

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE 'H' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 2002/Del/2021
Assessment Year: 2010-11**

Income-tax Officer,
Ward 10(3), Delhi.

(Appellant)

Versus Grow More Buildtech Pvt. Ltd.,
Plot No. 77, S.A. House,
Sector-44, Gurgaon.

PAN: AACCG3841L
(Respondent)

**C.O. No. 03/Del/2022
(in ITA No. 2002/Del/2021)
Assessment Year: 2010-11**

Grow More Buildtech Pvt. Ltd.,
Plot No. 77, S.A. House,
Sector-44, Gurgaon.

(Appellant)

Versus Income-tax Officer,
Ward 10(3), Delhi.

(Respondent)

Assessee by : Dr. Rakesh Gupta, Advocate &
Sh. Somil Agarwal, Advocate
Revenue by : Sh. Vivek Vardhan, Sr. DR

Date of hearing : 14.06.2023
Date of pronouncement: 14.06.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned appeal by the Revenue and cross objection by the assessee arise out of order dated 20.01.2022 of learned

Commissioner of Income-tax (Appeals)-4, New Delhi for the assessment year 2010-11.

2. The dispute in the present appeal is confined to deletion of addition made of Rs.3,37,91,810/- on account of income from sale of land.

3. Briefly, the facts are, the assessee is a resident corporate entity. In the assessment year under dispute, the assessee filed its return of income on 25.09.2010 declaring nil income. Subsequently, the Assessing Officer received information indicating that the assessee has entered into an agreement to sale dated 04.12.2009, wherein, it had transferred/sold its right over a piece of land to M/s. Vatika Ltd. for a total consideration of Rs.7.00 crores. Whereas, the assessee has not offered the profit out of such sale for taxation in the impugned assessment year. He observed that not only the assessee has received the full and final payment of the entire sale consideration of land during the year but has also handed over physical possession of land to the purchaser. Based on such information, the Assessing Officer reopened the assessment u/s. 147 of the Act. In course of assessment proceedings, the Assessing

Officer called upon the assessee to explain why the income from sale of land should not be brought to tax in the impugned assessment year. In response, the assessee submitted that, though, the agreement to sale was entered into in the impugned assessment year, however, the sale transaction was completed in the assessment year 2011-12 on registration of sale deed. It was submitted that since the sale was completed in assessment year 2011-12, the assessee has offered the profit from sale of land to tax in the return of income filed for the assessment year 2011-12. Thus, it was submitted, no taxable event happened in assessment year 2010-11. The Assessing Officer, however, did not find merit in the submissions of the assessee. Taking note of the fact that the assessee has entered into the agreement to sale in the impugned assessment year and has received the sale consideration of land, the Assessing Officer brought the profit on sale of land to tax in the impugned assessment year. The assessee contested the addition by filing appeal before learned first appellate authority. Being convinced with the submission of the assessee that the sale transaction was completed in assessment

year 2011-12, wherein, the assessee has offered the profit from sale of land to tax, learned Commissioner (Appeals) deleted the addition.

4. We have considered rival submissions and perused materials on record. Undisputedly, the sale deed, evidencing transfer of land from the assessee to the buyer, was registered before the competent authority in financial year 2010-11, relevant to assessment year 2011-12. Though, it may be a fact that the assessee had entered into the agreement to sale in financial year 2009-10, relevant to assessment year 2010-11, however, not only the agreement to sale was an unregistered document, but the completion of sale transaction is subject to fulfilment of various conditions. It is observed, the assessee was the owner of licensed land admeasuring 7.35 acres, out of which, the assessee wanted to sell land admeasuring 7 acres for development of group housing colony. For developing the said project, the assessee entered into an agreement with M/s. Vatika Ltd. However, the assessee needed to transfer the license in respect of such land in favour of the developer. For this purpose, the assessee sought permission from the Director, Town and Country Planning, Haryana, Chandigarh vide letter dated 21.12.2009 and the

permission was granted to the assessee by the Director, Town and Country Planning, Haryana, Chandigarh on 24.09.2010.

5. As per the terms of agreement to sale, the assessee was required to mutate the land in the name of the buyer. It is observed, the land was mutated in the name of the buyer on 29.12.2010. The final sale deed was executed between the parties and registered in the financial year 2010-11, relevant to assessment year 2011-12. Merely because the assessee had entered into the agreement to sale in financial year 2009-10, relevant to assessment year 2011-12, it cannot be said that the sale transaction was completed in the assessment year 2010-11. It is trite law, the transfer of title in respect of immovable property takes place only through a registered sale deed. Till the property is conveyed by the seller to the buyer through registered sale deed, transfer of title is not complete. Merely because substantial amount out of the sale consideration are received or possession was handed over, would not be sufficient to construe transfer of title over the property. Merely on the basis of agreement to sale, it cannot be said that sale of immovable property has taken place. This is the law laid down by the Hon'ble Supreme Court in

case of CIT vs. Balbir Singh Maini (2017) 398 ITR 531 (SC). Thus, in our view, the Assessing Officer fell into error while holding that the profit on sale of land is taxable in the impugned assessment year.

6. In any case of the matter, the facts on record demonstrate that the assessee has offered the profit from sale of land in the return of income filed in the assessment year 2011-12. The Assessing Officer has also assessed such income at the hands of the assessee in the assessment year 2011-12. Therefore, there is only a timing difference with regard to the assessment of the income from sale of land. Further, once the Assessing Officer has taxed the income in assessment year 2011-12, it could not have been taxed in the impugned assessment year, as it will amount to double taxation of the same income. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the addition. Grounds raised are dismissed. In the result, appeal is dismissed.

7. In so far as cross objection is concerned, learned counsel appearing for the assessee, on instructions, submitted that he does

not want to press it. Accordingly, the cross objection is dismissed as not pressed.

8. To sum up, both, the appeal and cross objection are dismissed.

Order pronounced in the open court on 14/06/2023.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 14/06/2023

*aks/-

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi