

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER..**

I.T.A. No. 233/Nag/2015.
Assessment Year : 2011-12.

Dy. Commissioner of Income-tax,
Circle-1, Nagpur.

Shri Mohan B. Agrawal,
Vs. Nagpur.
PAN AAKPA 1678G.

Appellant.

Respondent.

Appellant by : Shri A.R. Ninawe.
Respondent by : Shri Mnoj Moryani.

Date of Hearing : 27-03-2017.
Date of Pronouncement : 29th March, 2017.

ORDER.

PER SHAMIM YAHYA, A.M. :

This appeal by the Revenue is directed against the order of learned CIT(Appeals)-I, Nagpur dated 30-04-2015 and pertains to assessment year 2011-12. The grounds of appeal read as under :

1. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in directing the AO to treat the transaction as Long Term Capital Gain transaction in spite of the fact that the asset was sold within 3 years of purchase (date of registered sale deed).
2. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in holding that the assessee is eligible for deduction u/s 54F of the I.T. Act, 1961.
2. Brief facts of the case are as under :

The AO in the course of assessment proceedings noticed that the assessee has shown the long term capital gains of Rs.1,06,11,152/- on sale of plot of civil lines known as Rajakothi, Nagpur. The AO in his order has stated that the assessee along with his four brothers (all having equal shares of 1/5th) had entered into an agreement with Smt. Nirmala Madhukar Kolte for purchase of the said property. However, due to some dispute the sale deed could not be executed. Further that a registered sale deed was executed only on 18-04-2009 on the basis of compromise deed passed by Hon'ble High Court on 01-01-2007 which was modified by another decree order dated 01-09-2009. Thus by virtue of the sale deed executed on 18-04-2009 pursuant to the compromise deed and the modified compromise decree executed on 02-01-2007 and 01-09-2008 respectively the assessee got the possession of the land. The said land was sold by the assessee along with other co-owners to Shri Balbir Singh Pritam Singh Renu on 20-08-2010 for a consideration of Rs.5,51,00,000/-. Thus according to the AO the assessee had sold the plot of land within a period of 15 months of getting the possession of the land. On these facts the AO held the gain to be short term capital gain.

3. Upon assessee's appeal learned CIT(Appeals) decided the issue in favour of the assessee by holding as under :

“6. I have carefully considered the submissions of the AR of the appellant, the order of the AO and the material on record. It is an undisputed fact that the seller of the property was directed to execute a sale deed in favour of the plaintiff, the purchasers as per the terms of the agreement dated 15.02.1983 in the decree passed by the Hon'ble 2nd Jt. Civil Judge Nagpur on 13.07.1995, the plaintiff, the appellant accordingly made the balance payment of Rs.13,38,300/- to the seller and the seller has accepted and acknowledge the receipt of the same. Thus, once the terms of the contract entered on 15.02.1983 have been complied with and accepted by both the parties, in pursuance to the court decree order dated 13.07.1995, the contract becomes final. There is also no dispute as regards to

the fact that the plaintiff deposited the balance amount of Rs.13,38,300/- in the court within two months from the date of decree passed by the Hon'ble court. Accordingly, pursuant to a compromised decree of High Court passed on 02.01.2007, subsequently rectified on 01.09.2008, the sale deed was executed on 18.04.2009 between the seller and the plainiff, the appellant in respect of the land area admeasuring 1453.71 sq. meteres as per the decree order of the Hon' ble High Court. It is also an undisputed fact that the shares falling to the purchasers pursuant to the courts decree order were registered by a deed of sale on 18.04.2009 on the valuation of the property which was mentioned in civil suit No.41 of 1987 and the shares were not registered on the valuation as on the date of registration of the sale deed on 18.04.2009 because the right, title and interest In the said property got with the appellant with effect from 1987 as the decree passed was in relation to the suit no. 41 of 1987. Therefore, there is substantial force in the contentions of the AR of the the appellant that the **"order of the court determining the rights of the parties to any property in a suit is always retrospective in effect."** Thus the right title and interest In the property got vested with the appellant on the value of the property as embedded in suit no.41 of 1987 by virtue of compromised court decree passed on 02.01.2007 as modified on 01.09.2008. It is also a fact as emanated from the records that pursuant to the court decree passed on 13.07.1995 in respect of the said suit No.41/ 87 the Hon'ble court upheld the right title and interest in the property of the appellant and ordered to get the property transferred in the name of the appellant. Therefore the contention of the AR of the appellant that the subsequent act of registration of property through sale deed on 18.04.2009 is merely an incorporation of the said right emanated retrospectively from the contract entered between the parties in the year 1987 which has been upheld by the Hon'ble High Court in the compromised decree passed on 02.01.2007 also carries force in as much as that the courts order did not create a new title as on the date of passing the decree by confirming the earlier agreement dated 15.02.1983 and only confirmed and upheld the right of the appellant embedded in the civil suit no. 41 of 87.

6.1 The AR of the appellant In this regard as also placed the reliance in the case of **Rabindra Nath Bannerjee vs. Harendra Kumar**

Chakravarthy reported in **1956 AIR 462 Calcutta**. The AR has also relied on the decision of **4 BOM LR 384**.

6.2 The said property subsequently has been sold to Shri Balbir Singh Pritam Singh Renu Prop. M/s. Pritam Builders on 21.08.2010. It is perused from the record that the compromise decree of the Hon' ble High Court

was passed on 02.01.2007 wherein the Hon'ble High Court confirmed the order of the Hon' ble Jt. Civil Judge in suit no.41/87 dated 13.07.1995. Thus, the compromised decree passed by the Hon'ble High Court which being not appealable has achieved finality has vested absolute right, title and interest in the property in the hands of the appellant in the eyes of the law. Therefore even otherwise the period of 3 years is over as on 01.01.2010 whereas the property in question was sold vide sale dated 21.08.2010. Thus even otherwise, the transaction of sale has been effected after a period of 3 years, therefore, the transaction in question qualifies to be a long term transaction as against the short term capital gain transaction determined by the AO. I, therefore, decline to agree with the version of the AO, treating the transaction as short term capital transaction. It is also significant to mention that the learned AO of one of the co-owners has accepted the transaction on identical facts as long term transaction. Therefore, the transaction in question is directed to be treated as long term capital gain transaction.”

4. Against the above order, Revenue is in appeal before us.

5. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that the assessee has entered into an agreement for the purchase of land in 1983 by way of an agreement and had advanced a sum of Rs.1.50 lakhs. Thereafter due to some legal problems the registration was delayed. Ultimately decree order was passed on 13-07-1995. Learned counsel submitted that the entire sale consideration was deposited in Court as per Court order on 13-07-1995. In these circumstances, learned counsel submitted that since the land has been sold by the assessee on 26-03-

2009 there is no reason why the gain should not be treated as long term capital gain. In this regard learned counsel placed reliance upon the decision of Hon'ble Apex Court in the case of Shri Sanjeev Lal Etc. vs. CIT 365 ITR 389. Learned counsel further referred to the amendment in section 50C by Finance Act 2016 and referred to the following amendment :

“Amendment by the Finance Act, 2016.

By Finance Act, 2016, in sub-section (1), the following provisions shall be inserted with effect from 1st day of April, 2017, namely:-

“Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.”

6. Referring to the above amendment, learned counsel sought support in the present case wherein the agreement has been entered into and the price fixed therein and paid much before the date of actual registration. Hence learned counsel submitted that period of holding should be taken as the period from when the agreement was entered into.

7. Per contra learned D.R. relied upon the order of the AO.

8. Upon careful consideration we note that the agreement for sale was entered into on 15-02-1983. As per the Court decree the entire sale consideration was deposited within two months of the order i.e. 13-07-2095. Subsequently due to further litigation, the registration was delayed. In these circumstances, in our considered opinion, the order passed by the learned CIT(Appeals) is correct. We further draw support from the Hon'ble Apex Court decision in the case of Sanjeev Lal Etc. vs. CIT in Civil Appeal Nos. 5899-5900 of 2014 dated 1st July, 2014. In this case Hon'ble Apex Court has expounded as under :
(Head Note only):

“ In the instant case sale could not be executed because of reasons beyond control of appellants, i.e. pendency of litigation and same was registered only on 24.9.2004 after dismissal of suit- In view of definition of term “transfer”, it can be said that some right in respect of capital asset in question had been transferred in favour of vendee – Therefore, some right which appellants had, in respect of capital asset in question, had been extinguished because after execution of the agreement to self it was not open to appellants to sell property to someone else in accordance with law- A right in personam had been created in favour of the vendee, in whose favour agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money-”.

9. We find that in the present case also the agreement was duly entered in 1983. Thereafter pursuant to Court decree the balance amount was also deposited in 1995. Subsequently due to the litigation and circumstances beyond the control of the assessee, the registration was delayed. In these circumstances when the assessee sold the property it cannot be said that the assessee was holding the property for the purpose of computation of capital gain for a period of less than

three years. Accordingly in the background of aforesaid discussion and precedent, we do not find any infirmity in the order of learned CIT(Appeals). Accordingly we uphold the same.

10. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on this 29th day of March, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Nagpur,
Dated: 29th March, 2017.

Copy forwarded to :
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2. AC.I.T., Central Circle-1(1), Nagpur.
3. CIT(Appeals)-(C), Nagpur.
4. C.I.T.-I, Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

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By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.