

Co-ownership of property to be determined from documents not intent; Tribunal rejects splitting of capital gains between husband and wife

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In brief

In a recent ruling¹, the Bangalore bench of the Income-tax Appellate Tribunal (Tribunal) rejected both husband's (taxpayer) and wife's claim that long-term capital gains (LTCG) arising on sale of property, which was registered in the name of the husband, should be split equally in their hands and taxed accordingly. The Tribunal rejected the taxpayer's co-ownership plea and denied the exemption claimed under section 54EC/ 54F of Income-tax Act, 1961 (the Act) in the hands of the wife.

In detail

Facts

- The taxpayer purchased a vacant site in 1986.
- A residential property was constructed for which the taxpayer and his wife contributed equally.
- The said property was let out and both equally declared rent received as income in their respective return of income (ROI).
- Subsequently, the taxpayer sold the property.
- The LTCG earned from the sale of property was also equally offered to tax in both their hands.
- In addition, exemption under section 54F for purchase of new residential

property and exemption under section 54EC for investment in bonds was also claimed equally in their respective ROI's.

- The tax officer (TO) observed that the wife's name was not appearing on both purchase and sale deeds, and therefore deleted the income from LTCG and denied the claim of exemption in the hands of the wife under section 54EC and 54F of the Act
- The TO reopened the case of taxpayer and taxed the entire capital gain in the hands of the taxpayer.
- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the TO's view.

Issues before the Tribunal

- Whether the taxpayer and his wife have equal ownership in the impugned property?
- Whether they both are entitled to claim exemption under section 54EC/ 54F?

Taxpayer's contentions

- Though the sale deed transferring the property did not mention or record the co-ownership, the purchase of the property was effected by equal contributions by both husband and wife.
- Pursuant to the purchase of the property, both husband and wife came into joint possession of the property.
- Both jointly constructed the

¹ ITA No. 2007/Bang/2016

residence with equal contributions from their earnings and savings.

- Both of them had declared rental income from the property equally in their ROI and were assessed in their respective hands.
- Merely because the purchase and sale deeds were only in the name of husband, it did not take away the rights in the ownership and enjoyment of the property from his wife.
- Reliance was placed on the Supreme Court's (SC) decision in the case of Poddar Cements Private Limited², wherein it was held that "owner" was the person who was entitled to receive income from property in his own right.

Revenue's contentions

- The taxpayer had mentioned that residential property was purchased by him in the past. Thus, the taxpayer's contention that it was jointly held was factually incorrect.
- No evidence was produced to support that his wife had contributed towards purchase of the property.
- The taxpayer's wife was a Malaysian citizen when the property was purchased and no documents evidencing the permission of Reserve Bank of India (RBI) was produced.
- Thus, no title on the said

property was conferred to his wife.

Tribunal's ruling

- The Tribunal noted that in the original purchase deed and in the subsequent sale deed, the name of the taxpayer's wife did not appear as owner or co-owner.
- The taxpayer arranged the funds necessary for the impugned property. Similarly, the taxpayer received the entire sale consideration. The taxpayer's wife had no role in the transaction.
- It rejected the taxpayer's contention of "equal declaration of rental income" on the ground that the mere fact of *suo moto* offering of rental income equally in the ROI did not confer co-ownership in the property.
- The Tribunal further added that ownership had to be considered from the recitals of the relevant documents and not from any stated intention or claim made, which was legally unsustainable.
- The Tribunal rejected the taxpayer's reliance on the SC decision in the case of Poddar Cements Private Limited², as the decision was in the context of section 22 of the Act.
- In addition, in the instant case, the taxpayer's wife was not entitled to receive the income from property but had

accorded herself in connivance with her husband.

- The Tribunal observed that the taxpayer's wife was required to obtain the permission of the RBI for purchasing a property in India. However, no such evidence was produced.
- Therefore, the Tribunal rejected the taxpayer's contention of equal contribution by both husband and wife in purchase and construction of property.
- Accordingly, the Tribunal upheld the TO's order and the CIT(A) in holding that the entire LTCG should have been taxable in the hands of the taxpayer.
- The Tribunal rejected the claim of exemption under section 54EC/ 54F claimed by the taxpayer's wife as the same was not invested by the taxpayer.

The takeaway

This ruling of the Tribunal highlights that co-ownership in a property can only be considered from the recitals of the relevant documents and not from any stated intention or claim made, which is legally unsustainable.

Let's talk

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

² CIT v. Podar Cement Private Limited [1997] 226 ITR 625 (SC)

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