

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.09/Kol/2021
Assessment year: 2017-18

ITO, Ward-50(1), Kolkata.....Appellant

vs.

Dhirendra Nath Samaddar.....Respondent

Uttrapan Complex, DS-IV,
2nd Floor, Manicktala Civic Centre,
Sem.VIIM, Kolkata- 700054.
[PAN: AJJPS8002J]

Appearances by:

Shri Manish Tiwari, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 24, 2023

Date of pronouncing the order : February 24, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 03.09.2020 of the Commissioner of Income Tax(Appeals)-15, Kolkata [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue in this appeal has taken the following grounds of appeal:

"1. Whether Learned Commissioner of Income Tax(Appeals)-15, Kolkata was justified in deleting the addition made by Assessing Officer amounting Rs.2,07,00,000/- as business income instead of capital gain income allowing exemption u/s 54 of the I.T. Act, 1961.

2. That the department craves leave to add modify or alter the above grounds of appeal and/or adduce additional evidence at the time of hearing of the case.”

3. The short issue involved in this appeal as to whether the consideration received by the assessee on account of sale of property is to be treated as business income as held by the Assessing Officer or as capital gains income as claimed by the assessee.

4. The brief facts of the case are that the assessee had purchased a land about 10-12 years ago and kept it as investment and also incurred expenditure on its improvement. Thereafter, the assessee entered into a joint development agreement (JDA) with some developer and agreed for the sale consideration as percentage on the actual sale of flats developed and sold by the developer. The Assessing Officer held that since the sale consideration was, in the shape of percentage of sale consideration of flat, therefore, the income earned by the assessee on the transfer of the said land as per the JDA was to be treated as business income of the assessee, whereas, the assessee had shown this aforesaid income as capital gains. The assessee also claimed cost of acquisition, improvement and also claimed deduction u/s 54B of the Act while offering capital gains for taxation. The Assessing Officer, however, treated the entire sale consideration received by the assessee as business income of the assessee.

5. Before the CIT(A), the assessee claimed that the land was always treated as capital asset/investment by the assessee. That only quantum of the sale consideration was fixed as a percentage of the consideration received by the developer but that itself does not tantamount to be business income of the assessee. It was submitted that the sale proceeds received from the prospective buyers by the developer may be business

receipts of the developer, however, so far as the assessee was concerned, the assessee had transferred the land which was purchased by the assessee about 10-12 years ago and that merely because the assessee had entered into a JDA, that does not mean that the income received, by the assessee from the sale of the said land, should be treated as business income of the assessee. It was further submitted that even otherwise, the Assessing Officer treated the entire sale consideration as business income of the assessee and did not allow the deduction of cost of acquisition and expenditure of improvement of land.

6. The ld. CIT(A) considering the above submission of the assessee held that all the documentary evidences suggest that the assessee has kept the land as a capital asset and further all the evidences of indexed cost of improvement was furnished. Since the appellant has held the property as capital asset and not stock-in-trade, therefore, the ld. CIT(A) allowed the claim of the assessee and held that the income from the sale of the property is to be treated as long-term capital gains and further allowed the cost of improvement, indexation and also allowed the deduction u/s 54B of the Act.

7. The ld. counsel for the assessee has invited our attention to the copy of the notice issued on 14.08.2018 u/s 143(2) of the Act to submit that the case of the assessee was selected for limited scrutiny on the following ground:

i. Deduction/Exemption from capital gains

The ld. counsel, in this respect, has submitted that the case of the assessee was selected only for limited scrutiny in respect of deduction/exemption claimed from capital gains u/s 54B of the Act.

Therefore, the Assessing Officer was supposed to restrict his scrutiny regarding the liability of the assessee to claim deduction u/s 54B of the Act and the Assessing Officer was not supposed to go into the issue as to whether the sale consideration received by the assessee was business income or capital gains.

8. We find force in the aforesaid contention of the assessee. The case of the assessee was selected for limited scrutiny to examine the claim of deduction/exemption out of capital gains earned by the assessee. There was not any mandate to the Assessing Officer to examine the issue relating to the nature of the income earned by the assessee as to whether the same was treated as business income or capital gains and there is no allegation of the Assessing Officer that the assessee is otherwise not entitled for deduction u/s 54B of the Act. In view of this, we do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

9. In the result, the appeal of the Revenue stands dismissed.

Kolkata, the 24th February, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 24.02.2023.

RS

Copy of the order forwarded to:

1. ITO, Ward-50(1), Kolkata
2. Dhirendra Nath Samaddar
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

I.T.A No.09/Kol/2021
Assessment year: 2017-18
Dhirendra Nath Samaddar

//True copy//

By order

Assistant Registrar, Kolkata Benches