

## **No business profits arose on sale of property just because property development objective was given in MOA of Co.**

**Summary – The High Court of Calcutta in a recent case of Rungta Properties (P.) Ltd., (the Assessee) held that where there was no evidence that assessee undertook business of property development, its immovable property developed through another developer upon executing an agreement would constitute adventure in nature of trade and profit derived from sale of such development would be treated as capital gain**

**Revenue was not justified in treating sums reflected in books of assessee as loan from a company as deemed dividend in assessee's hands as same was to be taxed in hands of common shareholder as per section 2(22)(e)**

**Where Assessing Officer had not brought on records any material to show that transactions in shares of company involved were false or fictitious, loss arising from purchase and sale of shares of said company could not be disallowed**

### **Facts**

- The assessee had been holding an immovable property since the year 1965. It entered into the agreement in 1994 in relation to that property with another company, TRAL. The said development agreement was followed by a supplementary agreement and a Memorandum of Understanding. The arrangement between the assessee and TRAL was that a new structure was to come up in place of the subsisting one at the cost of the developer and the assessee was to get 49.29 per cent of the developed property along with undivided share of land in the same proportion, the rest going to the developer.
- The Assessing Officer treated the gain on transactions from sale of flats as business income. He argued that such development arrangement was an adventure in the nature of trade and the immovable property for the relevant assessment years ought to be treated as stock-in-trade as it had changed its character subsequent to execution of the development agreement.
- The Commissioner (Appeals) held that income derived from the aforesaid transactions ought to be treated as long term capital gains.
- The Tribunal affirmed the order of the Commissioner (Appeals).
- In the instant appeal, the assessee argued that this was gain from improvement of the assessee's property which the assessee held since 1965 and had all along shown in its books as fixed assets. He sought to highlight the fact that the assessee did not itself develop the property and there was no finding on the part of the Assessing Officer that the assessee was involved in the business of real estate at any point of time.

**Held**

- The transactions which the assessee had entered into could not come within the ambit of adventure in the nature of trade.
- So far as assessee in this appeal is concerned, no material has been brought to notice that it had carried on the business of property development. In the absence of any evidence that the assessee undertook the business of property development, the object clause in the memorandum cannot be treated to be determining factor to conclude that this was part of the assessee's regular business. On the same reasoning, reference to property in corporate name of the assessee cannot make the assessee a property development company. The Tribunal as well as the Commissioner have concurrently found that gain of the assessee from the transactions of sale of flats did not constitute adventure in the nature of trade. The orders of the Assessing Officer on the same point for the two other assessment years were also dismissed by the Commissioner and the Tribunal. Thus, there is no perversity in such finding and hence, such finding is confirmed.