



## CVO CA UPDATES

### CASE LAW UPDATE

- Complied by CA Kajal Gala

#### ITO vs. Mrs. Sanika Avadhoot (ITA No. 1880/Mum/2020)

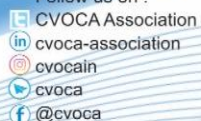
##### ❖ Summary

Difference in the stamp duty value arising due to change in the originally agreed purchased property is not taxable.

##### ❖ Facts of the Case

- The individual Appellant had entered into the property purchase agreement for purchasing a flat for an agreement value of Rs. 5,62,28,500/- whose stamp duty value was Rs. 8,05,06,000/-;
- The Appellant had originally booked flat no. 4707 on 24.09.2010 in some project which could not be built due to height restriction and hence Appellant was shifted to flat no. 3907 in same project;
- Thereafter for some reason Appellant was not granted the flat no. 3907 also and was offered flat no. A3-3405 in developer's some other project vide agreement dated 04.05.2015;
- Assessing officer ('Ld. AO') considered shifting of flats as transfer u/s. 2(47) of the Income Tax Act, 1961 ('The Act') and proceeded to add the difference between the agreement value and stamp duty value amounting to Rs. 2,42,77,400/- as income from other sources u/s. 56 of the Act;
- The First Appellate Authority ('CIT(A) or FAA) ruled in the favour of the Appellant and deleted the addition done by the Ld. AO.

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#### ❖ Tax Department's Arguments

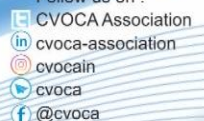
Revenue relied upon the decision of AO:

- Shifting of flats amounts to transfer u/s. 2(47) of the Act;
- The difference between the purchase price as per agreement and stamp duty value to added to Appellant's income u/s. 56 of the Act;

#### ❖ Tax Payer's Argument

- The agreement registered was nothing but the ratification of the pre-existing agreement dated back to the main agreement of 2010:
- It was submitted registered agreement is the same contract with only constructed premises being replaced and there was no new agreement and payment for premises also forming part of the consideration of registered agreement;
- The Appellant also argued that if Ld. AO treats the same as transfer of right to receive residential property originally allotted against A3-3405 being replaced by the new flat, then it will fall under the definition of 2(47) of the Act and Appellant would also be entitled to deduction u/s. 54F of the Act;

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#### ❖ Judgment

In the instant case, ITAT concurred with the decision of CIT(A) that when the developer failed to provide original flat then it had offered another flat in the building which was to be constructed on a future date also the assessee has booked the flat that property was not in existing and it was a property to be constructed in future time. The ITAT also notes the explanation of CIT (A) that if such transaction are treated as transfer by notionally assigning value then the benefit of indexation and benefit of Sec. 54 of the Act to be given to the Appellant.

#### ❖ Author's Comment

As per the aforesaid decision, if the transaction i.e. original flat being replaced by another flat to be constructed on a future date is considered as the transfer u/s. 2(47) of the Act by assigning the notional value then the benefit of indexation and also exemption u/s. 54 may be granted.

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