INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
Before Shri C. M. Garg, Judicial Member

ITA No. 7529/Del/2019
(Assessment Year: 2011-12)

Vidya Devi, Vill. Kailash, PO Tikri, Karnal, Haryana (Appellant) **PAN: FCBPD4813A**	Vs.	ITO, Ward-4, Karnal (Respondent)

Assessee by :	Shri Satyam Aneja, Adv
Revenue by:	Shri Om Prakash, Sr. DR
Date of Hearing	16/03/2023
Date of pronouncement	17/04/2023

O R D E R

This appeal filed by the assessee is directed against the order dated 30.07.2019 of the Ld. CIT(A), Karnal relating to Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:-

"1. The ld CIT(A) has grossly erred in upholding the assumption of jurisdiction u/s 147, which is based on grossly wrong, incorrect, exaggerated and frivolous reasons. The Ld. CIT(A) did not consider the submission made by the Appellant.

2. The Ld. CIT(A) and Ld. A.O. has both grossly erred in law and on facts in calculating LTCG on advance money received without any transfer of any capital asset."

3. The ld counsel for the assessee submitted a written submission/ short synopsis which reads as under:-

"*The appellant is basically an agriculturist- having agricultural land in village Kailash District Karnal Haryana joint with sons, inherited by husband Mohar Singh who deed some time ago. The Assessee Vidya Devi along with his son Raj Kumar & widow Manju of son Vijay Kumar and Seven other farmers of the village "Kailash" having joint land all persons agreed to sell 107 k 4 m to M/S J.D universal Realtors and developers pvt ltd against consideration of*

Rupees Ninety-Eight lakhs per acre on 06.09.2010 and took in advance sum of Rs One crore Ten lakhs Through cheque to be divided as per their respective share as mentioned in the agreement to sell dated 06.09.2010. please see agreement to sell Paper Book Page 1 to 5

Since purchaser party was unable get conveyance deed Registration both the parties mutually agreed to cancel their bargain. So, on 16.03. 2011 bargain was cancelled and cancellation of the agreement to sell was specifically recorded on the back of the agreement to sell dated 06.09.2010.

Please see back side of paper book page 1 of the agreement to sell. Thus, there was no sale deed as the agreement to sell was cancelled and no transfer of any Asset took place. None of the clauses of section 2(47) of the Income Tax Act 1961 is covered by the word advance nor there is any procession in the section 47 of the Income Tax Act 1961.There is no such transfer of property or right of property stated in these sections. Even there is no such transfer which can be subjected to taxation as per the definitions of section 2 or in section 12 other sources or 12B (Capital gain) of the Income Tax Act 1922,

The Assessee after receiving their share in advance money as per the agreement to sell of Rs 2000274/- deposited in joint Account in the name of three persons, Raj Kumar, Vidya (Assessee) and manju w/o Vijay Kumar in A/C 1009110100000756777 In Axis Bank. The bank statement of Axis bank is on record which clearly depicts the Account to be in the joint name of the Raj Kumar, Vidya (assessee) and M anju w/o Vijay Kumar The A.O attributed the money deposited in the hands of Assessee Vidya Devi and assessed to Tax under the head capital gain, whereas the money deposited was to be divided between the abovementioned 3 persons including the Assessee

There the A.O has grossly erred in the taxing under the head of capital gain as there is no transfer of any asset and it cannot be taxed under the head of capital gains in absence of "transfer" which is essential for invoking the provisions of Section 45 of the Act. As argued, there was no transfer so no tax liability. Secondly entire three persons advance money attributed to the Assessee. The consequent liability of advance money will arise in future when there arises any need & the land under reference is transferred. The Provisions of Sec. 51 (applicable if advance money received and forfeited before 31.3.2014) of the Income-tax Act deal with advance money received for transfer of a capital asset. As per the provisions where any capital asset was on any previous occasion

the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost of acquisition of the asset or the WDV or Fair Market Value as the case may be. As such the effect is that if an Assessee receives some advance money which is forfeited without the asset being actually transferred, the cost of acquisition in the hands of the assessee gets reduced and as such the amount forfeited gets taxed in the year when the asset is actually transferred in an indirect manner by reducing the cost of acquisition. Provisions of Sec. 56(2)(ix) [applicable if advance money received and retained on or after 1.04.2014].

Section 56(2)(ix) was inserted by the Finance (No.2) Act 2014, with effect from assessment year 2015- 16. It provides for taxability as Income from Other Sources of any sum of money received as an advance or otherwise during negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset which provides for taxing the amount so forfeited under Income from other sources. Effectively, therefore the said amendments seek to prepone the taxability of the advance money forfeited to the year of receipt of the money as against the previous (Applicable to the present situation) provision where the same is taxed in an indirect manner in the year of transfer of the capital asset.

<u>Reliance Placed on :</u>

- *Commissioner of Income-tax v. Reliance International Corporation (P.) Ltd. [1994] 73 TAXMAN 679 (DELHI)*

- *Futura Polyster Ltd. v. Income Tax Officer [2020] 118 taxmann.com 243 (Mumbai - Trib.)*

Therefore, Assessment made is wrong & illegal and the LD CIT(A) also erred in conferring the same."

4. The ld counsel submitted that as per judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs. Reliance International Corporation (P) Ltd 211 ITR 666 (Delhi) and order of ITAT Mumbai Bench in the case of Futura Ployster Ltd Vs. ITO in ITA No. 1459-1460/Mum/2018 dated 16.07.2020 where the assessee has challenged addition of long term capital gain arising from sale of land on ground that agreement to sale of said land was cancelled subsequently by

executing a cancellation deed, in view of the fact that possession of land was never handed over by assessee to third party, on said count alone, provisions of section 2(47)(v) read with section 53A of Transfer of Property Act, 1882, would not be applicable and, thus, addition has to be deleted.

5. Replying to the above, the ld Sr. DR strongly supported the order of the authorities below and submitted that even in a case when the agreement to sale was cancelled subsequently, then also the amount of advance forfeited by the assessee has to be taxed in the hands of the assessee.

6. On careful consideration of the above submission, first of all I note that undisputedly rather admittedly assessee jointly with her two sons inherited agricultural land from her husband Late Shri Mohar Singh. The assessee Smt Vidya Devi along with her son Shri Raj Kumar and widow Manju of her son Shri Vijay Kumar and seven other farmers of Village Kailash having joint land all persons agreed to sell 107 Kanal 4 Marlas land to M/s. JD Universal Realtors and Developers Pvt. Ltd against a consideration of Rs. 98 lacs per acre on 06.09.2010 and also took a sum of Rs. 1,10,00,000/- through cheque to be divided as per respective shares as mentioned in the agreement to sell vide dated 06.09.2010. It is also not in dispute that subsequently on 16.03.2011 bargain was cancelled and cancellation of agreement to sale was specifically recorded on the back of the agreement to sale dated 06.09.2010. These facts have not been controverted by the authorities below. However, the AO made an addition of Rs. 11 lakh being $1/10^{th}$ share of advance amount in the hands of the assessee considering the same as sale consideration. The amount of advance was deposited in the joint bank account in the name of assessee, her son Raj Kumar and widow Smt. Manju wife of late Vijay Kumar in Axis Bank account No. XXXXX6777. The amount was Rs. 20,00,274/- as per submissions of the assessee and this quantum has

not been disputed by the AO and the AO has also took note of said amount in first para of the assessment order.

7. In my considered opinion the AO has grossly erred in taxing the advance amount under the head capital gain in peculiar circumstances when no transfer of any asset was made by the assessee and her co-owners. Thus, I am in agreement with the contention of the ld counsel that no tax liability under the head short term/ long term capital gain arises in the hands of the assessee in such a situation. It is also to be noted that the assessee had deposited an amount of Rs. 20,00,274/- in the joint bank with three others co-owners and we are unable to understand the action of the AO in taxing Rs. 11 lakhs in the hands of the assessee when there being no transfer of land. Undisputedly the amount received by the assessee and her co-owners which was deposited in the joint bank account has not been returned to the 3rd party and it is remained with the assessee and co-owners after being forfeited. In such a situation provision of section 51 are applicable which provides that if advance money received and forfeited before 31.03.2014, then the advance received and retained by the assessee in respect of such cancellation of transaction shall be deducted from the cost of acquisition of asset or the written down value or fair market value as the case may be and this fact would be considered by the AO in a case where such property is transferred in future point of time. But the amount of advance received and forfeited by the assessee before 31.03.2014 cannot be taxed in the hands of the assessee under the head capital gain.

8. In the present case the assessee received advance amount on 06.09.2010 under agreement to sale, which was cancelled on 16.03.2011 and amount of advance was forfeited therefore, provision of section 51 of the Act are applicable and the amount proportionately forfeited by the assessee would be deducted from the cost of acquisition of the asset or fair market value as the case may be at the time of actual

transfer of such asset in future. My conclusion also gets support from the judgment of the Hon'ble Jurisdictional High Court of Delhi in case of CIT Vs. Reliance International Corporation (P) Ltd (supra) and order of the co-ordinate bench of Mumbai in the case of Futura Plo0yster Ltd Vs. ITO (supra).

8. In the result, the appeal of the assessee is allowed and the AO is directed to delete the addition.

Order pronounced in the open court on 17/04/2023.

-Sd/-

(C. M. Garg)
JUDICIAL MEMBER

Dated:17/04/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi