

Capital gain on sale of property situated in Sri Lanka is taxable only in Sri Lanka

Summary – The Mumbai ITAT in a recent case of Mrs. Shalini Seekond, (the Assessee) held that Income earned on capital gains on sale of immovable property situated in Sri Lanka shall be chargeable to tax only in Sri Lanka under India-Sri Lanka DTAA

Facts

- The case of assessee was selected for scrutiny by revenue under CASS. She had earned capital gains on sale of property situated in Sri Lanka.
- Assessee submitted that such capital gains were taxable only in Sri Lanka as per Article 13 of India-Sri Lanka DTAA.
- The AO and the CIT(A) rejected the contentions of assessee and taxed such long-term capital gains. The aggrieved-assessee filed the instant appeal.

The Tribunal held as under:

- (1) As per Article 13(1) read with Article 13(6) of the India-Sri Lanka DTAA, the capital gain arisen to the assessee from sale of immovable property situated in Sri-Lanka is taxable in Sri-Lanka as the Government of Sri-Lanka has right to tax the same because the immovable property is situated in Sri-Lanka. The Government of India cannot brought the same to tax under the provisions of the Act as the provisions of DTAA will prevail being beneficial to the assessee over the provisions of the Act.
- (2) Even though the word 'may be taxed' is used in Article 13(1) of DTAA between India and Sri-Lanka as the same is to be read in a manner that it takes away the power of the other Contracting State to tax the same income, of which power to tax is vested by virtue of DTAA in the Contracting State in which the immovable property is situated.
- (3) The Central Government in exercise of its powers u/s 90(3) of the Act came out with notification No. 91 of 2008 dated 28.08.2008 whereby it specified that in DTAA whereby any income of resident of India "may be taxed" in the other country, such income shall be included in the total income chargeable to tax in India in accordance with the provisions of the Act and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.
- (4) The said notification no 91 as could be observed from the plain language used is merely procedural in nature and no additional liability is sought to be fastened on the tax-payer by issuance of the said notification the notification under section 90(3) of the Act merely gives a legal framework for clarifying the intent and objective as understood during the course of negotiations of the treaty and thus in our considered view the same shall be applicable to the DTAA from the date of the entering of the DTAA even if the said DTAA is entered into prior to coming into force of Section 90(3) of the Act on 01-04-2004.

- (5) Thus, the income of the assessee earned on capital gains on sale of immovable property situated in Sri Lanka during relevant previous year shall be chargeable to tax only in Sri Lanka. While the same income shall be included in the income of the assessee chargeable to tax in India under the provisions of the Act and the relief shall be granted in the manner laid down in the notification no 91 read with India-Sri Lanka DTAA and provisions of the Act.