

**ITAT asks the Govt. to bring out a mechanism to ensure tax recovery from ARCs/Banks on the sale of security assets**

The Income Tax Appellate Tribunal, Mumbai Bench (“**the ITAT**”) in the case of **Abbasbhai A. Upletawala v. Income Tax Officer Ward 16(1)(1) [ITA No. 5332/Mum/2015 dated October 21, 2022]** asked the government to bring out a mechanism to ensure tax recovery on the sale of security assets from the Asset Reconstruction Companies (“**the ARCs**”) or banks.

**Facts:**

Mr. Abbasbhai A. Upletawala (“**the Appellant**”) is the director of M/s Abid Steels Co Ltd (“**the ASCL**”) and had given a personal guarantee to, on behalf of the ASCL and in respect of its commercial borrowing from the State Bank of India (“**the SBI**”). The Appellant had owned a land measuring 2291.9 square meters, which he had purchased for Rs. 2 Lakh on August 22, 1983. The Appellant had given it as collateral security for the commercial borrowings to the SBI. The Appellant was also a party to the recovery proceedings before the Debts Recovery Tribunal (“**the DRT**”) as a director and personal guarantor to the ASCL.

The SBI entered into an assignment agreement on March 29, 2004 with Asset Reconstruction Company India Ltd (“**the ARCIL**”), a company registered as a securitization and asset reconstruction company pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“**the SARFAESI Act**”) in which the property offered as collateral security by the Appellant to the SBI was assigned to ARCIL.

The ARCIL then, sold the property to Advent Developers Pvt Ltd (“**the ADPL**”) for Rs. 2,00,00,000 on September 1, 2015 whose market value was of Rs. 2,04,93,500 as per stamp duty valuation. The Appellant was the confirming party to the transaction between ARCIL and ADPL.

The Assessing Officer (“**the AO**”) noted that the confirming party had surrendered all rights, title and interest to the vendor and hence was liable to pay tax on the entire amount of Rs. 2,04,93,500 under long term capital gain and the Appellant failed to mention the same in the assessment for the assessment year 2006-07. The Appellant filed an appeal before the Commissioner of the Income Tax (Appeal) (“**the CIT(A)**”) but no success was achieved.

**Issue:**

Whether the Appellant is liable to pay tax under long term capital gain on the sale of security assets?

**Held:**

The ITAT held as under:

- It is not clear as to what is the date on which transfer took from the Appellant to SBI, neither there is any evidence in form of any documentation or Order of DRT in this regard.
- The matter was remitted to the CIT(A) to record a specific finding on the year of transfer of property from the Appellant to SBI and recomputing the capital gains after giving a due and reasonable opportunity of hearing to the Appellant.
- It was also asked from the Government to seriously consider protecting the legitimate interests by ensuring some mechanism to ensure that the tax liability on the capital gains is duly recovered from the borrower whose property is sold, and when it is not possible to do so on account of the borrower’s genuine financial difficulties, from the person who receives the proceeds of the sale of such assets.
- With the increasing number of cases in which recovery measures are enforced by selling properties, held by the bankers and ARCs as collateral securities, and inevitable

liquidity or bankruptcy issues with such borrowers, there must already be good amount of such avoidable losses to the revenue which should be discontinued.

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