

Tribunal confirms ignoring of tenancy period for computing period of holding

September 26, 2017

In brief

In a recent decision¹, the Mumbai Income-tax Appellate Tribunal (Tribunal) upheld the action of the lower authorities in ignoring the period of tenancy right for the purpose of computing period of holding on sale of immovable property. It was held that the taxpayer did not sell tenancy right in the property but became the owner of the property on payment of consideration.

In detail

Facts

- The taxpayer¹, an individual, was a tenant in an immovable property *vide* agreement entered into in the year 1998. In May, 2010, the taxpayer purchased the said property from the owner *vide* a registered agreement for a consideration. The taxpayer sold the said property in October 2010 for a consideration and offered the gain as long-term capital gain (LTCG).
- The Tax Officer (TO) denied the benefit of LTCG claimed and treated the same as short term capital gain (STCG). On appeal before the Commissioner of Income-tax (Appeals), the action of the TO was upheld.

Issue before the Tribunal

Whether tenancy period is to be considered for the purpose of determining the capital gain?

Taxpayer's contention

The taxpayer emphasised that tenancy right was converted into ownership in May, 2010 on payment of lump sum consideration. Thus, sale of property in October, 2010 was eligible as LTCG.

Revenue's contention

The Revenue contended that the property was held by the taxpayer as its owner for a period of five months. Accordingly, the gain on sale as was STCG.

Tribunal's decision

- The taxpayer did not sell tenancy right, rather he transferred the property as

its absolute owner.

Therefore, he held the said property as its absolute owner only for a duration of five months.

- The Tribunal further held that the judgements relied upon by the taxpayer were distinguishable on facts and hence not applicable.

The takeaways

Tenancy period shall not be considered for the purpose of computing period of holding where a person becomes absolute owner of the property subsequent to such conversion/ transfer of tenancy rights

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

¹ ITA No. 1125/ Mum/ 2015

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