

Sum received for giving up rights to buy a property is taxable under head capital gains: ITAT

Facts of the case - Sukhwant Singh v. Income-tax Officer - [2023] (Chandigarh - Trib.)

The assessee entered into an agreement to purchase a property in 2005 and paid consideration of Rs. 14 lakhs. However, the seller could not transfer such property to the assessee and refunded Rs. 28 lakhs to the assessee in the year 2012 (relevant assessment year).

While furnishing the return of income for the relevant assessment year, the assessee considered the amount of Rs. 14 lacs as purchases and availed the indexation benefit, thereby offering such income to tax under the head of Capital Gains in accordance with the provisions of Section 45.

The Assessing Officer (AO) accepted the sale consideration of Rs. 28 lakhs and accepted the purchase value of Rs. 14 lakhs but assessed the difference of Rs. 14 lakhs straight away as income from other sources instead of Capital Gains. On appeal, CIT(A) upheld the order of AO. Aggrieved by the order, the assessee filed an appeal to the Tribunal.

Decision of the case :

- The Tribunal held that as per the contents of the compromise agreement, the seller was unable to get the sale deed of said land executed in favour of the assessee, and both parties decided to settle their dispute without any litigation. For that purpose, both parties decided to abandon their respective claims, and the assessee agreed to forgo his right to buy the land. Consequently, the assessee was entitled to a payment of Rs. 28 lacs, and the original agreement to sell became null and void.
- In the instant case, the amount so received by the assessee was towards relinquishment of his rights to buy the property, and the same would qualify as property of any kind and, thus, a capital asset. Where such an asset is transferred by way of relinquishment, the compensation for such relinquishment so received is chargeable to tax under the head of "Capital gains", and the amount initially paid shall be treated as cost of acquisition for acquiring such rights.
- Therefore, the income was rightly offered to tax under the head of "Capital gains", and the same cannot be brought to tax under the head of "Income from other sources".