

Selling various small properties acquired from sale of land is not treated as business activity

Summary – The Chandigarh ITAT in a recent case of Munish Singla, (the Assessee) held that selling various small properties acquired from sale of land is not to be treated as business activity

Facts

- During year, the assessee sold a property and invested sale consideration for purchasing 28 properties. The Assessing Officer treated the income of the assessee from the sale purchase of property as 'business income' against the claim of the assessee of capital gains income.
- On appeal, the Commissioner (Appeals) as well as the Tribunal also upheld the order of the Assessing Officer.
- On the assessee's appeal to the High Court:

Held

- The ITAT stated that the most important question is as to whether the income earned by the assessee from the sale of property is 'business income' or 'capital gains'.
- Merely because assessee after sale of large chunk of land, purchased many small properties including some commercial properties is not sufficient to hold that the assessee was doing regular business in sale and purchase of the immovable property.
- It is immaterial whether the assessee, for the purpose of investment, purchases commercial property or residential property or any agricultural land or otherwise. The motive of the assessee is to be seen whether the assessee's intention is to earn quick profit by way of repetitive transactions of sale and purchase of the properties or to hold the properties for the purpose of investment.
- Therefore, there is no any justification on the part of the lower authorities in treating the income of the assessee from sale of property during the year as business income. The order of the lower authorities on this issue is set aside and the Assessing Officer is directed to treat the income from the sale of property as under the head 'capital gain'. This issue is accordingly allowed in favour of the assessee.