

IN THE INCOME TAX APPELLATE TRIBUNAL "B(SMC)"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.272/Kol/2022
Assessment Year: 2012-13

Shaktiraj Holding and Construction P Ltd.....Appellant
C/o. S. N. Ghosh & Associates,
Advocates, 2, Garstin Place,
2nd Floor, Suite No.203,
Off Hare Street, Kolkata-1.
[PAN: AADCS7143J]

vs.

ITO, Ward-5(1), Kolkata.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the appellant.

Shri Manas Mondal, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 26, 2022

Date of pronouncing the order : July 26, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 14.05.2018 of the Commissioner of Income Tax (Appeals)-2, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue involved in this appeal is as to whether the profits earned by the assessee on the sale of land are to be assessed as income from business or under the head 'capital gains'.

3. The undisputed facts as noted by the Assessing Officer are that the assessee is in the business of developing of land and selling flats and building etc. The assessee had purchased a land which the assessee treated as stock-in-trade. However, the assessee could not develop the said land and sold the land as such. The Assessing Officer observed that since the selling of the land was not included within the business activity of the assessee company, he, therefore, assessed the profits on the sale of land under the head capital gains as against business income claimed by the assessee.

The Id. CIT(A) confirmed the findings of the Assessing Officer.

4. At the outset, the Id. Counsel for the assessee has submitted that since the assessee is in the business of developing of land and building, therefore, the land was held as stock-in-trade. That merely because the assessee could not develop the land that does not mean that the land was held as investment. That the purchase of land itself was for the business activity of the assessee and the same was held as stock-in-trade from the date of purchase itself.

5. We are convinced with the above argument of the counsel for the assessee. There is no dispute that the land, in this case, was purchased by the assessee and kept from the very beginning as stock-in-trade. Merely because the assessee could not develop the land and sold as such, that does not change the nature of the asset held by the assessee. The issue is otherwise is squarely covered by the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Kan Construction and Colonizers (P) Ltd. [2012] 20 taxmann.com 381 (All.) wherein the Hon'ble High Court, in similar circumstances, has observed as under:

“12. Section 50C also uses the word “capital asset.” For applicability of section 50C one of the essential requirements is that an asset should be capital asset.

From the ratio of the various judicial pronouncements referred to above, it can be culled out that whether sale of land is sale of capital asset or stock in trade is essentially a question of fact. There is no rule of thumb to address the said issue. Several principles have been evolved in the judicial decisions, but although are more in the nature of guidelines. The question has to be answered in each case having regard to the circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them in a process of evolution. The inference has to be drawn on a cumulative consideration.

13. Coming to the facts of the present case, the assessee is a builder. Construction of buildings is its business. The assessee has sold number of buildings referred to above, with regard to which there is no dispute. The dispute is with regard to the sale of plots. Investment in purchase and sale of plots by a builder who is indulged in selling buildings is ancillary and incidental to his business activity. It is a matter of record that the assessee has treated the land as stock in trade which finds corroboration from its balance sheet. Stock in trade has been excluded from the definition of capital asset. According to the Webster's New International Dictionary, the 'stock-in-trade' is “a. The goods kept for sale by a shopkeeper. b. The fittings and appliances of a workman.” In other words, the stock-in-trade includes all such chattels as are required for the purposes of being sold or let to hire on a person's trade. According to Stroud's judicial dictionary,

4th Edition, Volume 5 page 2623 “stock-in-trade comprises all such chattels as are required for the purposes of being sold, or let to hire on a person's trade. In Additional Commissioner of Income-tax Vs. Puttu Coal Pvt. Ltd., (1983) 140 ITR 740 (Bombay), the assessee was money lender, who purchased a ship in satisfaction of his major portion of outstanding loan. The ship was considered as stock in trade of the assessee's money lending business.”

6. As observed by the Hon’ble Allahabad High Court that whether the sale of land is sale of capital asset or stock-in-trade is essentially a question of fact. The facts and circumstances of this case, in our view suggest that the land was held by the assessee as stock-in-trade. We, therefore, do not find any justification on the part of lower authorities in treating the land as capital asset. We, therefore, allow the appeal of the assessee and direct the Assessing Officer to compute income on sale of land as business income of the assessee.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 26th July, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 26.07.2022.

RS

Copy of the order forwarded to:

1. Shaktiraj Holding and Construction P Ltd
2. ITO, Ward-5(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches