

**(2014) 02 CAL CK 0060**

**In the Calcutta High Court**

**Case No : GA 3281 of 2013 and ITAT 180 of 2013**

Commissioner of Income Tax

APPELLANT

Vs

Panorama Developers Pvt. Ltd.

RESPONDENT

**Date of Decision : 17-02-2014**

**Acts Referred:**

**Citation : (2014) 02 CAL CK 0060**

**Hon'ble Judges : Sudip Ahluwalia, J;G.C. Gupta, J**

**Bench : Division Bench**

**Advocate : S. Das Chandra, Advocate for the Appellant; R.K. Biswas, Advocate for the Respondent**

## **Judgement**

1. The Court The Revenue has come up in appeal against a judgment and order dated 16th May, 2013 by which the learned Tribunal dismissed the appeal preferred by the Revenue against judgment and order dated 20th April, 2010 passed by the Commissioner of income tax.

2. The facts and circumstances would appear from the judgment of the Commissioner of income tax. The learned CIT (Appeals) held that-

For the sake of convenience and at the cost of repetition the facts are that the Appellant who is the business of development of land as well as other activities. A plot of land attributable to their share at 145 Rash Behari Avenue, Kolkata was sold for a consideration of Rs. 15550000/-. The land was sold on 22.8.2003 and the book value of the land in the accounts of the Appellant for the asst. Yr. 2006-2007 was at Rs. 6523405/-. In the accounts of the Appellant for the Asst. Yr. 2006-2007 the land value of Rs. 6523405/- was shown as Investments. The Appellant worked out the Cost of Acquisition on Indexation at Rs. 7954387/- and the resultant long term capital gains of Rs. 7595613/- was offered for taxation @ 20%. The impugned land was purchased by the Appellant on 31.5.1999 and was shown as stock in trade in the accounts filed by the appellant as on 31.3.2000. Thereafter, the land remained under the same head as Stock in Trade for the

Financial Years 2000-2001 onwards till 2004-2005 (relevant to Asst. Yr. 2005-2006). For the Asst. Yr. 2005-2006 the accounts of the appellant was prepared and audited and the land was shown as stock in trade and thereafter on the basis of a Board Resolution and discussion by the Board of Directors a revised Balance Sheet was prepared in which land was converted into Investment. It is also not disputed that the revised balance sheet was prepared after the land had been sold and the AO considering this to a crucial aspect of the case held that the appellant's action was an after thought and colourable method for evasion of tax and applied the case of the Supreme Court in the case of Mc. Dowel Co. Ltd. reported in 154 ITR 148. The A/R on the other hand submitted that what had to be understood was as to whether or not the land which was sold constituted a business asset or a capital asset, notwithstanding the fact that the land was shown as stock in trade. ....

The Appellant has pointed out the following facts vis-?-vis the activities of the company which are important and clarify the issue;

- (1) Land was purchased in the year 1999 and sold in the year 2005.
- (2) No activity carried out on the said land and no alterations or modifications were made in the land.
- (3) The Appellant did not purchase or sell any land or building during the period between 1999 to 2005.
- (4) The intention of the Appellant according to it in purchasing the land was for the purpose of investment and for leasing.
- (5) The sale of the land by the appellant was an isolated transaction and cannot by itself constitute a business transaction, even if one of the objects of the Appellant company was development.
- (6) There has been no activity on the land and there has been no purpose or organized activity for the sale of the land.
- (7) The appellant derived rental income from land held as a fixed asset.

I have considered the arguments of the appellant and believe that the activity of business, has not been established conclusively. The conduct of the appellant in the previous years, their actions as apparent from the balance sheet of the previous years and their source of income in the previous years, all point to the fact that there was no business activity and the land was sold during the year on which income had been derived could not be considered to be a business activity.

The case law on the issue discussed in some detail before forms the "raison d'etre" of the argument. In the circumstances, I concur with the appellant that the sale of land be treated as capital gain and not business income.

3. The learned Tribunal concurred with the views of the CIT (Appeals) holding

that-

On a careful consideration of the facts and circumstances of the case, we are inclined to uphold the order of the Id. CIT(A) for the simple reason that the basic facts leading to computation of capital gains was not a choice but in accordance with the provision of Income tax Act, in so far as, the stock in trade could be converted for the purpose of transfer or sale as per the business requirement of the assessee as per facts on record. The computation for the purpose of Long Term Capital Gain would therefore was in accordance with the provision of law which exercise has been undertaken by the assessee was actually the reason was not to be considered against the other business asset. In other words, the computation of capital gains arose on the basis of applying a negative cost in consequence wherein no infirmity was found by the AO was therefore considered appropriately in the order of the Id. CIT(A) who accepted the sale of land was not the business activity for the impugned assessment year of the assessee and was to be considered for taxation on the basis of computation of capital gains done. We, therefore, uphold the same and have no hesitation in dismissing the appeal filed by the Revenue.

4. The question whether the income arose out of any business activity or out of capital gain is essentially a question of fact or a mixed questions of law and fact.

5. Both the CIT (Appeals) and the learned Tribunal agreed as regards the fact that the income arose out of capital gain.

6. Mrs. Das Chandra, learned Advocate appearing for the appellant/revenue could not point out any infirmity in the view taken by the CIT (Appeals) and the learned Tribunal.

7. We are as such of the opinion that the appeal does not raise any question of law far less any substantial question of law. Therefore we refuse to admit the appeal which is accordingly dismissed.

8. We however make it clear that Mrs. Das Chandra pointed out that due to inadvertence in the Memorandum of Appeal particularly in the cause title the name of the appellant has been described as Commissioner of income tax (Appeals). She submits that the word "Appeal" was inadvertently added which should be deleted from the cause papers. Such prayer is allowed. The department is directed to make the necessary correction.