

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.430 of 2015 (O&M)
Date of decision: 22.1.2016**

**Late Shri Narinder Singh through his wife and L/H Smt. Shiv Dev
Kaur, Raja Narinder Singh Street, Nabha, District Patiala.**

.....Appellant

Vs.

DCIT circle, Sangrur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Dr. Deepak Jindal, Advocate for the appellant-assessee.

Mr. Zora Singh Klar, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 15.7.2015, Annexure A.5 passed by the Income Tax Appellate Tribunal, Chandigarh (in short, "the Tribunal") under section 254(1) of the Act in ITA No.608/Chd/2014 for the assessment year 2007-08, claiming following substantial questions of law:-

"i) Whether the transactions in hand envisage a "transfer" eligible to tax by reference to Section 2(47)(v) of the Income Tax Act, 1961 read with Section 53A of the Transfer of Property Act, 1882?

ii) Whether the Income Tax Appellate Tribunal has ignored rights emanating from the JDA, legal effect of non registration

of JDA, its alleged repudiation etc.?

iii) Whether “possession” as envisaged by Section 2(47) (v) and Section 53A of the Transfer of Property Act, 1882 was delivered, and if so, its nature and legal effect?

iv) Whether there was any default on the part of the developers, and if so, its effect on the transactions and on eligibility to tax?

v) Whether amount yet to be received can be taxed on an hypothetical assumption arising from the amount to be received?”

2. It is not disputed by learned counsel for the parties that the issues involved herein have already been decided by this Court in ITA No.200 of 2013 (*C.S.Atwal vs. The Commissioner of Income Tax, Ludhiana and another*) vide order dated 22.7.2015, wherein after examining the relevant statutory provisions and the case law on the point, following conclusions were drawn:-

“1) Perusal of the JDA dated 25.2.2007 read with sale deeds dated 2.3.007 and 25.4.2007 in respect of 3.08 acres and 4.62 acres respectively would reveal that the parties had agreed for pro-rata transfer of land.

2) No possession had been given by the transferor to the transferee of the entire land in part performance of JDA dated 25.2.2007 so as to fall within the domain of Section 53A of 1882 Act.

3) The possession delivered, if at all, was as a licensee for the development of the property and not in the capacity of a transferee.

4) Further Section 53A of 1882 Act, by incorporation, stood embodied in section 2(47)(v) of the Act and all the essential ingredients of Section 53A of 1882 Act were required to be fulfilled. In the absence of registration of JDA dated 25.2.2007 having been executed after 24.9.2001, the agreement does not

fall under Section 53A of 1882 Act and consequently Section 2 (47)(v) of the Act does not apply.

5) It was submitted by learned counsel for the assessee-appellant that whatever amount was received from the developer, capital gains tax has already been paid on that and sale deeds have also been executed. In view of cancellation of JDA dated 25.2.2007, no further amount has been received and no action thereon has been taken. It was urged that as and when any amount is received, capital gains tax shall be discharged thereon in accordance with law. In view of the aforesaid stand, while disposing of the appeals, we observe that the assessee appellants shall remain bound by their said stand.

6) The issue of exigibility to capital gains tax having been decided in favour of the assessee, the question of exemption under Section 54F of the Act would not survive any longer and has been rendered academic.

7) The Tribunal and the authorities below were not right in holding the assessee-appellant to be liable to capital gains tax in respect of remaining land measuring 13.5 acres for which no consideration had been received and which stood cancelled and incapable of performance at present due to various orders passed by the Supreme Court and the High Court in PILs. Therefore, the appeals are allowed.”

3. In view of the above, the appeal is disposed of in the same terms as in *C.S.Atwal's* case (supra).

(Ajay Kumar Mittal)
Judge

January 22, 2016
'gs'

(Raj Rahul Garg)
Judge