

Date of allotment of land would be its date of acquisition and not the date of sale deed to compute capital gains

Summary – The High Court of Madras in a recent case of S.R.Jeyashankar, (the Assessee) held that where assessee had entered into an agreement with builder for purchase of undivided share of land and construction, date of allotment of undivided share in land was to be adopted as date of acquisition for computing capital gain instead of date of sale deed

Facts

- The assessee had entered into an agreement dated 22-2-2005 for purchase of undivided share of land as well as for construction of home by a project promoted by VHPL. Thereafter, the assessee sold the entire unit by a sale deed dated 10-4-2008 and claimed the difference between the cost of acquisition and sale consideration as long term capital gains.
- The Assessing Officer however, took a view that the undivided share of land was registered on 4-8-2005 and since the property was purchased in the month of August, 2005 and sold in April, 2008, the capital gains arising from sale would be assessed as short term capital gains only and accordingly, the Assessing Officer denied benefit of section 2(29A) made addition.
- On appeal, the Commissioner (Appeals) allowed the appeal filed by the assessee.
- On revenue's appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On appeal before the High Court:

Held

- On the basis of the admitted facts, the Tribunal placed reliance on the decision of the Punjab and Haryana High Court *Mrs. Madhu Kaul v. CIT* [\[2014\] 363 ITR 54/225 Taxman 86/43 taxmann.com 417](#), where an identical issue arose as to whether the date of capital gains should be reckoned from the date of allotment or it should be reckoned from the date of actual sale, which is subsequent to the date of allotment. In effect, the High Court held that the allottee gets the title to the property on issuance of allotment letter and the payment in instalments is only a consequential act upon which delivery of possession to the property flows.
- [Circular No. 471 dated 15-10-1986](#) speaks about the right of an allottee over a property that has been allotted. The other issues like payment of balance instalments, delivery of possession, which takes place after the allotment only, relates back to the original allotment, in the present case, agreement. Therefore, the principle on which long term capital gains should be determined has been clearly indicated in the circular.
- In the light of the above said decisions and the Circular, there is no reason why the same principle should not be applied to all transactions based on agreements in respect of capital asset. It has been

correctly pointed out by the Commissioner (Appeals) as well as the Tribunal following the decision of the Punjab and Haryana High Court that the breach of agreement would only give right to the beneficiary for enforcing the right over the property. Therefore, no reason to differ with the said reasoning.