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### Rights under an agreement are capital asset

The Bangalore Bench of the Indian Income-tax Appellate Tribunal (ITAT) rendered its decision that rights under an agreement are capital asset and income from relinquishing such rights are taxable as capital gains

#### Facts of the case:

- The taxpayer<sup>1</sup>, an individual, had entered into an agreement dated 9 February 2005 to purchase a vacant site. The taxpayer paid an advance to the vendor and the remaining consideration was payable on registration of the sale deed (2005 sale deed). Further,
  - The vendor was to make out a marketable title to the property;
  - The taxpayer had a right to enforce the terms of the sale deed, by way of specific performance;
  - This sale deed was not registered.
- On 8 December 2011, the vendor and the taxpayer (as confirming party) sold the property to a third party for a higher sale consideration. As per the recital / preamble of the sale deed (2011 sale deed):
  - The taxpayer was a confirming party, as he had the right to obtain conveyance of the property from the vendor;
  - The taxpayer nominated the third party purchaser to purchase the property and the sale consideration was payable to the vendor and the taxpayer in the ratio of 5:7, respectively.
- The taxpayer offered the income from 2011 sale deed to capital gains tax.

However, during the audit proceedings the Assessing Officer (AO) assessed this income as ‘income from other sources’ on the basis that the taxpayer did not have any right over the property, except a right to get refund of advance paid under the 2005 sale deed.
- On appeal before the Commissioner of Income-tax Appeals [CIT(A)], the taxpayer relied on the decision of the Karnataka High Court<sup>2</sup>, wherein it was held that compensation received for giving up of a right to claim specific performance (of conveyance of an immovable property), was taxable as capital gains.

However, the CIT(A) upheld the order of the AO on the basis that, unlike the Karnataka High Court case<sup>2</sup> the taxpayer had not filed any suit for specific performance and did not have any right over the capital asset.

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<sup>1</sup> Chandrashekar Naganagouda Patil v. DCIT [2020] 117 taxmann.com 520 (Bangalore ITAT)

<sup>2</sup> CIT v. H Anil Kumar [2011] 242 CTR 537 (Kar HC)

- Aggrieved by the CIT(A)'s order, the taxpayer filed an appeal before the Bangalore Bench of the Income-tax Appellate Tribunal (ITAT).

### **Decision of the ITAT:**

- The ITAT held that the right acquired under the 2005 sale deed was a capital asset on the following basis:
  - As per the Karnataka High Court case<sup>3</sup>, giving up of a right to claim specific performance (of conveyance of an immovable property), amounted to relinquishment of a capital asset. Therefore, there was a transfer of capital asset as per the provisions of the Income-tax Act, 1961 (ITA) and the amount received on giving up the said right was taxable as capital gains.
  - The CIT(A) had erred in holding that the taxpayer could not rely on the Karnataka High Court case<sup>3</sup> on the grounds that the taxpayer had not filed a suit for specific performance.
- The ITAT rejected the Revenue's contention that as per the Registration Act, 1908, an agreement for sale required compulsory registration for its validity and since, the 2005 sale deed was not registered, it could not be admitted as an evidence. The ITAT held that the provisions of the Registration Act, 1908 were applicable only if a claim was made for application of the doctrine of part performance enshrined in section 53A of the Transfer of Property Act, 1882.

In the case under consideration, there was no delivery of possession in part performance of the 2005 sale deed and therefore, it did not require compulsory registration.

In view of the above, the ITAT held that the income from relinquishing rights under an agreement was taxable as capital gains.

### **Comments:**

- The issue of whether transfer of rights under an agreement is a capital asset is subject of litigation. This ruling affirms the principle that rights under an agreement is a capital asset.

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<sup>3</sup> CIT v. H Anil Kumar [2011] 242 CTR 537 (Kar HC)



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