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

Judgment reserved on November 25, 2014
Judgment delivered on December 03, 2014

\+ **ITA 655/2014**

SHRI SACHINDER MOHAN MEHTA ..... Appellant

Through: Mr.Manu K.Giri, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX .....Respondent

Through: Ms.Suruchi Aggarwal, Sr.Standing Counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. This appeal under Section 260-A of the Income Tax Act, 1961 ('Act', in short) has been filed by the appellant-assessee against the order dated April 04, 2014 passed by the Income Tax Appellate Tribunal, Delhi Bench ('Tribunal', in short) dismissing the appeal ITA No.839/Del./2013 filed by the assessee for the Assessment Year 2009-10.

2. The brief facts are, the assessee, an Architect by profession, purchased a floor of property being E-215, East of Kailash, New Delhi in the month of July 1997, in terms of an unregistered agreement of sale for Rs. 18 lakhs. According to the appellant-assessee, the following amounts were debited from his bank account:

28.06.1997	*Rs.14,00,000/-*
07.07.1997	*Rs. 8,50,000/-*
08.07.1997	*Rs. 7,50,000/-*
Total	***Rs.30,00,000/-***

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3. Between the period 23.12.1998 and 25.01.1999, four registered sale deeds were executed for 1/4th share of the residential floor in question, each deed showing a consideration of Rs. 4.50 lakh. Suffice to state, no sale deed was registered for the fixtures and fittings for which an amount of Rs.12 lakhs was paid. It is also noted that there is no mention of Rs. 12 lakhs in the four sale deeds.

4. On April 09, 2008, the appellant assessee sold the property in question in the form of two sale deeds for Rs.90 lakhs as front portion and rear portion. The assessee, in his computation of capital gain, deducted an amount of Rs.12 lakhs, which he claimed to have spent on fixtures and fittings from the consideration received at the time of sale. Rs.12 lac was treated as cost of acquisition/improvement.

5. During the assessment proceedings, the appellant assessee had taken the stand of having entered into two agreements, one for purchase of bare shell floor for Rs.18 lakhs and for purchase of fixtures and fittings for Rs.12 lakhs respectively. A total amount of Rs. 30,00,000/- needs to be reduced from the sale consideration for computing long term

capital gains. In the Assessment Order, it is noted that only a paper bill was submitted as a justification for reducing Rs. 12 lakhs. In this regard, the assessee vide order sheet entry dated November 23, 2011, was asked to explain the position. The assessee explained vide his reply dated November 28, 2011. Apart from the facts narrated above, it was also his case that in common parlance, a residential house denotes/means a habitable place. A house cannot be habitable without windows, wardrobes, geysers, electricity fans, lights etc. According to the assessee, all these items are necessary to make a house habitable. All the aforesaid items, although removable in the same manner as the house which is, breakable, but till the time, house remains, these attachment remains, for any house to be habitable. In the inventory details of purchases, the loose items were only two, cotton rugs of size 2" X 2" and two Pooja Stools, the cost of which would not have been more than Rs.5000/-.

6. The Assessing officer did not agree with the stand taken by the assessee and as such, did not allow the deduction at Rs.12 lakhs from the sale consideration holding such items as 'furniture' covered under the definition of 'personal asset'. The Assessing Officer was of the view that the appellant assessee had purchased the aforementioned property through four registered sale deeds of Rs.4.50 lakhs each and in all the sale deeds, nowhere, mention that there was a separate agreement for

fixtures and furniture. According to him, when a property was sold, it was sold with all doors, windows, cupboards, fixed in the house. Nowhere, windows and doors were sold separately from the sale of the house. Nowhere, the basic house was sold separately and furniture was sold separately. According to him, the furniture were personal effects which were not covered under the head 'capital asset' as per the provisions of Section 2(14) of the Act. He also held that the payment for acquisition of property could be ascertained only from the registered sale deeds. Only on the basis of a bill, it cannot be assumed that payment was for acquisition of the house property and therefore, Rs.12 lacs cannot be added to the cost of acquisition. He held, apart from the cost of acquisition, only expenses on transfer and cost of improvement can be deducted from the sale consideration. Other payments can be deducted from the sale consideration for the purpose of computing capital gain specially, when payments were not mentioned in the registered sale deeds. The Assessing officer allowed the cost of improvement of Rs.9,62,107/-. In the last, he computed the long term capital gain as Rs.18,19,945/-.

7. The appellant assessee filed four appeals before the Commissioner of Income Tax (Appeals). In the first appeal, the appellant-assessee had claimed that the Assessing Officer erred in not considering the amount of

Rs.12 lakhs as cost of acquisition thereby increasing the taxable long term capital gain. In the second appeal, it was the case of the appellant-assessee that the Assessing Officer erred in holding the amount as 'cost of furniture' and as 'personal asset' under Section 2(14) of the Act, ignoring the nature and the fact that it was the part of the gross sale consideration. It may be noted here, the assessee has also claimed the amount as 'Cost of Purchase/Improvement'. The appellant assessee also claimed that property in question sold in two parts (rear and front) by him in terms of the sale deeds executed in 2008 for Rs.45 lakhs each with fittings and fixtures, which are essential for making the house habitable. The Commissioner of Income Tax (Appeals), after noting the reasons given by the Assessing Officer in rejecting the claim of the assessee, has held as under:

> *"After considering the grounds raised by the appellant and the facts of the case and the opinion of the assessing officer, I find that only on the basis of a bill which is for furniture, it cannot be assumed that the payment is for acquisition of the house property and should be added to the cost of acquisition. In the facts and circumstances of the case, I hold that the Assessing Officer has correctly reduced the payment made for acquisition of furniture from the cost of acquisition. The capital gain worked out by the assessing officer after reducing the cost of furniture from the cost of acquisition is correct and there is no need to interfere with that. The grounds raised on the issue are dismissed".*

8. The issues raised in the third and fourth appeals are not subject matter of this appeal and hence are not referred to.

9. The appellant assessee filed an appeal before the Tribunal, raising only two grounds, which are reproduced as under:

> *"1. That Ld Assessing Officer has grossly erred in not considering 12,00,000/- as part of cost of acquisition of residential property purchased in F.Y. 1997-98 and thus erred in increasing the taxable long term capital gain on sale thereof in financial year 2008-09 which finding is against the specific provisions of section 2(47)(v) of the Act and therefore is bad in law and on facts on the case.*
>
> *2. That the Id Assessing Officer/CIT(A) in first instance erred in holding that 12,00,0.00/- was not the capital cost of acquisition of house but was the cost of furniture thus a personal assessee as per section 2(14) of the Act, without considering the nature of the said capital expenses as per the inventory detail of such purchases. However, without prejudice even if such cost is so considered by the Ld Assessing Officer, they further erred in not deducting its market value as on date of sale from the sale consideration of the hose since the gross sale consideration included the sale of such items and therefore is bad in law and on facts of the case".*

10. The Tribunal, after noting Section 48 of the Act, which relates to

the aspect of capital gain, was of the view that the sale deeds by which, the assessee had sold the property in question, does not mention the fact about the sale of furniture and fixtures and other fittings. The Tribunal also noted the fact that the sale deed by which, the assessee has purchased the property, also do not reflect the fact of the assessee having purchased the furniture and fixtures. From these two facts, the Tribunal drew a conclusion that the assessee did not sell the furniture items.

11. The Tribunal also rejected the basis on which, the assessee has claimed deduction at Rs. 12 lakhs on the ground that the description of items indicates that the same consisted of removable wood work. According to the Tribunal, it was possible that the assessee might have sold the items separately through a separate agreement as he had done at the time of purchase. The Tribunal also holds that the furniture and fixtures are personal effects which have been specifically excluded from the definition of capital asset as contained in Section 2(14) of the Act.

12. Mr. Manu K. Giri, learned counsel appearing for the appellant assessee would largely reiterate the stand taken by the assessee before the authorities below. He would state that when the assessee had purchased the property along with the furniture, even though, does not form part of the sale deeds, the said furniture must be construed to have been acquired at the time of purchase. He would state that when the

appellant had sold the property, he is entitled to the deduction of the said amount for the purpose of computing capital gain.

13. On the other hand, Ms.Suruchi Aggarwal, learned Sr.Standing Counsel appearing for the revenue would support the conclusion of the Authorities below, stating that, the same is a reasoned order, considering all the aspects of the case and seek dismissal of the appeal.

14. Having heard the learned counsel for the parties, we note that the issue which arises for our consideration is whether Rs. 12 lakhs paid by the appellant assessee to the seller at the time of purchase of the property in question must be construed as a cost of acquisition of the asset so as to be deducted from the full value of consideration received by the appellant assessee at the time when he had sold and transferred the property in question. Section 48 of the Act stipulates the manner in which the capital gain shall be calculated. We reproduce the said Section as under:

> *"Section 48:*
> *The income chargeable under the head capital gain shall be computed by deducting from the full value of consideration received or accruing as a result of transfer of capital asset, the following amounts namely:-*
> *i) expenditure incurred wholly and exclusively in connection with such transfer;*

ii) the cost of acquisition of the asset and the cost of any improvement thereto."

15. From the perusal of the said Section, it is clear that; (1) asset sold should be a capital asset; (2) from the sale consideration, only the cost of acquisition of the asset, cost of improvement, if any, and expenses incurred wholly and exclusively in connection with such transfers, are to be reduced. The issue would be, whether the display windows, partition of drawing room, wooden grills, wooden temples, wardrobes, cupboards, crockery, windows, fans, geysers, light fittings, rugs, furniture, fixtures, can be said to be capital asset, which were acquired by the assessee. It is an admitted position as noted by the Authorities below that the assessee had acquired the property by way of four sale deeds, each of Rs. 4.50 lakhs, the total of which, was Rs.18 lakhs. Another amount of Rs. 12 lakhs has been paid for acquisition of furniture and fixtures, which was by way of a following bill:

"S.NO.	**DESCRIPTION**	**RATE**	**AMOUNT**
	ENTIRE REMOVABLE WOOD WORI (..... THE FLAT I.E. ORNAMENTAL SHDW— CASE ! DISPLAY WINDOWS. WKNH— ~ENTAL PARTITION ON DRAWING ROOM, WOODEN GRILLS. WOODEN TEMPLE, WARDROBES, CUPBOARDS. CROCKERY, WINDOWS, FANS, GEYSERS ORNAMENTAL LIGHT FITTINGS, RUGS ~FURNITURE ~IXTURE COMPLETE.	**L.S.**	**Rs.12,00,000/-**
			Rs.12,00,000/-
	~~. TWELVE LACS ONLY"		

16. As noted by the Assessing Officer, there was no agreement, nor

any registered deed in that regard. The Assessing officer was right in noting that there was no mention in the sale deeds of Rs. 18 lakhs about purchase of the furniture and fixtures by way of a separate agreement for Rs. 12 lakhs. The purported purchase was only effected by way of a bill. Even the perusal of the bill would not reveal the details of show case, windows, grills, wardrobes, crockery, fans, fittings, furniture etc. It is also not known whether the seller of the property to the appellant assessee had, in fact, sought the benefit of the capital gain. The inventory has noted to mean "except two cotton rugs size 2' X 2' and two Pooja stools" is vague. Similarly, the deed of 2008 also does not give the inventory of the furniture and fixtures as sold in the year 2008, which aspect has been conceded by the learned counsel for the appellant-assessee at the time of the arguments. These findings are primarily findings of fact.

17. Further, the issue can be looked from another perspective, which is, most of the items which are said to have been acquired, are primarily 'personal effects' which are excluded from the definition of capital asset under Section 2(14) of the Act if they are meant for personal use. It is not the case of the appellant-assessee that the items like wooden temple, crockery, fans, geysers, light fittings etc. were not for personal use, nor such a case was put forth before the Authorities below. In fact, Rs. 12

lakhs was for all the fixtures and fittings including furniture. It is noted, the break up of Rs. 12 lakhs was not given. In any case, as noticed above it is a pure question of fact.

18. In view of the aforesaid position, we find that the Authorities below were right in disallowing Rs. 12 lakhs for the purpose of computation of the capital gain.

19. Keeping in view the above, no substantial question of law arises in this appeal and we dismiss the same with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

(SANJIV KHANNA)
JUDGE

DECEMBER 03, 2014
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