

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2310/Del./2019
Assessment Year 2010-2011

Smt. Madhu Gangwani, New Delhi – 110 048. PAN ADYPG0306Q C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi. PIN – 110 049.	vs.,	The ACIT, Circle – 30 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, And Shri Somil Aggarwal, Advocates.
For Revenue :	Shri K. Hauthang, Sr. D.R.

Date of Hearing :	23.09.2019
Date of Pronouncement :	01.10.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-10, New Delhi, Dated 12.02.2019 for the A.Y. 2010-2011, challenging the reopening of the assessment under section 147 of the I.T.

Act, challenging the Order of Ld. CIT(A) on the reason that capital gain is not subjected to tax in assessment year under appeal, challenging the addition of Rs.30 lakhs and Rs.3,58,067/- and interest under sections 234A, 234B and 234C of the I.T. Act, 1961.

2. Briefly the facts of the case are that return of income in this case was filed on 14.09.2010 declaring income of Rs.43,41,970/-. The return was revised declaring income of Rs.41,72,080/-. The assessment was reopened under section 148 of the I.T. Act. In this case information was received from ADIT, Investigation that in the course of investigation of suspicious transaction report in the case of Shri Ranish Karki, it came to light that assessee had signed a sale agreement with Shri Rajnish Karki for the sale of property L-1/13, Hauz Khas Enclave, New Delhi for Rs.3,25,00,000/- . During investigation, it was also seen that assessee had 50% ownership in this property and Shri Roop Chand had the remaining 50% share in the property. On 07.08.2008, Sh Roop Chand released the ownership of his 50% share in favour of assessee for Rs.29,00,000/-.

Therefore, assessee became the full owner of the property in question. The property was sold to Shri Rajnish Kharki on 31.03.2009 for a consideration of Rs.3.25 crores. It was also submitted that transfer of property was registered on 01.04.2009 through registered sale deed. The assessee did not showed the capital gain on transfer of this property in A.Y. 2009-10. The assessee has showed the capital gain in the computation of income for assessment year under appeal i.e., 2010-2011 and claimed deduction under section 54 of the IT Act, 1961 of Rs.2,17,12,940/- The computation of capital gain is reproduced in the assessment order. The assessee was asked to explain why the benefit of indexation should not be restricted to the land and building purchased during F.Y. 2005-2006 as 50% share in the property has been purchased during F.Y. 2008-2009. The assessee furnished complete details and agreed with the view of the Department. The capital gain of 50% share in the property will be treated as long term capital gains and remaining 50% will be treated as short term capital gain. Computation of which is noted in the

assessment order. The computation of the assessee was therefore, not found correct. Further computation was made. It was also found from calculation of short term capital gain of assessee, she deducted an amount of Rs.60 lakhs under the Head “Furniture and Fittings”, in support of which, copy of Agreement was filed. It was found that the expenditure is related to the period before the acquisition of the property was made. From the submission of the assessee. it was seen that expenditure made by the assessee was in two parts i.e., Rs.30 lakhs in 2006 and Rs.30 lakhs in 2008. Show cause notice was issued to assessee that furniture and fixture was not allowable deduction. The A.O. ultimately made addition of Rs.30 lakhs. Further, it was found that some expenses were made in the property in the period prior to the date of acquisition for which Rs.3,58,067/- were disallowed. The assessee challenged the reopening of the assessment and the aforesaid additions before the Ld. CIT(A). However, the appeal of assessee has been dismissed.

3. We have heard the Learned Representative of both the parties and perused the material available on record.

4. The first and foremost question raised by the Learned Counsel for the Assessee had been that the transfer of property did not take place in assessment year under appeal, therefore, no capital gain is chargeable in assessment year under appeal. Reassessment is invalid and bad in Law.

5. Section 45 of the I.T. Act provides that any profits and gains arising from transfer of a capital asset effected in the previous year shall, save as otherwise provided in Section 54 etc., be chargeable to Income Tax under the Head "Capital Gains" and shall be deemed to be the income of the previous year in which the transfer took place. Section 2(47)(v) of the I.T. Act provides the definition of "Transfer" – Transfer in relation to capital asset includes – any transfer involving the allowing on new possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in

Section 53A of Transfer of Property Act, 1982. It is, therefore, clear that for levy of capital gains tax, there should be a transfer of capital asset in the previous year relevant to assessment year under appeal. Section 2(47)(v) of the I.T. Act provides transfer of capital asset which includes the transactions involving the allowing of possession of any immovable property to be taken or retained in part performance of contract of the nature referred to in Section 53A of the Transfer of Property Act. Learned Counsel for the Assessee has filed copy of the Registered Agreement to Sell Dated 16.01.2009 in support of the aforesaid property whereby the assessee has agreed to sell the property to the purchaser Shri Rajnish Karki, subject to part payment and part possession have been handed over to the purchaser. This agreement to sell is registered with the Sub Registrar. Thus, conditions of Section 2(47)(v) of the I.T. Act are satisfied in the sense that there is a transfer of immovable property on execution of the registered agreement to sell whereby part possession is of the property in question have been handed over to the

purchaser, subject to part payment. The remaining conditions have been satisfied by handing over the entire possession of the property in question subject to remaining payment on execution of the sale deed dated 31.03.2009. Thus, the transfer of capital asset is completed in previous year relevant to preceding A.Y. 2009-2010. The Revenue has however been relying upon the fact that the sale deed dated 31.03.2009 since registered on 01.04.2009, therefore, the transaction of transfer of capital asset took place in A.Y. 2010-2011 in appeal. We do not agree with the view of the Revenue. Section 47 of the Registration Act, 1908 provides as under:

“47. Time from which registered document operates.— A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

5.1. The Hon’ble Supreme Court in the case of CIT vs. Balbir Singh Maini [2017] 398 ITR 531 held as under :

“The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression "enabling the enjoyment of" takes color from the earlier expression "transferring", so that it was dear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof, the maxim "noscitur a sociis" has been repeatedly applied by Supreme Court. A recent application of the maxim is contained in Coastal Paper Limited v. Commissioner of Central Excise, Visakhapatnam, (2015) 10 SCC 664 at 677, para 25. This maxim is best explained as birds of a feather flocking together. The maxim only means that a word is to be judged by the company it keeps. The idea was to bring within the tax net, transactions, where, though title may not be transferred in law, there was, in substance, a transfer of title in fact.”

5.2. Considering the facts of the case in the light of above discussion, it is clear that agreement to sell was executed and registered on 16.01.2009 whereby the part

possession of the property in question have been handed over to the purchaser subjected to part payment. Therefore, transfer of capital asset completes in preceding A.Y. 2009-2010. This fact is further strengthened by the fact that registered sale deed was executed between the parties on 31.03.2009 whereby the entire terms and conditions are satisfied. The full sale consideration have been paid and possession of the property have been handed over to the purchaser. This fact is further strengthened by Section 47 of the Registration Act whereby it is provided that registered document shall operate from the date of its execution. In these circumstances, we hold that transfer of capital asset had taken place in preceding A.Y. 2009-2010. Therefore, capital gain tax would not be chargeable in assessment year under appeal i.e., 2010-2011. The initiation of re-assessment proceedings are illegal and beyond jurisdiction of A.O. We, therefore, set aside the Orders of the authorities below and delete the entire addition. In this view of the matter, there is no need to decide the other issues involved in the present appeal. Before parting with the Order, we

would like to make it clear that since assessee has declared capital gain in the return of income filed for assessment year under appeal and paid self assessment taxes, therefore, assessee would not be entitled to retract from the statement so made in the return of income. In this view of the matter, we allow the appeal of assessee.

6. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.