

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No. 3595/Mum/2024 for A.Y. 2013-14

R Bipinchandra And Company, E-1, Hermes House, Mama Paramanand Marg, Opera House, Mumbai 400 004. PAN : AAAGR4394N	Vs.	Income Tax Officer 19(3)(1), Mumbai
(Appellant)		(Respondent)

Appellant By : Shri Biren Gabhawala
Respondent By : Shri R R Makwana, Sr. DR

Date of Hearing : 10.12.2024	Date of Pronouncement : 10.12.2024
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ORDER

Per Justice (Retd.) C V Bhadang, President:

By this appeal the appellant-assessee is challenging the order dated 01.07.2024 passed by the CIT(A)/NFAC, Delhi. The appeal relates to assessment year 2013-14. By the impugned order, the CIT(A) has confirmed the order dated 31.03.2016 passed by the Assessing Officer, thereby treating the amount of sale consideration in respect of the office premises and a car parking space [situated at Bharat Diamond Bourse Complex, Bandra Kurla Complex, Bandra (East), Mumbai] vide sale deed dated 05.11.2012 as Short term capital gains ('STCG' for short).

2. The Assessing Officer has observed and held that the date of allotment i.e. 19.07.2010 or at the best the date on which the complex was leased by MMRDA to Bharat Diamond Bourse, has to be taken as the date of acquisition by the appellant. According to the Assessing Officer the property having been sold within the period of 36 months, the amount of sale consideration has to be treated as STCG. The case of the appellant is that the said property was allotted to the appellant by Bharat Diamond Bourse in the year 1992 and the total consideration of ₹ 3,14,25,076/- was paid in instalments over a period of time from 1991-92 to 2006-07 and, thus, the sale consideration ought to be treated as Long Term Capital Gain (LTCG for short).

3. We have heard the parties and perused record.

4. It is submitted by the learned AR that the allotment letter was formally issued on 19.07.2010. The 'capital asset' within the meaning of section 2(14) of the Income Tax Act, 1961 ('Act' for short) was acquired by the appellant much before. It is pointed out that even the consideration for acquiring the property was paid during the period from 1991-92 to 2006-07. He submitted that definition of 'capital asset' as found in Section 2(14) of the Act is of widest amplitude, which is further clear from the use of words "of any kind". He therefore submitted that the authorities below were in error in reckoning the date of allotment i.e. 19.07.2010 as the date of acquisition of the 'capital asset', by the appellant and treating the sale consideration as STCG. Secondly, it is submitted that the Assessing Officer has failed to give the benefit of exemption u/s. 54EC of the Act of Rs 1,00,00,000/- in as much as the appellant had invested ₹50 lacs each in the bonds issued by the National Highway Authority of India Ltd. ('NHAI' for short) and Rural Electrification

Corporation ('REC' for short) on 12.12.2012 and 01.04.2013 respectively i.e. within six months from the date of transfer of the capital asset.

5. On behalf of the appellant reliance is, inter alia, placed on the decision of Bombay High Court in the case of PCIT vs. Vembu Vaidyanathan (2019) 413 ITR 248 and order of this Tribunal dated 10.11.2023 in D K Brothers vs. ITO (ITA No. 2183/Mum/2023 for A.Y. 2011-12) and certain other decisions.

6. The learned DR has supported the impugned order. It is submitted that acquisition of the capital asset, has to be reckoned from the date, on which the letter of allotment was issued and registered and not from any earlier date. It is pointed out that even Bharat Diamond Bourse, which is the predecessor of the assessee, acquired lease hold rights in respect of the property from MMRDA on 31.03.2010. It is thus, pointed out that the appellant could not have acquired the capital asset from Bharat Diamond Bourse from a date prior thereto.

7. We have considered the circumstances and the rival submissions made. The appellant had produced the following documents before the authorities below:

- Application for allotment of office space- letter dated 28th January, 1992
- Statement of payments made for purchase of office along with copies of receipts (65) issued by Bharat Diamond Bourse for each payment.
- Allotment letter dated 09.07.2008
- Copy of Purchase of Bonds- REC and NHA I

We find that the appellant vide his letter dated 11.3.2016 filed on 14.3.2016 contended that the allotment and possession of the property was handed over in

2006 and thus the property was held by the appellant for more than 36 months and hence the asset in question was long term capital asset. The documents that were provided to establish that the premises were in fact allotted and in possession of the assessee and therefore had rights to the property as under:

1. Letter dated 24.2.2006 to The Secretary, Bharat Diamond Bourse, and Undertaking dated 22.2.2006 filed along with the letter, for commencement of interior work in the allotted office.

2. Letter dated 9th October 2006 received from Bharat Diamond Bourse towards intimation for tiling/flooring work.

3. Letter dated 28.10.2006 to Bharat Diamond Bourse, submitting the plan and requesting permission to work.

4. Letter dated 21.11.2006 to Bharat Diamond Bourse authoring the Bharat Diamond Bourse to hand over the keys of the office to a senior execute of the firm

5. Letter dated to Bharat Diamond Bourse giving Architect, Mr. Vinod Parmar, certifying the completion of civil work in the office dated 7.2.2007. 6. Letter dated 9 July 2008 received from Bharat Diamond Bourse for allotment of office premises and final measurement of the allotted office."

8. The Assessing Officer in the assessment order has observed that during the year under consideration the appellant had transferred two immovable properties viz. office premises and a car parking space at Bharat Diamond Bourse Complex, Bandra on 5.11.2012 for a total consideration of ₹ 3,83,02,625/-, the physical possession of which was given to the appellant on 11.12.2009 while the allotment letter was issued on 19.07.2010. It is on account of this that the Assessing Officer had treated the sale consideration as STCG. It is also a matter on record that the application for allotment of the office premises was made by the appellant in 1992

along with the initial payment of ₹ 13,12,500/- and, thereafter, the balance consideration was paid in instalments from 1991-92 to 2006-07. The CIT(A) has noticed a statement of Shri Nipun Panchmiya, Finance Manager of Bharat Diamonds Bourse stating that 'physical allotment', of the office spaces was done on 11.12.2009 followed by allotment letter on 19.07.2010. On account of this the CIT(A) has concurred with the findings as recorded by the Assessing Officer.

9. We find that similar issue had arisen in the case of D K Brothers (supra) and certain other appeals. The co-ordinate Bench of this Tribunal placing reliance on the decision of Bombay High Court in Vembu Vaidyanathan (supra) has held that the date of allotment of the property is the date of acquisition unless the allotment is cancelled or the allottee has withdrawn from the scheme. In the case of D K Brothers also the assessee had got the property allotted in the year 1992 by making an initial payment and balance payment was made in instalments up to 2009-10. The sale deed was ultimately registered on 15.09.2010 and the property was sold on 08.02.2011, which the Tribunal found could be treated as LTCG having held the allotment to be made in 1992, which is to be taken as date of acquisition for computing the capital gains.

10. A brief reference to the decision in the case of Vembu Vaidyanathan (supra), may be made at this stage. In that case the assessee had acquired a residential unit on the basis of allotment letter issued by the builder in December 2004. The Assessing Officer, however, claimed that the transfer of the asset in favour of the assessee would be complete only on the date of agreement, which was executed in May, 2008. The Bombay High Court has noticed a Circular No.471 dated 15.10.1986 issued by the CBDT, wherein it is clarified that when an assessee

purchases a flat to be constructed by Delhi Development Authority ('DDA' for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purposes of Capital Gains tax, as the date of acquisition. There is a subsequent Circular No.672 dated 16.12.1993 issued by the CBDT, by which similar provisions were made in respect of cases of allotments of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of DDA.

11. We also find that there is a letter dated 09.07.2008, issued by Bharat Diamond Bourse to the appellant, which shows that final area allotted to the appellant is 1145 sq.ft. A perusal of the sale deed dated 05.11.2012 under which the assessee had transferred the capital asset would indicate that there are two agreements to lease dated 01.03.1993 and 18.03.1993 entered into between Bharat Diamond Bourse and MMRDA under which Bharat Diamond Bourse had acquired two pieces of land, which were duly amalgamated into Plot No.C-28 at G Block, Bandra Kurla Complex, situated in CTS No.4207, village Kolkalyan, Taluka Andheri, on which Bharat Diamond Bourse has constructed the commercial complex. Thus, it also cannot be accepted that on the date on which the premises were allotted to the appellant Bharat Diamond Bourse had no authority to do so.

12. In such circumstances, we find that the sale consideration ought to be treated as LTCG.

11. Once the amount is treated as LTCG, the appellant would also be entitled to exemption u/s. 54EC based on the total investment of ₹ 1,00,00,000/- with National

Highway Authority of India Ltd. and Rural Electrification Corporation, subject to its verification.

12. In the result, the appeal is allowed. The Assessing Officer is directed to compute the capital gain as LTCG and to grant benefit of exemption u/s. 54EC subject to verification of investments, as per law.

13. Ordered accordingly.

Order pronounced in the open court on 10th December, 2024

Sd/-
[B R Baskaran]
ACCOUNTANT MEMBER

Mumbai, Dated : 10th December, 2024.
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Sd/-
[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai