

P&H High Court has held in the case of **Mrs. Madhu Kaul Vs. CIT** that identification of the flat or physical delivery of possession is irrelevant as right to hold properly stands crystalised upon allotment. The allotment of a particular flat and delivery of its possession would relate back to the allotment. The payment of balance installments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter.

**Brief Facts :** – The appellant filed a return of income declaring a net taxable income at Rs.60,830/-. The return was selected for scrutiny. The assessee's claim for treating Rs.2,38,609/- received from sale of flat no.421, Sector 44-A, Chandigarh, as a long term capital gain, was rejected by treating it as a short term capital gain. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), which was dismissed on 06.08.1991. An appeal filed before the Income Tax Appellate Tribunal was dismissed on 15.03.1999.

### **Contention of the Assessee**

Counsel for the assessee submits that the flat was allotted on 07.06.1986, vide letter, conveyed on 30.06.1986. The first installment was paid on 04.07.1986. The flat was sold on 05.07.1989, i.e., after 36 months. The sale, therefore, results in long term capital gain. It is further contended that right, to hold flat came to vest in the assessee upon allotment and at the latest upon payment of Rs.7500/- on 04.07.1986. The sale of the said flat on 05.07.1989, reveals that the assessee held the capital asset for a period exceeding 36 months. It is further submitted that identification of the flat or physical delivery of possession is irrelevant as right to hold properly stands crystalised upon allotment and payment of the first installment. The allotment of a particular flat and delivery of its possession would relate back to the allotment and payment of the first installment. The appellant having held the flat from 04.07.1986, the date of payment of first installment to 05.07.1989, fulfills the parameters of a long term capital gain, thereby rendering the impugned orders illegal and void. It is further contended that the question of law framed in the present appeal has been answered in favour of the assessee in ITA NO.140 of 2000 (**Vinod Kumar Jain v. Commissioner of Income Tax, Ludhiana and others**), decided on 24.09.2010.

### **Contention of the Revenue**

Counsel for the revenue *per-contra* submits that mere allotment and or payment of the first installment without identification of the flat or delivery of possession has been rightly held not to confer any right vis-a-vis flat no.421, Sector 44-A, Chandigarh, which was allotted to the assessee, on 30.11.1988. It is further submitted that the allotment letter could be cancelled at any time and it does not confer any right in any specific unit but merely confers a right to be allotted a unit. The definition of transfer contained in Section 2(47) of the Income Tax Act, 1961 has to be read against the assessee and, therefore, the appeal may be dismissed.

### **Held by ITAT**

The Income Tax Appellate Tribunal has held that as a specific flat was allotted to the assessee, on 30.11.1988, the allotment letter or payment of first installment does not entitle the appellant to claim a long term capital gain.

### **Held by Hon'ble High Court**

Admittedly, the flat was allotted to the appellant on 07.06.1986, vide letter conveyed to the assessee on 30.06.1986. The assessee paid the first installment on 04.07.1986, thereby conferring a right upon the appellant to hold a flat, which was later identified and possession delivered on a later date. The mere fact that possession was delivered later, does not detract from the fact that the allottee was conferred a right to hold properly on issuance of an allotment letter. The payment of balance installments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter.

In view of what has been recorded hereinabove, we have no hesitation in holding that the Income Tax Appellate Tribunal has erred in holding that the transaction does not envisage a long term capital gain. Consequently, we allow the appeal, set aside order dated 15.02.1999 and answer the substantial questions of law in favour of the **assessee**.

High Court has placed reliance on Judgment in the case of ***Vinod Kumar Jain v. CIT, Ludhiana – ITA NO. 140 of 2000 and also on*** Sections 2(29-A),(42A) read with **Section 54** of the Income Tax Act, 1961 as well as **Circular No.471, dated 15.10.1986**

Source- **Mrs. Madhu Kaul Vs. CIT (Punjab & Haryana High Court), Income Tax Appeal No.89 of 1999**  
**Date of Order: 17th January, 2014**