their rights in the property in different capacities and, therefore, it was proper for the division of the sale consideration between them in the ratio of Rs.18 crores and Rs.17 crores respectively. Ld. CIT(A), therefore, allowed the appeal and granted relief to the assessee.

6. Revenue is, therefore, in this appeal before us challenging the deletion of the addition under the head 'long-term capital gain' and 'short-term capital gain' stating that all the ownership rights, along with title and interest, of the immovable property were vested in the assessee alone and, therefore, any payment made to M/s ESS ESS Metals and Electricals is not only excessive but unwarranted.

7. Ld. AR advanced arguments in support of the impugned order and submitted that when the sale deed in favour of M/s HH Buildtech Private Limited itself speaks of the apportionment of the sale consideration between the titleholder and the holder of the leasehold rights, it is not open for the Assessing Officer to dictate terms of sale

consideration and the receipt of money on account of sale of land under consideration.

8. We have gone through the record. There is no dispute as to Jeewan Lal Virmani during the land in dispute to M/s ESS ESS Metals and Electricals on lease for 99 years in the year 1975, and subsequent to the date of Jeewan Lal Virmani, his children selling the same to the assessee under three sale deeds on different dates. The sale consideration paid by the assessee is also not in dispute. As on the date of sale of the said land in favour of M/s HH Buildtech Private Limited, according to the learned Assessing Officer, the circle rate was Rs.27.60 crores whereas the sale consideration according to the sale deed was Rs.35 crores, which is much higher than the circle rate.

9. Sale deed dated 10.02.2012 of this land in favour of M/s HH Buildtech Private Limited clearly shows that both the assessee and M/s ESS ESS Metals and Electricals were the vendors of their respective rights in the land and the recitals of the sale deed are clear in stating that out of the sale consideration of Rs.35crores assessee had to receive Rs.18 crores and M/s ESS ESS Metals and Electricals had to receive Rs.17 crores.

10. In the circumstances, the admitted facts prove that in respect of the land that was sold in favour of M/s HH Buildtech Private Limited both the assessee and M/s ESS ESS Metals and Electricals have rights in different capacities. M/s ESS ESS Metals and Electricals held the leasehold rights for 99 years and since the lease was in the year 1975

and the assessee purchased the property between 1997 and 2010, the rights acquired by the assessee must be understood to be subject to the leasehold rights. It is, therefore, clear that the Assessing Officer was in clear error in holding that the assessee had become the sole owner of the property, which is factually and legally incorrect. Assessee was not the absolute owner of the property and her rights were subject to the leasehold rights held for 99 years by M/s ESS ESS Metals and Electricals. In such situation, it is for the parties to settle the sale consideration for transfer of respective properties held by the assessee and M/s ESS ESS Metals and Electricals. Revenue authorities have no say to dictate the terms of sale consideration to be received in exchange of rights of the parties.

11. It is not for the Assessing Officer to say that de hors the leasehold rights held by M/s ESS ESS Metals and Electricals for 99 years, the assessee had to receive the entire sale consideration to the exclusion of M/s ESS ESS Metals and Electricals or that the consideration paid to M/s ESS ESS Metals and Electricals was excessive. It is open for the Revenue to verify whether the sale consideration said to have been received by M/s ESS ESS Metals and Electricals was offered to tax or not in the scrutiny of the return of income of M/s ESS ESS Metals and Electricals. It is not open for the Revenue to contend that to the exclusion of M/s ESS ESS Metals and Electricals, assessee alone must receive the entire sale consideration ignoring the leasehold rights held by M/s ESS ESS Metals and Electricals for 99 years in respect of the very same property which was the subject matter of the sale.

12. In this perspective of the matter, we are of the considered opinion that the Ld. CIT(A) had reached a right conclusion on proper appreciation of the facts available on the record and the reasoning or conclusion of the Ld. CIT(A) in the impugned order is beyond the pale of challenge by the Revenue. We, therefore, decline to interfere with the impugned order.

13. In the result, appeal of the Revenue is dismissed.

**Pronounced in the open court on 16<sup>th</sup> July, 2019.**

Sd/-

sd/-

(O.P.KANT)

(K. NARASIMHA CHARY)

Accountant Member

JUDICIAL MEMBER

Dated: 16<sup>th</sup> July, 2019

'VJ'

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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| Date on which file goes to the Head Clerk. |           |
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