

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.388/Del./2018
(Assessment Year : 2009-10)**

DCIT, Circle 11 (1),
New Delhi.

vs. M/s. H & H Real Estate Pvt. Ltd.,
74, Hemkunt Colony,
Delhi – 110 048.

(PAN : AABCH6422M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Sharwan Kumar Gotru,, Senior DR

Date of Hearing : 18.08.2021

Date of Order : 18.08.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, DCIT, Circle 11 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 26.10.2017 passed by the Commissioner of Income-tax (Appeals)-35, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

“Whether on the facts and circumstances of the case and in law, the Id. CIT (A) has not erred in allowing the transfer of land and building of M/s. Advanced Automation and Process Control Pvt.

Ltd. in the garb of sale of shares and treat it as long term capital gain.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee company is engaged in the business of real estate. Original assessment in this case was framed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) at total income of Rs.12,98,09,100/- on 17.03.2011. Thereafter, assessment was reopened u/s 148 of the Act and assessment was framed u/s 147 read with section 143 (3) of the Act at the total income of Rs.13,14,91,940/-. Assessee company is holding 12.5% of the total shareholdings in M/s. Advanced Automation and Process Controls Private Ltd. whereas other shareholders of the company are Ashok Kumar Munjal and M/s. Angel Infrastructure Pvt. Ltd. who are having shareholdings to the tune of 37.5% and 50% respectively. During the year under assessment, assessee has transferred its 12.5% shares to a new shareholder, however no assets held by the company was transferred by the assessee company. AO treated the transfer of shares to be taxed as long term capital gain having been held by assessee for more than 2 years u/s 2(42A) of the Act and thereby framed the assessment at total income of Rs.13,14,91,940/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has allowed the claim of the assessee by treating the transfer of land and building of M/s. Advance Automation and Process Control Pvt. Ltd. as long term capital gain by allowing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. Senior Departmental Representative as well as on the basis of documents available on the file.

5. We have heard the Id. Senior Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. CIT (A) reversed the findings returned by the AO that receipt of Rs.17,82,71,004/- on sale of shares of M/s. Advance Automation and Process Control Pvt. Ltd. is taxable as short term capital gain by taxing the same, by returning following findings :-

“4.3.3.A perusal of the submissions filed reveals that the appellant is holding 12.5% shares of the total shareholdings

of the company i.e. M/s. Advance Automation & Process Controls P Ltd. The other shareholders are Sh. Ashok Kumar Munjal, Ludhiana (37.5%) and M/s. Angel Infrastructure P Ltd, New Delhi (50%). The contention of the appellant that any asset held by the company is a property of the company and not the shareholder/member is correct. The appellant had transferred its 12.5% shares to a new shareholder, however no asset held by the company was transferred by the appellant company. Therefore the transfer of "shares" held by the appellant being a shareholder for more than two years, being treated as long term capital gain u/s 2(42A) of Income Tax Act by the appellant is found to be correctly done. The appellant had not executed any transfer deed for land & building nor any such asset was appearing in its audited Balance Sheet. The treatment of holding of assets for Long Term capital Gain is different for shares held of a company and other assets. Therefore, the observation of the AO that the capital gain arising in the hands of the transferor (M/s H&H Real Estate Private Limited in this case) should be treated as Short Term capital Gain(STCG) on sale of property instead of Long Term capital Gain (LTCG) on sale of shares and to be taxed at 30%0, on sale of such underlying property for full value of consideration of Rs. 17,82,71,004/- (after allowing the deductions u/s 48 of the Act (cost of acquisition + expenditure on transfer), is not found to be tenable. The appeal on this ground is allowed.”

7. Ld. DR for the Revenue challenging the impugned order has relied upon the findings returned by AO but failed to point out any discrepancy in the impugned findings returned by the Id. CIT (A).

8. We have perused the order passed by the Id. CIT (A). Ld. CIT (A) has returned factual findings that since the assessee company has not executed any transfer deed for land and building nor any such assets was appearing in its audited balance sheet, the assessee has rightly shown the same as long term capital gain.

Even otherwise, assets of the company, namely, M/s. Advance Automation and Process Control Pvt. Ltd. has not been affected due to change of individual shares. So, finding no illegality or infirmity in the findings returned by the ld. CIT(A), present appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 18th day of August, 2021 after the conclusion of the hearing.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 18th day of August, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-35, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**