
(2013) 01 CAL CK 0083

In the Calcutta High Court

Case No : GA No. 3302 of 2012 and ITAT No. 277 of 2012

Bagri Impex (P.) Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 2(47)(v), 48, 50C, 50C(1)

Citation : (2013) 259 CTR 553 : (2013) 214 TAXMAN 305

Hon'ble Judges : Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : R. Bharadwaj, for the Appellant; P. Dudhuria, for the Respondent

Judgement

1. The undisputed facts of the case are as follows:

The assessee was owner of 2/5th share in a land situate at 14A, Burdwan Road, Kolkata. Naturally, there were co-owners owning the residuary the right in the land in question. The co-owners were the group companies. The case of the assessee is that the land in question or the interest of the assessee was agreed to be sold on 15th October, 1996 to 15 several buyers. Deeds of conveyance in favour of five buyers were executed on 15.1.1998. The balance 10 deeds of conveyance were executed on 26th May, 2006 and registered on 27th November, 2007. The stamp duty was assessed on 27th November, 2007. The assessee offered the sale proceeds for taxation during the financial year 2005-06 = Assessment Year 2006-07. Case of the assessee is that it had received money before executing the deed of conveyance. It would appear that the deed of conveyance was executed in the financial year 2006-07 and the registration took place in the financial year 2007-08. The question arose whether Section 50C of the Income Tax Act is applicable to the transaction. It shall be convenient to set out Section 50C, which prior to its amendment on 1st October, 2009, was as follows:

Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority:") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

After the amendment with effect from 1st October, 2009 the provision of Section 50C stood as follows:

Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority:") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

2. The case of the assessee is that the provision of Section 50C has no manner of application because on the date when he received the money by way of sale proceeds neither the deed of conveyance had been executed and naturally it could have been registered on that date. We already have indicated that the sale proceeds were claimed to have been received in the financial year 2005-06; the deed of conveyance was executed in the financial year 2006-07 and the registration of the deed of conveyance took place in the financial year 2007-08.

3. The submission of the assessee was accepted by the CIT(A). The Revenue preferred an appeal. The learned Tribunal reversed the order of CIT(A). The assessee has once again come up before this Court.

The following question of law has been advanced:

Whether, on the facts and circumstances of the case, the learned Tribunal was justified in law in not considering that the words "or assessable" was introduced in section 50C(1) of the Income Tax Act, 1961 with effect from 1st October, 2009 and thus erred in taking the value of the capital asset as assessed by the Stamp Valuation Authority on 27th November, 2007 instead of actual transfer price for the relevant assessment year 2006-07?

4. Mr. Bharadwaj, learned Advocate for the appellant submitted that the word "Transfer" in relation to capital assets has been defined in Section 2(47) of the Income Tax Act which provides as follows:

Transfer, in relation to a capital asset, includes,-

(i) the sale, exchange or relinquishment of the asset; or

- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
- (iva) the maturity or redemption of a zero coupon bond; or
- (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the employment of, any immovable property.

5. He submitted that going by the definition of word "Transfer", appearing from s. 2(47)(v) of the I.T. Act, the sale was completed when the consideration was received in the financial year 2005-06. Possession had already been given in the year 1996 pursuant to an agreement for sale, as indicated earlier. Section 50C had no manner of application because the valuation of the land for the purpose of stamp duty was yet to be assessed. In the circumstances, the learned Tribunal erred in applying section 50C to the case of the assessee.

6. We have not been impressed by this submission. It is true that "Transfer" has been defined in Section 2(47) quoted above. But the aforesaid definition was made before Section 50C was introduced to the Income Tax Act. After section 50C was introduced in the year 2003, the value of the land or building or both sold or otherwise transferred has to be the value assessed by the authority of the State Government for the purpose of stamp valuation. The submission that in the financial year 2005-06 when the consideration was received, the Deed of Conveyance had not even been executed has not found favour with us for the simple reason that the intention of the Parliament is that in a case where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income Tax Act. The amendment made in the year 2009 may have made the things simpler, but the intention of the legislature was very clear from the beginning that the value for the purpose of income tax shall be the same as the value for stamp duty. By adopting devices to defeat the provision, the assessee cannot be heard to contend that section 50C would not be applicable merely because the Deed of Conveyance had not at that time been executed or registered. The contention that the property stood transferred in the financial year 2005-06 when the sale proceeds were received

on the basis of the definition appearing from s. 2(47)(v) of the I.T. Act is without any substance for reasons already discussed. The assessee itself did not follow s. 2(47)(v) of the I.T. Act because it did not offer the transfer for taxation in the year 1996 when the possession is claimed to have been made over on the basis of the agreements for sale in accordance with s. 2(47)(v) quoted above. Designs to evade tax cannot be permitted. The Assessing Officer on the date of assessment for the assessment year 2006-2007 had before him the valuation made by the State for the purpose of stamp duty and rightly applied the same. The appeal, according to us, raises no substantial question of law and is, therefore, dismissed.