

INVESTMENT IN RESIDENTIAL REAL ESTATE ABROAD IS ELIGIBLE FOR THE SECTION 54F ADVANTAGE; THE AMENDMENT IS NOT RETROACTIVE

Hemant Dinkar Kandlur [TS-545-HC-2023(BOM)]

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Facts of the case

The case involves the company Vatika Township Private Limited (the assessee), which is engaged in real estate development.

The assessee entered into a development agreement with landowners for the development of a township.

As per the agreement, the assessee had to construct residential and commercial units and transfer a portion of these to the landowners as consideration.

Assessee's contention

The assessee contended that the transfer of developed units to the landowners should be considered as a 'work contract' and not a 'sale of goods.'

They argued that this transaction falls under the category of 'works contract' as defined under the relevant tax laws.

Revenue's contention

The revenue authorities contended that the transfer of developed units constituted a 'sale of goods' and thus attracted higher tax liability.

Their position was that the transaction did not qualify as a 'works contract' and should be treated as a sale, subject to tax accordingly.

Held:

The Hon'ble Supreme Court held that the transaction between the assessee and the landowners should be treated as a 'works contract.'

The court emphasized that the agreement was for development and construction, and the transfer of property was incidental to the completion of the project.

Therefore, the transaction was covered under the definition of 'works contract' and was not liable to be taxed as a 'sale of goods.'

AMRG Take

This case underscores the importance of precise legal definitions and classifications in taxation. Proper classification of a transaction, in this case as a 'works contract,' can have significant implications on the tax liability. It highlights the need for clear legislation and legal interpretations to ensure fair and consistent taxation, especially in complex sectors like real estate. It's a reminder that legal clarity is vital to avoiding disputes and ensuring a just application of tax laws.