

Capital gains on sale of building along with land to be bifurcated if dep. was claimed on building

Summary – The Chandigarh ITAT in a recent case of Het Ram Sharma., (the Assessee) held that On acquisition of land on which there was a hotel, part of compensation related to land would be subject to LTCG while that on hotel building to STCG

Facts

- During the year the assessee was paid compensation of Rs. 30.11 lakh on acquisition of his property by the land acquisition officer. However, no capital gain was declared in the return of income.
- A notice was issued under section 148 to the assessee, in response to which the assessee filed return shown *NIL* capital gain.
- Taking note from the detail that one of the buildings acquired was a residential building on which Long Term Capital Gain arose and further taking the indexed cost of the property from the said detail, the Assessing Officer computed the Long Term Capital Gain on the same. No deduction under section 54 was allowed as the assessee could not provide any proof of investment in purchase or construction of a new house before the due date of filing of return of income.
- Further, the Assessing Officer noted that the other building acquired was a hotel /dhaba which was used for commercial purpose and, hence, was a business asset of the assessee and the capital gain earned from the sale thereof was Short Term Capital Gain within the meaning of section 45 read with section 50. The Assessing Officer calculated depreciation on written down value of the Dhaba / Hotel building as on 1-4-2007 *i.e*; the beginning of the year and reducing the same from the compensation received, calculated STCG earned by the assessee at Rs. 11.12 lakh.
- On appeal, the Commissioner (Appeals) allowed the assessee deduction under section 54 on the long term capital gain assessed by the Assessing Officer while the short term capital gain assessed was upheld as such.
- On appeal:

Held

- In the present case, even if it was considered that the assets sold constituted both land and building, though the said fact is not emanating from the record, it cannot be said to be the sale of an undertaking as such. In fact, the Land & Building of the assessee was compulsorily acquired by the Government for the purpose of building a dam as is the undisputed fact emanating from the orders of the authorities below. Therefore, the asset transferred was not the undertaking of the assessee as such and no benefit can be derived from the aforesaid decision of the Madras High Court.
- The assessee has stated at Bar that it had received compensation for the transfer of both the land and building. In such a case, the compensation received has to be bifurcated between the land and building and it is only the compensation received on account of building which is to be treated as

Short Term Capital Gain since undisputedly the building is a business asset of the assessee who is using it as a dhaba/hotel. The land, on the other hand, is a non-depreciable asset and capital gain earned on account of transfer of the same tantamounts to Long Term Capital Gain. But since the fact that the assessee was compensated to the extent of Rs.12.52 lakh for both the hotel/dhaba and the land on which it was built, does not emanate from the records but has been stated so at bar by the assessee. Therefore, it will be fit to restore the issue to the Assessing Officer to determine the facts regarding the compensation received of Rs.12.52 lakh as to quantum received on account of land and building separately and thereafter decide the issue in accordance with law. The claim of the assessee to deduction under section 54 on the long term capital gains earned, if any, being consequential to the determination of the any long term capital gain earned by the assessee, is also therefore being restored to the Assessing Officer.