
(2001) 12 DEL CK 0010
In the Delhi High Court
Case No : Income Tax R. No. 73 of 1983

Balraj	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 173 CTR 452 : (2002) 61 DRJ 519 : (2002) 254 ITR 22 :
(2002) 123 TAXMAN 290

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : C.S. Aggarwal, for the Appellant; R.D. Jolly and Prem Lata Bansal,
for the Respondent

Judgement

S.B. Sinha, C.J.—The question which arises for consideration in this reference is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee had not purchased the property within one year from the date of sale of his residential house so as to be entitled to exemption u/s 54 of the Income Tax Act, 1961 ?"

2. The basic fact of the matter is not in dispute. The assessee sold a property, 15/16, East Patel Nagar, New Delhi, belonging to him on December 3, 1974, for Rs. 98,000. By reason of the agreement of sale coupled with possession the assessee purported to have purchased a property No. 12, West Patel Nagar, New Delhi, for Rs. 2,03,000 on February 6, 1975. It is not in dispute that if the aforementioned transaction amounts to purchase of property, the same would be within a period of one year. The only question, which therefore arises for consideration is whether the aforementioned agreement dated February 6, 1975, would answer the description of purchase within the meaning of Section 54 of the Income Tax Act. Out of the consideration of Rs. 2,03,000, the assessee admittedly at the time of entering into the aforementioned agreement paid a sum of Rs. 1,73,000 which would be more than the amount of Rs. 98,000, which

he received by way of consideration in terms of the transaction which took place on December 3, 1974. Section 54 of the Income Tax Act relates to profit on sale of property used for residence. The said provision reads thus :

"54. Subject to the provisions of Sub-section (2) where, in the case of an assessed being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset) and the assessed has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, then, instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place . . ."

3. The Assessing Officer, the appellate authority as well as the Tribunal rejected the claim of the assessed in respect of the assessment year 1975-76 on the ground that he did not become the owner of the property, as the said transaction was not evidenced by registration thereof as provided u/s 17 of the Registration Act. For the purpose of attracting the provisions of Section 54 of the Income Tax Act, it is not necessary that the assessed should become the owner of the property. Section 54 of the said Act speaks of purchase. Moreover, the ownership of the property may have different connotation in different statutes. The question which arises for consideration appears to be squarely covered by a decision of the apex court in Commissioner of Income Tax, Andhra Pradesh Vs. T.N. Aravinda Reddy, , where it has been held that "the word "purchase" occurring in Section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration. Each release in this case was a transfer of the releaser's share for consideration to the releasee and the transferee, the assesses, "purchased" the share of each of his brothers and the assessed was, Therefore, entitled to the relief u/s 54(1)". The question now is no longer rest integra having regard to the decision of the apex court in Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., . The apex court categorically held that Section 22 of the Income Tax Act, 1961, does not require registration of sale deed. The meaning of the word "owner" in the context of Section 22 has been held to be a person who is entitled to receive income in his own right. The apex court in M/s Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, and this court in Commissioner of Income Tax Vs. R.L. Sood, have held that registration of the document is not mandatory for claiming depreciation on the property. In this view of the matter, we have no doubt in our mind that the learned Tribunal went wrong in holding that for the purpose of applicability of Section 54, registration of document is imperative. We, Therefore, answer the question in the negative, i.e., the assessed is entitled to exemption in terms of Section 54 of the Act.

4. The reference is disposed of.