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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 270/2023**

AKASH PODDAR

..... Appellant

Through: Mr Ajay Vohra, Sr. Advocate with
Mr Aniket D. Agrawal and Mr
Samarth Chaudhari, Advocates.

versus

ACIT CIRCLE 30(1) NEW DELHI

..... Respondent

Through: Mr Shailendera Singh, Sr. Standing
Counsel with Ms Dacchita Shahi, Mr
Viplav Acharya and Mr Akash
Saxena, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

11.05.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal concerns Assessment Year (AY) 2014-15.
2. This appeal is directed against the order dated 15.12.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The appellant/assessee was also the appellant before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].
 - 3.1 *Via* order dated 21.02.2018, the CIT(A) sustained the claim of the appellant that the compensation received against the extinguishment of rights with respect to sweat equity can be treated as Long Term Capital

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Gains (LTCG).

4. To be noted, in the appeal filed by the respondent/revenue before the Tribunal, the appellant/assessee, who was the respondent in the said appeal, had, in fact, raised an additional ground, *albeit*, orally, in terms of Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 [in short, “Rules”] that compensation received in view of the extinguishment of right to Employee Stock Ownership Plan (ESOP) and purported unfair termination of employment should be treated as a capital receipt.

4.1 The Tribunal *via* the impugned order split up the compensation into capital gains to the extent of 15,000 shares (out of 50,000 shares) which was available to the appellant/assessee as ESOP and the remaining amount as salary under the provisions of Section 17(3)(iii) of the Income Tax Act, 1961 [in short, “the Act”].

5. Mr Ajay Vohra, learned senior counsel, who appears on behalf of the appellant/assessee, says that since the appellant/assessee was not in appeal before the Tribunal, despite his contention that the entire amount was a capital receipt, he could only hope to get the relief which was accorded to him by the CIT(A) i.e., the entire amount be treated as LTCG.

6. Accordingly, issue notice.

6.1 Mr Shailendera Singh, senior standing counsel, accepts notice on behalf of the respondent/revenue.

7. The matter requires further consideration. Accordingly, the appeal is admitted and the following question of law is framed for consideration:



“I. Whether in the facts and circumstances of the case, the Tribunal erred in law in artificially and illegally bifurcating the treatment to be accorded to the composite amount of Rs.3.03 crores received by the appellant in pursuance of a settlement for relinquishment of rights and interests in the shares of Tek Travels Pvt. Ltd. holding that part amount is to be treated as capital gains under section 48, and the remaining amount is to be treated as income from salary under section 17(3)(iii) of the Act?”

8. List the appeal on 06.11.2023.
9. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 11, 2023 / tr

[Click here to check corrigendum, if any](#)