

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri Sanjay Garg, Judicial Member**

आयकर अपील सं.य/ ITA No.532/Kol/2020 Assessment Year:2016-17
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Karan Chaudhary P/593, Purnadas Road, Kolkata-700 029 [PAN No.AHNPC 5835 D]	<u>बनाम/</u> V/s.	Income Tax Officer, Ward-30(2), Aayakar Bhawan, (Dakshin), 2,Gariahat Road, K Kolkata-700 031
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Jayanta Khanra, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	08-02-2021
घोषणा की तारीख/Date of Pronouncement	08-02-2021

आदेश /O R D E R

The present appeal has been preferred by the assessee against the order dated 27.02.2020 of the Commissioner of Income-tax (Appeals)-8, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The only issue raised by the assessee in this appeal is as to whether the income earned from the sale of right in the property / flat which was acquired by the assessee by way of allotment letter from the builder in the year 2010 would qualify as long term capital gains or under the head "Income from other sources".

3. The assessee applied for the flat and the allotment letter was issued by the builder in 2010. However, before taking the actual possession of the flat, the assessee transferred his rights in the said flat to some other person earning a profit of ₹21,27,200/-. As per the Income Tax Authorities, the assessee had not got the possession of the immovable property and that what was transferred only was the rights in the property. The Assessing Officer, therefore, held that since the rights in the property did not constitute “**capital asset**”, therefore, the income from the sale of rights in the said flat was liable to be assessed as income from “other sources”.

4. Being aggrieved by the said order of the Assessing Officer the assessee preferred appeal before the Ld. CIT(A), however, could not succeed.

5. Before this Tribunal, the Ld. counsel for the assessee has reiterated his submissions and has further submitted that assessee had got transferable rights in the immovable property / flat. That the said rights in the flat were sold after a period of five years. That assessee has not been involved in the regular sale and purchase of rights in the immovable property. That the investment was made by the assessee in the said immovable asset / flat and the assessee after getting the allotment letter had got right to acquire the said property, which was transferred to some other person after gap of five years. The Ld. counsel in this respect has relied upon the decision of the co-ordinate bench of this Tribunal in the case of *Income Tax Officer Ward-31(1) Kolkata vs. Mahesh Kumar Singhania (HUF)* in **ITA No.1387/Kol/2017** vide order dated 25.10.2017 wherein, in the identical facts and circumstances, the co-ordinate bench of the Tribunal while relying upon another decision of Hon'ble Madras High Court in the case of *Commissioner of Income Tax vs. Sri S.R. Jeyashankar* 373 ITR 120 (Mad), has held that after the issuance of the allotment letter in the flat, the assessee's right in the said asset is to be treated as capital asset and the profits earned from the sale of the said asset are liable to be assessed as long term capital gains. Ld. DR could not rebut the above case law either on facts or on legal position. Therefore,

respectfully following the decision of the co-ordinate bench of the Tribunal, it is held that the profit earned by the assessee in sale of rights in the said flat are to be treated as capital gains and not income from "other sources". The Assessing Officer is directed to re-compute the LTCG in respect of the above profit earned by the assessee after giving due benefit of indexation etc.,

The appeal of the assessee is, hereby, **allowed**.

Order dictated and pronounced in open court immediately on completion of hearing on Monday, 8th February, 2021

Sd/-
(Sanjay Garg)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 08/02/2021 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Karan Chaudhary, P/593, Purnadas Road, Kolkata-29
2. प्रत्यर्थी/Respondent-ITO Wd-30(2), Aayakar Bhawan,(Dakshin) 2, Gariahat Road
Kolkata-31
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।