

(2014) 03 DEL CK 0199

In the Delhi High Court

Case No : ITA 114 of 2014 and CM Application 4959 of 2014

Commissioner of Income Tax-XVI

APPELLANT

Vs

K. Ramakrishnan

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Registration Act, 1908 — Section 47

Citation : (2014) 209 DLT 14 : (2014) 363 ITR 59 : (2014) 225 TAXMAN 123

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Suruchi Aggarwal, for the Appellant;

Judgement

S. Ravindra Bhat, J.—The revenue claims to be aggrieved by the order dated 17.5.2013 of the Income Tax Appellate Tribunal (ITAT). The revenue's appeal questioning the deletion of Rs. 55,72,612/- by the CIT(Appeals) was dismissed. It is urged that the findings of the Tribunal, in effect upholding the assessee's contention that the amount sought to be taxed was in fact a long term capital gain is not justified. The learned counsel invited our attention to the provisions concerned i.e. section 54EC and submitted that given the circumstance of the case especially the relevant dates-set out in para 7 of the impugned order, it could not be said that the assessee had acquired interest of the kind that can enable him to say that he "held" the asset for more than 36 months to entitle him to the benefit of long term capital gain. In this case the relevant facts relating to the acquisition of the capital asset, i.e., the HUDA plot and its ultimate disposal of the assessee was considered by the Tribunal and discussed as follows:

5. The Id. counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. Besides addressing the oral arguments, he has also placed before us a brief written synopsis. It has been contended that the Assessing Officer had wrongly treated the capital gain as short-term capital gain and while doing so, had erroneously taken the date of execution of the conveyance deed in favour of the assessee as the relevant date, rather than the

date of allotment of the plot to the assessee by HUDA; that undisputedly, the assessee had booked the plot in question with the HUDA on 18.06.1986 and had deposited the earnest money; that the plot was allotted to the assessee on 03.08.1999; that on receipt of the allotment letter, the assessee had deposited further amounts on various dates, as given in the chart contained in the written synopsis; that by the expiry of the period of sixty days from the date of allotment, i.e., by 03.10.1999, the assessee had deposited 96% of the tentative cost of the plot; that as per the terms and conditions contained in the allotment letter, since the assessee paid the Installment as demanded by HUDA, the assessee was to become the beneficial owner of the residential plot in question; that as per clause 5 of the allotment letter, a letter of "acceptance was to be filed by the assessee along with an amount of Rs. 10,155/-, within thirty days, thereby having paid 25% of the total cost of the plot; that this amount had to be deposited by the assessee in his capacity as the owner of the plot, on allotment, which was done, as evidenced by the receipt of payment; that as per clause 11 of the allotment letter, the right of the assessee in the allotted plot was an absolute right as owner thereof; that this clause prohibited the assessee from transferring the plot except with the permission of HUDA; that this clause stated that it was till the execution of the conveyance deed, that the assessee was not to be treated as owner of the plot; that as per clause 12, execution of the conveyance deed was not made subject to the handing over of the possession of the plot; that thus, right from 1999, when the plot was allotted to the assessee, the assessee was having absolute rights thereon; that in "Jitender Mohan", 11 SOT 594 (Del), it has been held that it is the date of allotment which is relevant for the purpose of computing a holding period and not the date of registration of conveyance deed; that Section 47 of the Registration Act lays down that registration of a document operates retrospectively; that in "Gurbax Singh Vs. Kartar Singh and Others, it has been held that registration of a document would relate back to the date of its execution; that in "Hamda Ammal Vs. Avadiappa Pathar and Others, and M. Syamala Rao Vs. Commissioner of Income Tax, it has been held likewise; that therefore, the Ld. CIT(A) has correctly decided the issue in favour of the assessee; and that as such, there being no merit therein, the appeal of the Department be ordered to be dismissed.

2. In this case the assessee acquired possession of the plot on 12.12.2005 and sold through a registered sale deed dated 9.1.2008. This Court is of the opinion that having regard to the findings recorded by the Tribunal, the assessee had acquired beneficial interest to the property at least 96% of the amount was paid i.e. by 3.10.1999. This Court is supported in its findings by a Division Bench ruling of the Punjab and Haryana High Court in Madhu Kaul vs. CIT, (ITA 89/1999 decided on 17.1.2014).

In view of the reasons the Courts is satisfied that the Tribunal's impugned order does not disclose any error calling for interference.

The appeal is accordingly dismissed.