

Rajkot ITAT taxes capital gains in year of registration of sale agreement

Summary – The Rajkot ITAT in a recent case of Devendra J. Mehta, (the Assessee) held that where assessee entered into agreement for sale of land on 31-3-2008, sale consideration was paid only on 15-12-2008 and sale deed was registered on 10-1-2011, transfer could not be recognized in assessment year 2008-09, but in assessment year 2011-12 only

Where at time of execution of agreement, a right in persona was created in favour of transferee/vendee, Assessing Officer should remit issue to DVO for determining fair market value on date of transfer of land

Facts

- The assessee entered into an agreement for sale of land on 31-3-2008. The amount of sale consideration was paid on 15-12-2008. The sale deed was registered on 10-1-2011. For the purpose of computing capital gain arising out of sale, the assessee had shown sale consideration of Rs. 50.45 lakhs. Whereas, the Assessing Officer found that as per stamp duty valuation, sale consideration was to be Rs. 4.35 crores and accordingly, determined the long term capital gain.
- On appeal, on value of sale consideration, the assessee contended that the fair market value of the property when the assessee had entered into agreement for the sale of the property in 2008, would be considered for computing gains. The assessee sought to refer the issue of valuation to the DVO under section 50C(2). The Commissioner (Appeals) rejected all contentions of the assessee and concurred with the Assessing Officer's finding.
- On appeal to the Tribunal:

Held

- In agreement for sale of land was entered into on 31-3-2008. Not a single paisa was paid on that date. It was transferred somewhere in the month of December, 2008. Agreement was without any consideration, but a promise of consideration was there. The Revenue pleaded that the assessee himself has recognized the sale in the assessment year 2011-12 when deed was registered. Considering the cumulative effect of these factors *i.e.* non-payment of any consideration at the time of agreement, non-registration of agreement, recognition of sale by the assessee himself in the assessment year 2011-12, the amendment in the Indian Registration Act and Other Related Law Amendment Act, 2001, the transfer cannot be recognized in the assessment year 2008-09. The capital gain tax is to be levied upon the assessee in assessment year 2011-12 only.
- Next fold of dispute is whether alternative contention of the assessee for remitting the matter to the DVO under section 50C(2) ought to be rejected by the Commissioner (Appeals), and the full sale consideration on which stamp duty was paid could only be adopted for the purpose of computing

long term capital gain. Sub-section 2 of section 50C contemplates that in case the assessee has alleged that value adopted by stamp valuation authority exceeds fair market value of the property as on the date of transfer, then the Assessing Officer may refer valuation of capital assets to the valuation officer. The reason for such a mechanism is that stamp duty even in the case of the assessee was only Rs. 21,32,070/-. It was to be borne by the vendee and not by the vendor. Thus, there was no liability upon the assessee as such under the stamp valuation Act. This aspect has enhanced liability of the assessee multi-fold under the Income-tax Act, and due to this reason a mechanism has been provided in the Act for the assessee to demonstrate that actual value received by him was far less than the one adopted for the purpose of stamp duty valuation. Now in the present case, it is to be seen that the assessee has entered into an agreement to sell on 31-3-2008. The time limit for filing a suit for specific performance under the Specific Relief Act has been provided in the Indian Limitation Act, and this limitation is three years from the date of agreement. In case the vendee refused to get sale deed registered, then assessee can only sue for specific performance, persuading vendee to purchase land. In that situation, the assessee would not get anything more than the amount agreed in the agreement. Similarly, there can be a time gap between the date of agreement *vis-à-vis* ultimate registration of sale deed. There can be an appreciation or depreciation in the property. In other words, at the time of execution of agreement in respect of an immovable property, the *right in persona* is created in favour of the transferee/vendee. When such right is created in favour of the vendee, vendor is restrained from selling the said property to someone-else, because vendee in whose favour the *right in persona* is created has legitimate right to enforce specific performance of the agreement, if vendor for some reason is not executing sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is an encumbrance on the property and considering this aspect, the Assessing Officer should have remitted this issue to the file of DVO for determining fair market value on the date of transfer of land. The DVO will have to keep in mind the encumbrance over the property by virtue of sale agreement. It is also pertinent to note that validity or genuineness of the agreement has also to be decided because under the agreement, consideration was promised and not paid at the time of agreement. It was paid on 15-12-2008. The issue is to be set aside to file of the Assessing Officer for re-adjudication. The Assessing Officer shall refer the matter to the DVO as contemplated under section 50C(2). The DVO shall determine fair market value of the property on the date of sale deed keeping in mind the encumbrance over the property by virtue of agreement.