

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE MR AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4828/Del/2015
(Assessment Year: 2010-11)

Ramender Kumar Tyagi, 5/1240, Vasudhanra, Ghaziabad PAN: AEHPK2428R	Vs.	DCIT, Circle-2, Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Rakesh Sehgal, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	25/07/2019
Date of pronouncement	22/10/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the 1d CIT(A), Muzaffarnagar dated 19.02.2015 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-

“ CONCISE GROUNDS OF APPEAL: (In place of Grounds No. 1 to 12 filed in Form 36)

Ground No. 1:

The Commissioner of Income Tax (Appeals) did not consider the facts of the appellant in his own case for AY 1999-2000 and 2004-2005, wherein it was decided by the Hon'ble Income Tax Appellate Tribunal wide its orders that the Land allotted to the appellant by Ghaziabad Development Authority (GDA), in lieu of acquisition of his joint agriculture land vide Deed of Compromise dated 18,h November, 1996, was held to be acquired on 16.03.1990 when the joint land was actually acquired by GDA and subsequently allotted the plot against the acquisition.

The Plot being sold by the appellant during the AY 2010-11 was a part of the allotment in lieu of the above acquisition, the acquisition of the appellant of the allotted plot 11/3 has to be taken as acquired by the appellant right from the date of acquisition i.e. 16.03.1990 as has been held by the Hon'ble Tribunal in AY 1999-2000 and 2004-05 wherein Plot 11/1 and 11/2 were sold respectively.

Ground No. 2:

The confirmation of the order of the Assessing Office by the Commissioner of Income Tax (Appeals) that the appellant has earned Short term Capital Gain from sale of Plot No 11/3 in FY 2009-10 on account considering the acquisition of the plot on 12/01/2009 and 04/06/2009 on the basis of Freehold of Land by GDA on the said dates is contrary to facts and law and therefore the treatment of the Capital Gain on sale of Plot 11/3 as Short Term is liable to be quashed and the Capital Gain earned is liable to be held as Long Term in view of the facts and the Judgment of the Hon'ble Tribunal in the case of the Appellant himself in AY 1999-2000a and A.Y. 2004-2005, wherein Plot 11/1 and 11/2 were sold respectively.

Ground No 3:

The confirmation of the order of the Assessing Officer by the Commissioner of Income Tax (Appeals) of determination of cost of acquisition of the plot as the price of Land mentioned in the Conveyance Deed executed by GDA on 12/01/2009 and 04/06/2009 through which the Land has been converted as Freehold viz. Rs 58,64,434.73 + Rs. 00,99,265.57 is contrary to facts and law and is therefore is liable to be ignored and the cost of acquisition as on 16.03.1990 is liable to be considered as has been considered and held by the Hon'ble Tribunal in the case of the appellant himself in A.Y. 1999-2000 and AY 2004-2005, wherein Plot 11/1 and 11/2 were sold respectively.

Ground No 4:

The confirmation of the order of the Assessing Officer by the Commissioner of Income Tax (Appeals) of not considering the payment of Rs.30,00,000/- to Shri Sanjeev Gupta as the part of cost of acquisition of the plot is contrary to facts and law and therefore the deduction is liable to be allowed in computing the taxable Long Term Capital Gain from sale of Plot No 11/3.

Ground No. 5

The confirmation of the order of the Assessing Officer by the learned Commissioner of Income-tax (Appeals) of not considering the investment made by the appellant of rs. 1,80,00,000/- for the purpose of deducting claimed u/s 54F is contrary to facts and law and therefore the deduction is liable to be allowed in computing the taxable long term capital gain from sale of plot No. 11/3.”

3. The brief facts of the case show that the assessee is an employee with a private company earning salary income as well as interest. He filed his return of income on 28.04.2011 declaring income of Rs. 1233293/- after claiming set off losses. The assessment u/s 143(3) of the Act was passed on 26.03.2013, wherein, the ld AO made an addition of Rs. 58509074/- on account of short term capital gain. The income of the assessee was assessed at Rs. 59742367/-. Aggrieved the assessee preferred an appeal before the ld CIT(A), who dismissed the appeal of the assessee. Therefore, the assessee is in appeal before us.

4. Issue in this appeal is that the assessee has sold a property at Vaishali, Ghaziabad for Rs. 24 crores having 1/4th share where the share of the assessee was Rs. 6 crores. Other three co-owners who are blood relatives of the assessee. Originally the land was acquired by GDA in 1990. Later on in 1996 compromise deed was entered in to in 1996. Thus land was allotted to the assessee by GDA as per compromise deed dated 18.09.1996. The compromise was on account that GDA acquired another land of the assessee because of legal hurdles as the date of acquisition of the original property was 16/3/1990. The land allotted was comprised of two adjoining plots, which were converted into free hold land on 12.01.2009, and 04.06.2009. Out those, one of the plot admeasuring 6160 sq meters was sold to M/s. Apex Buildcon on 01.07.2009, which resulted into capital gain in the hands of the assessee. The assessee claimed it to be a long term capital gain holding that date of acquisition of property is 16/03/1990. whereas, the ld AO held to be a short term capital gain as the assessee has transferred it on 01.07.2009 which was acquired on 12.01.2009 and 04.06.2009. The ld AO noted that at page 2 of para No. 2 of the sale deed it is mentioned that the possession of the property was to be taken by the assessee within one month after completing the formalities. The main reason for which the ld AO held it to be a short term capital gain is that the property having free hold rights were acquired on 12.01.2009 and 04.06.2009 which were sold on 01.07.2009. The assessee contested it before the ld AO that coordinate bench in assessee's own case where the assessee has sold another two plots received from GDA out of above compromised deed that date of acquisition of original land i.e. 16/3/1990 should be taken as the date of acquisition by the assessee and the market rate on that date should be taken as cost of acquisition. The ld AO held that the issue is covered against the assessee by the decision of the Hon'ble Karnataka High Court in 218 ITR 1. Therefore, he held that the assessee has earned short term capital gain. Accordingly, he computed the capital gain at Rs. 234036299/- upheld the action of the ld AO. He further held that even otherwise there is no material on record to show that the plot in question was ever allotted to the assessee by the GDA prior to 12.01.2009 and 04.06.2009. As the property sold by the assessee was considered by both

the lower authorities as short term capital assets, deduction u/s 54F was also denied. The assessee has also claimed Rs. 30 lakhs as the cost of acquisition of the asset which was paid to one Sanjeev Gupta to avoid litigation. The lower authorities held that there is no evidence of such payment and further there is no role of Mr. Sanjeev Gupta. Further, the payment was also made on 15.04.2010 after the land was sold and transferred. Thus, Rs. 30 lacs was not granted as cost of acquisition. The assessee is in appeal before us.

5. The assessee submitted that issue is whether the above assets sold during the year is long term capital asset or is short term capital is covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for Assessment Year 1999-2000 and 2004-05. He submitted that for Assessment Year 1999-2000, the assessee sold plot at Vaishali, Ghaziabad which was acquired by GDA on 16.03.1990. He referred to para No. 4 of that decision.
6. The ld Department representative relied upon the orders of the ld AO and the ld CIT(A).
7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. We have also perused the orders of the coordinate bench in assessee's own case for Assessment Year 1999-2000 and 2004-05. In Assessment Year 1999-2000 a coordinate bench has held the date of acquisition of plot, the right of which have accrued to the assessee when the GDA acquired the land on 16.03.1999 and not at the subsequent date of allotments of the plot. Thus, it was held that the property sold by the assessee was a long term capital asset. Similarly, for Assessment Year 2004-05 identical possession was referred to in case of the assessee. Therefore, respectfully following the decision of the coordinate bench in assessee's own case we also held that property sold by the assessee is a long term capital asset as the holding period is more than three years. Therefore, the capital gain arising thereon would be long term capital gain. Accordingly, ground NO. 1 and 2 of the appeal is allowed and the orders of the lower authorities are reversed to this extent.
8. The third ground of appeal is with respect to the cost of acquisition has already been decided in case of the orders of the coordinate bench in

Assessment Year 1999-2000 and 2004-05 in assessee's own case and further same is also accepted in case of other 3 other co-owners. In view of this there is no reason to disturb the cost of acquisition of the asset where the assessee is 1/4th owner of the plot. Accordingly, we allow ground No. 3 of the appeal of the assessee directing the AO to consider the cost of acquisition as per order of the coordinate bench in earlier years in assessee's own case.

9. Ground NO. 4 is with respect to allowing cost of acquisition of Rs. 30 lacs paid by the assessee to Mr. Sanjeev Gupta. After hearing the parties it is apparent that the lower authorities have not granted the above cost of acquisition as deduction while computing the capital gain in absence of any evidence with respect to right off of Mr Sanjeev Gupta. Merely pressing an agreement as well as payment to Mr. Sanjeev Gupta, does not entitle the assessee to claim the same as deduction. Accordingly, ground No. 4 of the appeal is dismissed.
10. Ground No. 5 is with respect to claim of deduction u/s 54F of the Act. As the lower authorities have treated the transaction of the sale of property as short term capital gain as there was no occasion with them to examine the claim of the assessee for exemption u/s 54F of the Act. As we have already held in ground No. 1 and 2 of the appeal that property transferred was a long term capital asset and gain thereon would be chargeable to tax as long term capital gain, therefore, we set aside ground No. 5 of the appeal back to the file of the ld AO with a direction to the assessee to substantiate the claim of deduction u/s 54F of the Act thereon. Accordingly ground No. 5 is right off above direction.
11. In the result appeal of the assessee is partly allowed.
Order pronounced in the open court on 22/10/2019.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 22/10/2019
A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi