



### **Income is taxable in the AY in which the sale agreement is executed - Raj HC**

The Hon'ble Rajasthan High Court, in the case of Satish Chand Bothra v. ITO, D.B. Civil Writ Petition No. 19589/2013, Dated: 06-11-2024, has held that income from property is taxable in the Assessment Year (AY) in which the sale deed is executed regardless of sale deed registration.

Section 47 of the Income-tax Act, 1961, stipulates that where registration of a document is not required or not made, the document shall come into operation from the time it has commenced to operate, not from the date or time of its registration.

The court noted that the sale transaction was completed in the AY 2005-06 by executing the agreement, consideration receipt, and possession handling. The transaction was disclosed in the Income Tax Returns filed for the AY 2005-06. Due to the circumstances pleaded, the sale deed was registered in July 2008. In such circumstances, the capital gain should be taxable in the AY 2015-06.

### **The High Court order is appended in this Blog**

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#### **Facts of the Case**

The petitioner/assessee sold his share of agriculture land situated in Chimanpura vide the sale deed dated 19.03.2005. As a result of the dispute pending between the co-sharers, the sale consideration was less than the prevailing market prices.

The fact that a dispute is pending between the co-sharers was mentioned in the sale deed. The transaction was depicted by the petitioner in the income tax returns filed about Assessment Year 2005-06. The notice under Section 147 read with Section 148 of the Income Tax Act for AY 2006-07 was

served upon the petitioner. The reasons for initiating proceedings under Section 148 were supplied. The objections filed by the petitioner were rejected.

### **Assessee Contention**

The assessee contended that the transaction was complete in the AY 2005-06. There was no cause of action for the department to initiate re-assessment proceedings for AY 2006-07.

### **Department Contention**

The department contended that the consideration for sale was not accepted by the Registration Authorities and demand for stamp duty was created as also the penalty was imposed.

### **Decision**

Section 47 stipulates that where registration of a document was not required or not made, the document shall come into operation from the time it would have commenced to operate, not from the date or time of its registration.

The court noted that the sale transaction was complete in the AY 2005-06 by execution of agreement, consideration receipt, and possession handling. The transaction was disclosed in the Income Tax Returns filed for the AY 2005-06. Due to the circumstances pleaded, the sale deed was registered in July 2008.

The court held that in AY 2006-07, neither of sale of immovable property nor of registration of documents had taken place, there was no occasion for the income tax authorities to initiate proceedings under Section 148 of the Income Tax Act to determine the capital gains from the transaction of sale of land.

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**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 19589/2013

Satish Chand Bothra, 178, Haldiyan Ka Rasta, Johari Bazar,  
Jaipur

----Petitioner

Versus

Ito Ward 2 1, N.c.r. Building, Statue Circle, Jaipur

----Respondent

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For Petitioner(s)	:	Mr. Gunjan Pathak with Mr. Kanishk Singhal
For Respondent(s)	:	Mr. Anuroop Singhi with Mr. Aditya Khandelwal & Mr. N.S. Bhati

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**HON'BLE MR. JUSTICE AVNEESH JHINGAN  
HON'BLE MR. JUSTICE UMA SHANKER VYAS**

**Order**

**06/11/2024**

**AVNEESH JHINGAN, J [ORAL]:-**

1. This petition is filed seeking quashing of notice dated 22.03.2013 issued under Section 147 read with Section 148 of Income Tax Act, 1961 (for short 'the IT Act') and order dated 19.09.2013 rejecting the objections filed by the petitioner.
2. The relevant facts are that the petitioner sold his share of agriculture land situated in Chimanpura vide sale deed dated 19.03.2005. As a result of dispute pending between the co-sharers, the sale consideration was less than the prevailing market prices. The fact that dispute is pending between the co-sharers was mentioned in the sale deed. The transaction was depicted by the petitioner in the income tax returns filed pertaining to Assessment Year (for short 'AY') 2005-06. The notice under Section 147 read with Section 148 of the IT Act dated 22.03.2013

for AY 2006-07 was served upon the petitioner. The reasons for initiating proceedings under Section 148 of the Act were supplied. The objections filed by the petitioner were rejected vide order dated 19.09.2013 (though the title of the order wrongly mentioned as 'disposal of the stay application').

3. Learned counsel for the petitioner submits that the transaction was complete in the AY 2005-06. There was no cause of action for the department to initiate re-assessment proceedings for AY 2006-07. Reliance is placed upon decision of Supreme Court in **Ittianam and Ors. Vs. Cherichi @ Padmini** reported in **[2010 8 SCC 612]** and judgment passed by Division Bench of this Court in case of **Maharani Yogeshwari Kumari vs. Commissioner of Income Tax** reported in **[1994 (2) RLW 152]**.

4. Learned counsel for the respondent defends the impugned order and submits that the consideration for sale was not accepted by the Registration Authorities and demand for stamp duty was created as also the penalty was imposed.

5. Section 47 of the Registration Act of 1908 is reproduced below:-

"47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

6. Section 47 stipulates that where registration of document was not required or not made, the document shall come into operation from the time it would have commenced to operate and not from the date or time of its registration.

7. The undisputed facts are that the sale transaction was complete in the AY 2005-06 by execution of agreement, receipt of consideration and handing over of possession. The transaction was disclosed in the Income Tax Returns filed for the AY 2005-06. Due to the circumstances pleaded, the sale deed was registered in July, 2008.

8. The Supreme Court in **Ittianam and Ors. (supra)** held:-

“39. Two other judgments cited by the learned counsel for the respondent rendered in the case of Hamda Ammal Vs. Avadiappa Pathar and that of A. Jithendernath Vs. Jubilee Hills Coop. House Building Society are on Section 47 of the Registration Act to the effect that the title passes retrospectively with effect from the date of execution and not from the date of registration. These are accepted legal principles on which there can be no debate but they have no application to the facts of this case.”

9. The Division Bench of this Court in **Maharani Yogeshwari Kumari (supra)** held that the income derived from the property in AY in which the sale deed was executed would be taxable in the hands of the transferee, even if the registration of the sale deed was subsequent.

10. As per Section 47 of the Act of 1908, the sale deed executed shall relate to AY 2005-06 and not to the date of registration.

11. Another aspect is that in AY 2006-07, neither of sale of immovable property nor of registration of document had taken place, there was no occasion for the income tax authorities to initiate proceedings under Section 148 of the IT Act to determine the capital gains from the transaction of sale of land.

12. In view of the above, the impugned order and notices are quashed.

13. The writ petition is allowed.

(UMA SHANKER VYAS),J

(AVNEESH JHINGAN),J

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Whether Reportable: - Yes