

## **Sale of land jointly held with co. not taxable as business profit just because Co. held land as stock-in-trade**

**Summary – The Delhi ITAT in a recent case of Arjun Puri, (the Assessee) held that where assessee, a co-owner of piece of land with a company in which he was a director, sold said land and offered income arising therefrom as capital gain, in view of fact that assessee had purchased land in his own name and, moreover, he was not involved in any trade or business to deal in lands, mere fact that company kept its share in land as stock-in trade, would not a reason to bring assessee's income to tax as business income**

### **Facts**

- The assessee owned a piece of land along with a company PCL in which he was director. There were 4 other co-owners of land.
- All the landowners collectively authorised PCL to enter into and execute the agreement to sell said piece of land.
- The sale proceeds were received in the name of PCL, out of which, the sale consideration received by the assessee in respect of the land owned by him was paid in cash.
- The assessee declared profit arising from sale of land as capital gain. He also claimed deduction under section 54F. The Assessing Officer noted that PCL had kept its share of land as stock-in-trade. He thus issued a show-cause notice to assessee as to why profit earned by him should not be brought to tax as business income.
- In response to said notice, assessee submitted that land was purchased as a capital asset and continued to remain so till it was sold. It was not acquired as stock-in-trade of a business. It was a solitary transaction entered into with intention of earning profit on accretion. Assessee was not a dealer in land. The period of holding showed that the assessee intended to earn capital gain.
- It was thus submitted that just because the land was held by PCL as a stock-in-trade would not ipso facto lead to the inference that the land owned by the assessee was also held by way of stock-in-trade. The A.O. did not accept the explanation of the assessee and held that the income was to be assessed under the head "Business" and denied exemption under section 54F.
- The Commissioner (Appeals), however, accepted assessee's explanation and, thus, set aside assessment order passed by the Assessing Officer.
- On revenue's appeal:

### **Held**

- It is not in dispute that assessee purchased the land in his own name which is proved by purchase deed executed in his favour. There were no material available on record to show that land was acquired as stock-in-trade. It was a solitary transaction entered into by the assessee with an intention of earning profit on accretion. The assessee is not a dealer in land. The assessee entered into the solitary transaction of purchase of land which could not be treated as subject matter of

trading. The land was not acquired for the purpose of dealing in land. The length of period of ownership was from 1995-97 to 2005 which speaks that assessee purchased the property to make investment in capital asset.

- Thus, the intention of the assessee at the time of purchase of property was to make investment in capital asset as an investor. The assessee kept the same as an investment and has never taken into stock-in-trade. No borrowed funds were used or interest paid on any amount for the purpose of investment in the land. There is no frequency of transaction carried out by the assessee. The assessee made re-investment in land for claiming exemption under section 54F. The assessee made investment in capital asset expecting appreciation-in-value in future. The assessee in his individual capacity was not involved in any trade or business to deal in lands in earlier years. The assessee has income from salary and income from other sources, which have been declared in the returns of income for preceding assessment years, which have been accepted by the Department. Therefore, assessee was not regular in trade for sale of the property.
- The assessee was a Director in PCL which is a different legal entity. Merely because PCL held the land as stock-in-trade, does not prove that assessee also held the property as stock-in-trade. The assessee did not make any effort to attract the purchasers, such as opening of an office or to make advertisement to show his intention to deal in property. The motive of the assessee right from the very beginning with respect to acquisition of the property was, to realise the profit on appreciation in its value and never had any intention to indulge in trading activity.
- Merely because the land has been sold under a Common Agreement to Sell for the sake of convenience, would not, make the transaction as Joint Venture. Each landowner had received sale consideration from PCL. It was also alleged by the A.O. that prior to it, assessee had agreements with some other parties, but such agreements were never acted upon between the parties. PCL has substantial land holding as against land holding of the assessee. The assessee incurred small expenses on the property in question which was only 9 per cent of the value. Therefore, decision of the Madras High Court in the case of *CIT v. Kasturi Estate (P.) Ltd.* [\[1966\] 62 ITR 578](#) squarely apply to the facts and circumstances of the case, where, even the expenditure incurred for laying roads, corporation survey, centage filling-up, parcelling into plots and others was not held as 'activity of business' but 'expenditure' for realising better sale price of the capital asset.
- It may also be noted here that revenue Department in the case of one of the owner of the land in question 'G' in the scrutiny assessment under section 143(3), accepted similar claim of capital gains declared by her and claim of exemption under section 54F has been allowed. Since in the case of one of the co-owner of the land in question, revenue has accepted the claim of capital gains and exemption under section 54F, the case of the assessee cannot be taken differently who is also an individual and claimed the investment in property as an investor. Therefore, case of the assessee cannot be compared with other companies *i.e.*, PCL and others who were holding the properties as stock-in-trade.

- Thus, there is no infirmity in the order of the Commissioner (Appeals) in holding that sale of land was sale of capital asset and the profit was in the nature of capital gain. The claim of assessee for exemption under section 54F has, therefore, been rightly allowed in favour of the assessee.
- In the result, appeal of the department is dismissed.