

Date of holding property to be taken from date on which lease-cum-sale agreement holder paid entire consideration

Summary – The Bangalore ITAT in a recent case of Bhatkal Ramarao Prakash, (the Assessee) held that where assessee under a lease-cum-sale agreement, had paid entire consideration for site originally allotted to it in 2001, date of possession of property by assessee as lessee cum agreement holder with right to obtain conveyance of absolute interest over land that was leased, had to be accepted as date of holding of property and not date on which absolute conveyance was made to assessee

Assessee would be entitled to claim deduction under section 54F in respect of investment made in entire property which constituted single house but was bifurcated with two door numbers for ground and first floor with common entrance in ground floor, only to earmark share of beneficiaries

For claiming deduction of capital gains under section 54F, new residential house need not be purchased by assessee in his own name

Facts

- The assessee acquired RR property from Ideal Homes Co-op. Building Society Ltd., Bangalore, under a lease-cum-sale agreement dated 22-3-2001. As per the terms of lease-cum-sale agreement, the assessee paid a sum of Rs. 60,000 towards the value of site on the date of agreement for lease-cum-sale. As per the further terms of this agreement, the assessee had to construct the building on the site within two years from the date of agreement. The assessee should not alienate the site for a period of 10 years.
- The assessee complied with the aforesaid terms of lease-cum-sale agreement and was in possession of the property and put up construction on the site on the date of agreement and subsequently.
- The society by registered sale deed dated 31-8-2014 conveyed the property to the assessee. The fact that the assessee was allotted the site as per the terms of lease-cum-sale agreement dated 22-3-2001 and the fact that assessee complied with all the conditions in the said lease-cum sale agreement have been acknowledged in the sale deed.
- The assessee sold the site as well as the building constructed thereon under a Sale Deed dated 3-12-2014. The assessee computed long-term capital gain on the sale of this property by taking the date of lease-cum-sale agreement *viz.*, 22.03.2001 as the date of acquisition of the property. Since the property was held by the assessee for more than 3 years, the assessee claimed that the capital gain arising on transfer was a long-term capital gain and accordingly claimed deduction under section 54F by investing the capital gain in acquisition of another property.
- The Assessing Officer, however, construed the date of acquisition of property by the assessee as 31-8-2014, the date on which the society made an absolute conveyance to the assessee. Since the assessee sold the property on 3-12-2014 and the date of sale being less than 36 months, the

Assessing Officer construed the capital gain on sale of property as a short-term capital gain and accordingly disallowed the deduction claimed under section 54.

- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- At first, the definition of the term 'Short-term capital gain' has to be looked into because what is not short-term capital gain is Long-term capital gain and that is the way Long-term capital gain has been defined in the Act. Short-term capital gain means capital gain arising from the transfer of a short-term capital asset. Short-term capital asset has been quite exhaustively defined, covering several situations. For the present appeal the portion of the definition which says short-term capital asset means 'a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer' alone is relevant.
- It is not in dispute that the assessee paid cost of the site as early as 22-3-2001 and was in possession of the property as lessee-cum-Agreement holder with right to obtain conveyance of absolute interest over the land that was leased. The expression 'held by the assessee' in the context of section 2(42A), is rather ambiguous, in the sense that it does not speak of the date of vesting of legal title to the property. Even the provisions of section 2(47)(v) and (vi) which defines what is 'transfer' for the purpose of the Act, considers possessory rights as akin to legal title. It is therefore necessary to look into the policy and object of the provisions giving exemption from levy of tax on capital gain. In the instant case, as has been already seen, the assessee had paid the entire consideration for the site originally allotted as early as in the year 2001. The assessee had performed its part of the contract with the society. Therefore the claim of the assessee that it held the property from 22-3-2001 has to be accepted, keeping in mind the policy and object of the provisions giving exemption from levy of tax on capital gain.
- The Karnataka High Court in the case of *CIT v. Dr.Shakuntala* IT Appeal No.117 of 2006, dated 19-9-2007 had to deal with a case where the assessee got a site allotted in her favour by the Bangalore Development Authority (BDA) under a lease-cum-sale agreement dated 28-2-1981 and was put in possession of the site allotted. She got absolute sale deed from BDA only on 19-9-1996. She sold the property on 25-3-1997. The question before the Karnataka High Court was as to whether the capital gain can be regarded as LTCG or STCG. The case of the revenue was that the period of holding had to be reckoned from 19-9-1996 and the capital gain had to be regarded as STCG. The plea of the assessee was that the holding period had to be reckoned from 18-2-1981 the date on which the assessee got possession of the property under lease-cum-sale agreement was accepted by the Karnataka High Court.
- In the decision of the Karnataka High Court in the case of *CIT v. A Suresh Rao* [\[2014\] 41 taxmann.com 475/223 Taxmann 228 \(Karn\)](#) a similar issue was considered wherein the significance of the expression 'held' used by the legislature has been analysed and explained at length. The High

Court analysed various provisions of the Act pertaining to computation of capital gain under various situations and also circulars issued by the CBDT on this issue and held that it is the point of time at which he holds the property, which is to be taken into consideration in determining the period between the date of acquisition and date of transfer of such capital gain in order to decide whether it is a short-term capital gain or a long-term capital gain.

- In the light of the aforesaid decisions, the capital gain in question in the instant case has to be treated as LTCG as claimed by the assessee.