

No tax liability on the Receipt of security deposit under Joint Development Agreement (JDA) unless possession of the property is transferred: NCLAT

FACT OF THE CASE

1. The assessee entered into a development agreement and three others to extend her land for joint development with a company. The joint development agreement (JDA) stated that Rs. 7 crores were to be paid to the assessee, and possession of the property was to be handed over to the developer.
2. The Assessing Officer (AO) held that the transaction had culminated in the transfer of immovable property, thereby attracting long term capital gain. Accordingly, he treated Rs. 7 crores as long-term capital gain in the hands of the assessee.
3. On appeal, the CIT(A) upheld the order of AO. Aggrieved-assessee filed the instant appeal before the Tribunal. The assessee contended that she had only entered into JDA and didn't transfer the immovable property as per the provisions of section 2(47) read with the Transfer of Property Act, 1882.

DECISION OF THE CASE

1. The Hyderabad Tribunal held that the assessee had contributed her immovable property for the joint development of the property. Eventually, when her share in the developed property is sold, she will benefit from gain or loss, as the case may be, unless the assessee opts to retain the developed property.
2. Further, it is pertinent to mention that the amount received by the assessee of Rs. 7 crores were only an interest-free refundable security deposit for ensuring the project is completed as per the terms of the agreement. The assessee had only permitted the developer to develop the project on her land. Thus, it couldn't be construed that the possession of the immovable property of the assessee was vested with the joint developer as per the provisions of the Act. Considering these facts and circumstances of the case, it is apparent that the assessee shall not be liable to be taxed for entering into a JDA when neither the assessee have received any consideration nor handed over possession of the immovable property during the relevant assessment year.