

EY Tax Alert

HC rules that an amendment to adopt stamp duty valuation prevailing on the date of agreement to transfer capital asset being land or building or both is curative and retrospective in nature

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Executive summary

This Tax Alert summarizes a decision of the Madras High Court (HC) in the case of Shri Vummudi Amarendran¹ (Taxpayer), dated 28 September 2020, on the issue of whether the amendment made by the Finance Act, 2016 (FA 2016) to adopt stamp duty valuation prevailing on the date of agreement to sell, as against the date of registration, for determination of the consideration for computing capital gains, is retrospective.

The Indian Tax Laws (ITL) contain a specific provision that, where the sale consideration in relation to transfer of land or building or both (the specific capital assets) is less than the value adopted by the stamp valuation authority for the purpose of payment of stamp duty on such transfer, then the amount determined by the stamp valuation authority shall be deemed to be the full value of the consideration for the purpose of computation of capital gains.

¹ [TS-520-HC-2020(MAD)]

The ITL was amended with effect from tax year (TY) 2016-17 to provide that where the date of agreement for fixing the amount of consideration and the date of registration for transfer of capital asset are not the same, the stamp duty value as on the date of agreement (and, not on the date of registration) may be considered for the purposes of computing the full value of the consideration for transfer, provided the consideration or a part thereof is received through a banking channel on or before the date of said agreement (amended provision).

In the given case, the Taxpayer entered into an agreement to sell land on 4 August 2012, against which an advance consideration was received by the Taxpayer through a banking channel. However, a registered sale deed was executed on 2 May 2013, wherein the stamp duty value of the land exceeded the total consideration agreed by the Taxpayer in the agreement to sell i.e., on 4 August 2012. In computation of capital gains for TY 2013-14, the Tax Authority substituted the sale consideration by the stamp duty value prevalent as on the date of execution of the registered sale deed. The Tax Authority rejected the Taxpayer's contention that the value substitution is unwarranted as the amended provision has retrospective effect.

The HC ruled in favor of the Taxpayer and held that where statutory amendment is made to remove undue hardship to the taxpayer, such amendment is curative in nature and will take retrospective effect.

Background and facts

- ▶ The ITL contains a specific provision that, where the sale consideration in relation to transfer of land or building or both (the specific capital assets) is less than the value adopted by the stamp valuation authority for the purpose of payment of stamp duty on such transfer, then the amount determined by the stamp valuation authority shall be deemed to be the full value of the consideration for the purpose of computation of capital gains.
- ▶ The ITL was amended with effect from TY 2016-17 to provide that where the date of agreement for fixing the amount of consideration and the date of registration for transfer of capital asset are not the same, the stamp duty value as on the date of agreement (and, not on the date of registration) may be considered for the purposes of computing the full value of the consideration for transfer, provided the consideration or a part thereof is received through a banking channel on or before the date of said agreement (amended provision).
- ▶ The amended provision was brought in pursuant to a recommendation given by the Income Tax Simplification Committee (Easwar Committee) in its report which suggested that such amended provision is already in existence for the purpose of computing business income

where the transfer is of land or building, or both, held as trading asset. However, such provision is absent for the purpose of computing capital gains when the transfer is of specific capital assets, resulting in undue hardship to the taxpayer where seller has entered into an agreement to transfer specific capital assets much before the actual date of registration of transfer.

- ▶ In the given case, the Taxpayer entered into an agreement to sell land on 4 August 2012, against which advance consideration was received by the Taxpayer through a banking channel. However, a registered sale deed was executed on 2 May 2013, wherein the stamp duty value of the land exceeded the total consideration agreed by the Taxpayer in the agreement to sell i.e., on 4 August 2012.

In computation of capital gains for TY 2013-14, the Tax Authority substituted the sale consideration by the stamp duty value prevalent as on the date of execution of the registered sale deed. The Tax Authority rejected the Taxpayer's contention that the value substitution is unwarranted as the amended provision has retrospective effect.

- ▶ The First Appellate Authority ruled in favor of the Taxpayer. On further appeal by the Tax Authority, the Income Tax Appellate Tribunal (Tribunal) dismissed the appeal. On being aggrieved, the Tax Authority further filed an appeal before the HC.

Tax Authority's contentions

- ▶ The amended provision applies on a prospective basis from TY 2016-17 and cannot be given effect for TY 2013-14 by applying the legal principle of "*lex prospicit non respicit*" which means the law looks forward and not backward. Reliance was placed on the language of the amended provision, as also the legislative intent, to contend that such an amendment is not clarificatory in nature to have retrospective effect.
- ▶ Reliance was placed on the Supreme Court (SC) decision in the case of Vatika Township Pvt. Ltd.², which had held that where the language is not clarificatory in nature, then the statutory provision has prospective effective from the date fixed by the Legislature.
- ▶ The Tax Authority also relied upon the Calcutta HC decision in the case of Bagri Impex³, where the consideration for transfer of capital asset, being land, was received and offered to tax in TY 2005-06. However, the deed of conveyance for such sale was

² [(2014) 367 ITR 466]

³ [(2013) 31 taxmann.com 39]

executed in TY 2006-07, while registration of such conveyance deed took place in TY 2007-08. The taxpayer contended that the transfer took place in TY 2005-06 but since the conveyance deed was not registered in TY 2005-06, there was no stamp duty valuation available for TY 2005-06. The stamp duty value considered at the time of registration of the conveyance deed cannot be substituted. However, the Calcutta HC had ruled in favor of the Tax Authority. The Calcutta HC had held that the fact that the conveyance deed was registered in the subsequent year would not allow the taxpayer to escape the substitution of the actual consideration by the stamp duty value determined in the subsequent year, even if capital gain is offered to tax in the earlier year.

- ▶ Furthermore, reliance was also placed on the HC decision in the case of Ambattur Clothing Co. Ltd.⁴, where the registrar refused to release the title deed of the specific capital assets transferred to the buyer unless he paid stamp duty on the higher stamp duty valuation. The buyers discharged the stamp duty on the higher valuation in order to seek possession of the title deeds and such higher valuation was substituted as the full value consideration in the assessment of the seller while computing capital gains. The seller contended that such higher stamp duty valuation was accepted by the buyer without any consultation with the seller and, hence, no substitution should take place in the hands of the seller for computation of capital gains. However, the HC had held that such stamp duty value was not challenged by the seller despite reasonable opportunities being available within the provisions of the ITL, as also under Stamp Duty Laws, and the Tax Authority is under obligation to adopt the stamp duty value as the full value of the consideration for computing capital gains.

HC's ruling⁵

The HC held in favor of the Taxpayer by concluding that the amended provision is curative in nature and applies retrospectively to the year under reference. The HC provided the following reasons to uphold the retrospective effect of the amended provision:

- ▶ The Explanatory Memorandum to FA 2016, explaining the legislative intent to introduce the amended provision, suggests that the amended provision has been introduced after taking note of the hardship to taxpayers who have executed the agreement of sale, but the registration thereof is delayed due to bona fide reasons. In such cases, the time lag between

two events may give rise to a differential stamp duty value, while the taxpayer has committed to a specified consideration for transfer in the agreement for sale.

- ▶ The HC placed reliance on the SC decision in the case of Calcutta Export Company⁶ and other SC decisions⁷ for the proposition that where statutory amendment is made to remove undue hardship to the taxpayer, such amendment is curative in nature and will take retrospective effect. Such amendment may be interpreted liberally and equitably so that a taxpayer does not suffer unintended and deleterious consequences beyond the object and purpose of the provision.
- ▶ The Tax Authority had not doubted the bona fide reasons of the transaction carried on by the Taxpayer and had accepted the date of agreement and the consideration received thereunder.
- ▶ The HC distinguished the case of Bagri Impex (*supra*) on the ground that, for the purpose of the ITL, the seller had, in that case, claimed the transfer of specific capital assets to have already taken place in the earlier year, whereas the deed of conveyance on which the stamp duty was paid was executed in the later year. However, in the present case, the agreement to sell was entered into in the prior year while the actual transfer took place in the subsequent year, which scenario is squarely covered by the amended provision.
- ▶ The ruling in the case of Ambattur Clothing (*supra*) relied on by the Tax Authority was distinguished on the ground that, in that case, the seller did not contest the stamp duty valuation on which the buyer had discharged the stamp duty, despite reasonable opportunities available to the seller within the provisions of the ITL and Stamp Duty Laws. However, in the given case, the seller contested the stamp duty valuation on the ground that the amended provision is to be given retrospective effect and the stamp duty valuation at the time of the agreement to sell may be adopted, and not the time of execution of the registered sale deed as adopted by the Tax Authority.

⁴ [(2009) 326 ITR 245]

⁵ This decision is an ex parte order passed by the HC after hearing the arguments of the Tax Authority and there were no arguments presented by the Taxpayer

⁶ [(2018) 404 ITR 654(SC)]

⁷ Allied Motors Private Limited [(1997) 224 ITR 677 (SC)], Whirlpool of India Limited [(2000) 245 ITR 3 (SC)], Amrid Banaspati Company Limited [(2002) 255 ITR 117 (SC)] and Alom Extrusions Ltd [(2009) 319 ITR 306 (SC)]

Comments

It is not unusual in property transactions that there can be a time gap between agreement to sell and the date of consummating the transaction. Under the agreement to sell, the parties would finalize the terms of sale and purchase of the property transaction and fix the value of the consideration. Registration of the property may happen at a future date due to multiple commercial reasons, such as the seller of property clearing the title to the property, release of charge on the property under mortgage, due diligence of the property record by the buyer. There is a possibility that, during the intervening period, there may be an increase in the stamp duty value by the state government. In such a case, the taxpayer used to suffer taxation with respect to higher stamp duty value considered on the date of registration, thereby creating undue hardship to taxpayers, despite the fact that the seller was bound to honor the consideration agreed to be received according to the terms of the agreement. Taking note of this, the Legislature carried out an amendment in the form of the amended provision but did not make its operation retrospective from enactment of the parent section. The present HC ruling considered the amendment as curative to remove undue hardship to taxpayers and applied it to past years.

This HC ruling is much awaited and provides relief to many taxpayers.

This HC ruling also provides its observations on the relevance of the guideline value in ascertaining the true value of the property. The HC held that the guideline value fixed by the authorities is not final but only a prima facie rate of the property prevalent in the given location. It is open to the registering authority, as well as the person seeking the registration, to prove the actual market value of the property.

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