

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 4859/DEL/2019 [A.Y 2015-16]

Smt. Usha Gupta  
180-A, Gali Teliyan,  
Tilak Bazar, New Delhi

Vs.

The A.C.I.T.  
Circle - 47(1)  
New Delhi

PAN: AAHPG 2655 G

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 19.10.2023

Date of Pronouncement : 30.10.2023

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the CIT[A]- 16, New Delhi dated 29.03.2019 pertaining to Assessment Year 2015-16.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in upholding the determination of short term capital gain as against long term capital loss by the Assessing Officer in respect of disinvestment of property located at DSM-528, DLF Towers, Shivaji Marg, New Delhi.

3. Briefly stated, the facts of the case are that the assessee filed return of income on 23.10.2015 declaring total income of Rs. 24,87,820/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed sale of property at DSM-528, DLF Towers, Shivaji Marg, New Delhi on which the assessee claimed indexed cost of acquisition from A.Y 2007-08 onwards. The Assessing Officer found that the purchase deed of the said property was executed on 24.01.2013. Therefore, the Assessing Officer came to the belief that the assessee has sold the said property without holding it for a period of more than 36 months and hence it attracts short term capital gain and, accordingly, made addition of Rs. 1,16,81,422/-.

5. Assessment was confirmed by the Id. CIT(A).
6. Representatives of both the sides were heard at length. Case records carefully perused.
7. The entire quarrel revolves around the fact whether the assessee has held the property for more than 36 months. Basis of this quarrel is the claim of the assessee that right in the property was acquired in F.Y. 2007-08 when substantial payments were made whereas the point of the Revenue is that the impugned property was transferred in the name of the assessee on 24.01.2013, therefore, the period of holding starts from F.Y. 2012-13.
8. It would be pertinent to see the Payment Schedule, which is as under:

<u>F.Y.</u>	<u>AMOUNT</u>
2007-08	2,564,322
2008-09	4,500,000
2010-11	2,791,137
2011-12	1,700,173
2012-13	3,190,049
2014-15	<u>161,218</u>
	<u>14,906,899</u>

9. The above figures are not at all in dispute. Therefore, it can be seen from the above chart that substantial payments were made in the earlier F.Y and the assessee acquired a legal right in the said property.

10. Legal right can also be found from the agreement to sell dated 11.11.2010 wherein it has been specifically mentioned that total consideration is Rs. 1,20,29,000/- and the assessee has paid Rs. 70,64,322/- which comes to 59% of the total consideration. This also goes to show that after paying more than 50% of the consideration, the assessee acquired right in the impugned property in F.Y. 2007-08.

11. This right of the assessee was also recognized by DLF Universal Limited who recognized the legal right on 25.11.2010 and issued the following letter:

**DLF UNIVERSAL LIMITED**

DLF CENTRE, SANSAD MARG, NEW DELHI-110 001 TEL. 42102030, FAX 41502144

DLF/CS/78786 N01

25<sup>th</sup> November 2010

Mr. Rajinder Gupta  
D-10, Bhagwan Das Nagar  
Near East Punjabi Bagh  
New Delhi-110026

**Sub: Property No.-DSM-528 in DLF Tower, Shivaji Marg, Delhi.**

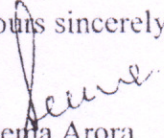
Dear Sir,

This has reference to the transfer documents submitted for the subject property. We confirm to have executed the transfer of the captioned property in your name.

Please find enclosed herewith herewith 'B' copy of Space Buyers agreement no.141 dated 26th June, 2008 along with '6' original receipts duly endorsed in your favor for your reference and records.

Thanking you

Yours sincerely

  
Seema Arora  
Dy. Manager -Customer Services

Encl: as above

12. A perusal of the above letter clearly shows that DLF has given Space Buyers Agreement for the impugned property to the assessee on 26.06.2008.

13. These clinching evidences go on to show that the assessee had legal right in the impugned property acquired in F.Y. 2007-08, thereby making the holding period of more than 36 months and thereby making the capital gains as long term capital gains.

14. Considering the clinching evidences on record, we have no hesitation in holding the property as long term capital asset and the gains arising out of the sale of the said property as long term capital gains. We, accordingly, direct the Assessing Officer to accept the long term capital loss as shown by the assessee.

15. In the result, the appeal of the assessee in ITA No. 4859/DEL/2019 is allowed.

The order is pronounced in the open court on 30.10.2023 in the presence of both the representatives.

Sd/-

**[CHALLA NAGENDRA PRASAD]**  
JUDICIAL MEMBER

Sd/-

**[N.K. BILLAIYA]**  
ACCOUNTANT MEMBER

Dated: 30<sup>th</sup> OCTOBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	