

Transfer of ownership rights via agreement to sell held as 'transfer', even if possession wasn't given to purchaser

Summary – The High Court of Allahabad in a recent case of Chandra Prakash Jain, (the Assessee) held that where assessee being, owners of a property entered into agreement to sell whereby they transferred their right of ownership in favour of purchasers who on basis of said agreement, resold a part of property and further carried out certain development work, transaction in question was to be regarded as transfer of capital asset within meaning of section 2(47)(v).

Facts

- The assesseees were co-owners of a property. They entered into an agreement to sell said property on 7-9-1991.
- The assesseees claimed that since by aforesaid agreement, they had not transferred the possession, there was no transfer of capital assets within the meaning of section 2(47).
- The Assessing Officer rejected assesseees' explanation holding that execution of agreement to sell resulted in transfer of property under section 2(47)(vi).
- The Tribunal upheld the order of the Assessing Officer.
- On appeal:

Held

- Section 2(47) is definition clause pertaining to transfer in relation to capital asset. The Act being a special Act which consists of specific definition clause in context of capital assets the general principles of transfer as contained in the Transfer of Property Act, 1882 shall not be applicable. It is well settled that Legislature can for the purposes of a special Act provide an artificial definition. Further more than the definition being an inclusive definition it had to be given an expansive meaning.
- In the present case, there is no applicability of section 2(47)(v). Sub-section (v) applies to the transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of the contract. The possession having not been transferred by the agreement dated 7-9-1991, there is no applicability of section 2(47)(v).
- The assesseees were full owner of the property. By agreement dated 7-9-1991, the assesseees transferred their right of owner-ship in favour of purchasers. The Tribunal has noted that no further transaction after agreement dated 7-9-1991 took between the assesseees and purchasers and that was the only transaction, on the basis of which purchasers sold two shops in the year 1995 and

obtained possession in the year, 1998 and carried out all developments. The agreement dated 7-9-1991 was thus, clearly covered by the definition under section 2(47)(vi).

- Further, there is no illegality in the Tribunal's proceeding to examine the case in the light of section 2(47)(vi). All the facts being on record whether transaction is covered by section 2(47)(v) or 2(47)(vi) was well within the domain of the Tribunal while deciding the appeal filed by the department. Thus, the submission of assessee that a new case was made out by the Tribunal cannot be accepted.
- In view of the aforesaid, the Tribunal was fully justified in holding that agreement of sale dated 7-9-1991 amounts to transfer of capital assets by virtue of section 2(47)(vi).