

Capital gains to be taxed in year of execution of sale deed and not in year of registration of sale deed

Summary – The Mumbai ITAT in a recent case of Ashwin C Jariwala., (the Assessee) held that Since registration of sale deed related back to date on which agreement for sale was executed in favour of buyer by owner, capital gain arose from such sale was to be assessed in year of execution of sale deed

Merely because HUF of assessee had not filed return of income, Assessing Officer could not assess capital gain in hand of assessee in his individual capacity

Facts

- The assessee along with other co-owners had sold an ancestral property purchased by his grand father and the share of the assessee in the sale consideration came to Rs. 6 lakhs. The assessee contended that the capital gain was assessable in the hands of his HUF.
- However, the Assessing Officer held that the capital gain was assessable in the individual capacity. Since the assessee had inherited the ancestral property, the Assessing Officer took the cost of acquisition as *NIL*. Accordingly, the Assessing Officer assessed the entire amount of Rs. 6 lakhs in the hands of the assessee.
- On appeal, the Commissioner (Appeals) also confirmed the findings of the Assessing Officer. However, the Commissioner (Appeals) held that the conveyance of the property would get concluded only upon completion of registration formalities, which in this case got completed on 1-7-2008. Accordingly, the capital gain was assessable during the year relevant to the assessment year 2009-10 and, the cost of acquisition should be taken as the market value as on 1-4-1981. The Commissioner (Appeals) estimated the market value of the property as on 1-4-1981 at Rs. 1 lakh and held that the assessee would be entitled to indexation benefit proportionate to his share on the value of Rs. 1 lakh.
- In instant appeal, the assessee contended that the conveyance deed of the property was executed on 31-3-2008 and the possession of the property was also given on that date and hence the capital gain, if any, was assessable in the assessment year 2008-09 and not during the year under consideration. He also submitted the capital gain, if any, was not assessable in his individual hands, since the assessee had received only his share from the HUF. Further, he submitted that there was no basis with the Commissioner (Appeals) for estimating the market value as on 1-4-1981 as Rs. 1 lakh.

Held

- Admittedly, the conveyance deed was executed on 31-3-2008 and the same was registered under the Registration Act on 1-7-2008. On a perusal of the conveyance deed, it is noticed that the possession of the property was also given to the buyers on 31-3-2008 and the assessee along with other co-owners have received the entire consideration before 31-3-2008. Hence, the contentions

of the assessee that the impugned property has been transferred during the year relevant to the assessment year 2008-09 is correct and hence the Assessing Officer was not justified in assessing the same in assessment year 2009-10. The revenue submitted that the registration of deed on 1-7-2008 was only a formality and upon the registration of the deed, the conveyance would date back to the date of execution of the deed. The contentions of the assessee that the registration of the conveyance deed relates back to the date on which the agreement for sale was executed in favour of the buyer by the owner is correct. In view of the above, the capital gain, if any, is assessable in assessment year 2008-09 only.

- The next question is whether the capital gain can be assessed in the hands of the assessee herein in his individual capacity. It is noticed that the assessee has contended before the Assessing Officer that the property belongs to the HUF and what he has received is only a share from the HUF. However, the tax authorities have rejected the claim on the reasoning that the HUF has not filed return of income and hence the capital gain should be assessed in the individual hands. The approach of the tax authorities cannot be upheld. Merely because the HUF of the assessee has not filed return of income, the Assessing Officer cannot assess the capital gain in the hands of the assessee in his individual status. Since the property has been jointly held by all the family members, the same cannot be said to belong to the assessee in his individual status. In fact, the conveyance deed was also executed jointly by all the co-owners. Accordingly the Assessing Officer was not correct in law in assessing the share of the assessee as capital gain in the individual status.
- In view of the foregoing discussions, the order of the Commissioner (Appeals) on this issue are set aside and the Assessing Officer is directed to delete the assessment of capital gains made in the hands of the assessee herein.