

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.459/LKW/2009
Assessment year:2006-07

Income Tax Officer-VI(3), Lucknow.	Vs.	Smt. Tripta Shahani, C/o Elora Hotel, 3, Lalbagh, Lucknow. PAN:ANBPS0377A
(Appellant)		(Respondent)
Appellant by	Shri Amit Nigam, D. R.	
Respondent by	Shri Abhinav Mehrotra, Advocate	
Date of hearing	25/07/2014	
Date of pronouncement	05/09/2014	

O R D E R

PER A. K. GARODIA, A.M.

This is Revenue's appeal directed against the order passed by learned CIT(A)-II, Lucknow dated 08/05/2009 for the assessment year 2006-2007.

2. In this appeal, the Revenue has raised the following grounds:

"1.1 The learned CIT(A) has erred in law and on facts deleting the addition of Rs.25,22,147/- treated it by Assessing Officer as short term capital gain.

1.2 For doing so, the learned CIT(A) has erred in placing reliance on ratio in 120 TTJ 792 (Mumbai) which is clearly distinguishable on facts."

3. Learned D.R. of the Revenue supported the assessment order whereas Learned A.R. of the assessee supported the order of CIT(A). He also submitted that certificate of Eldeco Infrastructure & Properties Ltd. is

available on page No. 1 & 2 of the paper book as per which it is certified by them that against the original booking on 13/08/2001 in the project Eldeco Residency Greens, Greater Noida, different flat was allotted in the project Eldeco Utopia, Noida and the said allotment was in continuation of the booking made on 13/08/2001. Thereafter, at the time of surrender of the booking on 11/10/2005 that company made a payment of Rs.45 lac to the assessee on surrender of booking. He submitted that under these facts, it has to be accepted that gain is long term capital gain and not short term capital gain. He also placed reliance on the Tribunal decision rendered in the case of Mukesh G. Desai (HUF) vs. Income Tax Officer [2009] 120 TTJ (Mumbai) 792. Reliance was also placed on the other Tribunal decisions rendered in the case of Jagan Nath Singh Lodha vs. Income Tax Officer [2004] 85 TTJ (Jd) 173. Reliance was also placed on the judgment of Hon'ble A.P. High Court rendered in the case of M. Syamala Rao vs. CIT [1998] 234 ITR 140 (AP).

4. We have considered the rival submissions. We find that this issue was decided by CIT(A) as per para 2.4 of his order, which is reproduced below for the sake of ready reference:

"2.4 I have perused the assessment order and have considered the submissions made by the A.R. I find force in the submission of the A.R. as the case of the appellant is similar to the case of Mukesh G. Desai (HUF) (supra) wherein the Hon'ble ITAT, Mumbai held that the exemption u/s 54 would be allowable. Respectfully following the decision of Hon'ble ITAT, Mumbai in the case of Mukesh G. Desai (HUF) (supra), the A.O. is directed to allow exemption u/s 54F of the I.T. Act, 1961."

4.1 From the above para from the order of CIT(A), we find that his decision is on the basis of Tribunal decision in the case of Mukesh G. Desai (HUF) (supra). Moreover, we find that the objection of the Assessing

Officer is that the assessee has earned Rs.40 lac on transfer of flat No. SV-1-06-SF on 11/10/2005 which was allotted to assessee after cancelling allotment of flat No. C-3GF on 24/01/2004 and therefore, the assessee has held the property in question for less than three years and therefore, the gain is not long term capital gain. In this regard, we are of the considered opinion that when the flat No. SV-1-06-SF was allotted to the assessee in continuation of old flat No. C-3GF, allotted to him on 13/08/2001, the date of acquisition of flat sold by the assessee should be considered as 13/08/2001 and hence, the gain in question is to be accepted as long term capital gain. Merely change in the flat without determining any consideration for the old flat cancelled and new flat transferred, it cannot be said that the old flat was sold and new flat was purchased on the date of change. Hence, in the facts of the present case, we are of the considered opinion that no interference is called in the order of CIT(A).

5. In the result, the appeal of the Revenue stands dismissed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/.
(SUNIL KUMAR YADAV)
Judicial Member

Sd/.
(A. K. GARODIA)
Accountant Member

Dated:05/09/2014.

*C.L.Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar