

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 256/Del/2018 : Asstt. Year : 2013-14

Deepak Bhatnagar, J-7, MIG Flats, Prasad Nagar, Karol Bagh, New Delhi-110005	Vs	DCIT, Circle-1(1)(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AHZPB6972E		

Assessee by : Sh. P. C. Yadav, Adv.

Revenue by : Sh. Avikal Manu, Sr. DR

Date of Hearing: 15.03.2022

Date of Pronouncement: 17.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-42, New Delhi dated 03.10.2017.

2. Brief facts of the case are that the assessee filed return of income on 27.03.2014 declaring income of Rs.90,46,530/-. The assessment order was passed on 22.03.2016. The assessee claimed short term capital loss on sale of property. The AO disallowed the claim of the assessee and assessed the income at Rs. 96,77,530/-. In this regard, the AO held that though proof of cost of acquisition was furnished by the assessee, he failed to furnish any proof regarding sale consideration. The AO held that in the absence of any proof in support of assessee's claim that the property in question was sold at a price less than its

cost of acquisition cannot be accepted. Accordingly, the veracity of assessee's claim of loss on sale of property in question remains un-substantiated. Ergo, the short term capital loss of Rs.6,31,000/- claimed by the assessee is disallowed for want of supporting evidence.

3. Aggrieved the assessee has challenged the action of AO in making disallowance of short term capital loss amounting to Rs.6,31,000/- on sale of property situated at Plot No. S-142, Uppal South End before the Id. CIT(A).

4. During the proceedings before the Id. CIT(A), the assessee explained that, at time of assessment, a copy of bank statement was submitted with AO where sale consideration received in respect of sale of property is reflecting. Thus there was no dispute regarding the amount of sale consideration and cost of acquisition or the amount of short term capital loss. The disallowance has been made only for want of sale deed to corroborate additionally the amount of sales consideration received amounting to Rs.1,24,44,000/-.

5. The assessee contented that AO ignored the evidence submitted during the assessment proceedings in the form of a copy of bank statement reflecting receipt of sale proceeds of property. During the proceedings before the Id. CIT(A), the assessee further submitted additional evidence in the form of agreement to sell, to highlight the amount of sale consideration received amounting to Rs.1,24,44,000/-.

6. In the remand report, the AO commented on the merit of the additional evidences which is reproduced as under:

(i) The assessee has submitted the copy of "Agreement to Sell" before your good self in support of sale consideration of property no. S-142, Uppal South End and not the sale deed as has been mentioned in your letter.

(ii) Also the said agreement to sell has not been notarized and hence, does not carry any legal value. Thus, the same cannot be treated as a valid proof of sale of consideration.

(iii) The complete details/description of the property i.e. details of owner, area, location, etc are not mentioned in the agreement to sell. The words "Against Plot No. S-14" is written in hand on the second page of the said sale agreement, and the same has not been notarized as stated earlier. This document does not mention details of the property to be sold. It does not even contain the complete address the said property. Thus, the validity of this agreement to sale submitted by the assessee is questionable.

7. On receipt of the remand report, the Id. CIT(A) held that it may be relevant to add that Hon'ble Supreme Court of India recently observed in the case of "Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana" that it has become common practice to effect transfers of immovable property by way of either general power of attorney (GPA) sales or sale agreement, GPA or will transfers in order to evade, among Other things, the payment of duties, taxes and other fees payable on transfer and registration (eg, stamp duty or registration fees). While referring to Sections 53A and 54 of the Transfer of Property Act and its decisions in NarandasKarsondas vs. SA Kamtam and

RambhauNamdeoGajre vs. Narayan BapujiDhotra, the Hon'ble Supreme Court observed that a transfer of immovable property by way of sale can be effected only by a deed of conveyance. In the absence of a deed of conveyance (which must be duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. The court also observed that according to the Transfer of Property Act, an agreement of sale - whether with or without possession - is not a conveyance. The court further dealt with the importance of registering documents that record transactions of sale or transfer and the need for all states to take steps to curb malpractice, thereby reducing the circulation of unaccounted wealth (or 'black money') in society.

8. The Id. CIT(A) held that in view of the above judgment, the agreement to sell without notarization cannot be taken as acceptable evidence to corroborate the event of sale of the property and the quantum of consideration exchanged in respect of the transfer of property. Accordingly, it was held that the assessee has failed to substantiate the fact of sale of property at a particular value.

9. The Id. CIT(A) further held as under:

"It is important to note that AO has nowhere doubted the claim of the assessee that the bank deposits are not out of sale proceeds of the property. The dispute is limited to the fact that whether there is transfer of capital asset or not? If there is no transfer of capital asset as per section 2(47) of the act, the question of capital gain/loss does not arise. The capital gain /loss would arise only on transfer of capital asset. Since in this

case, no evidence has been placed on record to substantiate the fact of transfer of capital asset, therefore, the question of capital gain/loss does not arise. The deposit in the bank account of the assessee is not taxable under the provision of section 56(2) (ix) because there are no findings on the record in respect of forfeiture of the advance received against the property. The relevant extracts of provision of section 56(2) (ix) are reproduced as under:

"Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if-

- (a) Such sum is forfeited; and*
- (b) The negotiations do not result in transfer of such capital asset."*

Heard the arguments of both the parties and perused the material available on record.

10. We find that the Id. CIT (A) interspersed the provisions of Section 2(47) and Section 56(2)(ix). It is a fact that the assessee has purchased the said property at Rs.1,30,75,400/- and sold for Rs.1,24,44,400/-. The loss of Rs.6,31,000/- is treated as short term capital loss. Once, the receipt of the amount is treated as receipt from the sale of the property, the loss or the gains have to be treated under the relevant head of the income for taxation purpose. It is not in dispute that the amount received is against the sale of property but not as any advance. Further, we have also gone through the details of purchase of the property by the assessee and also sale of said purchased property. The facts reveal that the property in question is on account of booking made by the first party, then

purchased by assessee and then sold by the assessee. Thus, there are only transfer agreements without resorting to registration of the document at different times. In crux, these transactions were "sale of booking of plots". Since, the sale & purchase of the property is not in dispute, the natural corollary is to treat the profits or losses alike under the relevant head which in this case is "capital gains" and since the period is less than three years, we hold that it would be "short term capital loss".

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

Order Pronounced in the Open Court on 16/03/2022.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 17/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR