

Date of agreement to sell, not date of sale deed, relevant for determining the period of holding, if all conditions prescribed for transfer are satisfied

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In brief

In a recent decision¹, the Jaipur bench of the Income-tax Appellate Tribunal (Tribunal) has held that for the purpose of computing the holding period, the date of agreement to sale will be regarded as the date of transfer if all the conditions prescribed under section 2(47) of the Income-tax Act, 1961 (the Act) have been complied.

In detail

Facts

- The taxpayer was a company engaged in the business of agency. Taxpayer had purchased an agricultural land from sellers *vide* agreement to sale dated 11 April 2007.
- The taxpayer was handed over the physical possession of the land as per the aforesaid agreement.
- The sale deed was executed by the landowners in favour of the taxpayer on 13 April 2010.
- This was subsequent to conversion of land from agricultural to non-agricultural land.
- The taxpayer sold the land to two different parties in

FY 2011-12 and FY 2012-13 and offered the gains as long-term capital gains to tax.

- The Tax Officer (TO) considered the date of execution of sale deed as date of purchase and sought to tax the gains as short-term capital gains instead of long-term capital gains.
- The Commissioner of Income-tax (Appeals) upheld TO's view.

Issues before the Tribunal

Whether the date of execution of sale deed as against the date of agreement to sale is relevant for the determination of transfer of land under section 2(47) of the Act read with section 53A of the Transfer of Property Act, 1882 (TOPA)?

Revenue's contentions

- Agreement to sale dated 11 April 2007 is not legally enforceable as per the Rajasthan Tenancy Act, 1955 and would not constitute transfer
- The provisions of transfer of the Property Act could not be applied in a case where property could not be transferred legally.

Taxpayer's contentions

- The taxpayer was handed over the physical possession of land on part performance of contract, i.e., on the date of agreement, and accordingly, the transfer of land was completed.
- The taxpayer referred to section 53A of the TOPA and contended that where

¹ ITA No. 680 & 681/JP/2017

the transferee had taken possession of the property and was willing to perform his part of the contract then the transferor shall be debarred from enforcing any rights against the transferee in respect of the property.

- Agreement to sale dated 11 April 2007 coupled with payment for property and its possession, which enabled the taxpayer to enjoy immovable property fulfils the conditions stipulated under section 2(47)(vi) of the Act, and thus, constituted transfer.

Tribunal's decision

- The Tribunal observed that registering the agreement to sale, the conversion of land, and thereafter, the execution of sale deed was a continuous process that begins with the agreement to sale.
- The sale deed was a performance of obligation under the actual agreement to sale and the conversion of land after execution of agreement was a post facto conversion, and therefore, the transfer would effect from the date of

agreement to sale.

- Once the sale deed is executed in pursuance to agreement to sale and all the conditions stipulated under section 2(47) of the Act are satisfied, it would constitute transfer and would be effective from the date of agreement to sale itself.
- It was not a case of transfer based only on unregistered documents but the parties to the agreement had executed sale deed in performance of the agreement to sale.
- Therefore, the transfer of immovable property would be considered a combined act of agreement to sale and sale deed as a single transaction of transfer.
- The Tribunal, relying on the SC decision in the case of Sanjay Lal² held that when an agreement was executed, a right *in personam* was created in favour of the vendee and the vendor was restrained from selling the property. Thus, the transfer would be effective from the date of agreement to sale.

The takeaways

- This ruling of the Tribunal highlights that in case of a purchase transaction involving a series of documents/ events, one needs to arrive at a conclusion about the date of purchase having regard to substance of the transaction and not merely by the date of execution of the sale deed. Reaffirms that the intention of parties are relevant for determining the period of holding and that must be ascertained from documents as a whole.
- Further, the judgement reiterates the nuance highlighted by SC in the case of Sanjay Lal that an agreement to sale creates a legitimate right to enforce specific performance of the agreement by which the seller is restrained from selling the immoveable property.

Let's talk

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

² Sanjay Lal v CIT [2014] 365 ITR 389 (SC)

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