
(1979) 12 MAD CK 0034

In the Madras High Court

Case No : T.C. No. 705 of 1975 (Ref. No. 508 of 1975)

C. Ramanathan

APPELLANT

Vs

Commissioner Of Income Tax

RESPONDENT

Date of Decision : 17-12-1979

Acts Referred:

Income Tax Act, 1961 — Section 12B, 256(1), 41(1), 45, 54

Citation : (1980) 17 CTR 322

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Judgement

Sethuraman, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, the following question has been referred at the instance of the assessee :

Whether it has been rightly held by the Tribunal that the provisions of section 54 of the Income Tax Act, 1961, are not applicable to the assessment made on the applicant herein as a legal heir of his father for the assessment year 1970-71 ?

One C.V. Venkateswaran was employed as an engineer in Cochin. He owned a house situated at Mahatma Gandhi Road, Ernakulam and resided there. On 4-7-1966, he executed a will under which he appointed his only son as the executor. He made certain bequests to his wife and married daughters and the remainder was given to his son absolutely. On 9-9-1969, he sold the residential house in Ernakulam to Sri Isac for a sum of Rs. 1,89,000/- and he moved down to Madras. He purchased in Madras a vacant site for which he paid an advance of Rs. 3,000/- on 10-11-10-969. A draft sale deed was also got prepared, but before the sale could be executed, he died on 22-12-1969. The sale deed was executed in favour of his son Ramanathan on 8-6-1970. The sale was for a sum of Rs. 30,938/-. A building was put up on the plot. The cost of the building came to Rs. 1,20,000/- inclusive of the price of the site. The construction was completed on 2-9-1971 and Ramanathan and his family resided therein. The very purpose of the purchase of the vacant site, it is not in dispute, was only to provide themselves with residential accommodation in Madras after the property

in Ernakulam was sold.

2. Assessment proceedings for 1970-71, which were started after the death of Venkateswaran, were commenced on C.V. Ramanathan, the legal heir of Sri. Venkateswaran. In the course of the said assessment, there was a claim that since Venkateswaran was residing in the Ernakulam property and that since there was a purchase of a plot and construction of a residential house thereon within two years from the date of the sale of the Ernakulam property, the entire gains arising from the said sale having been utilised in the construction of the residential house at Madras, there was no liability to capital gains tax u/s 45 of the Income Tax Act, 1961. The claim for exemption was based on section 54 of the Act. The Income Tax Officer rejected this contention on the ground that the assessee had not purchased the property within two years from the date of the sale of the Ernakulam property and that section 54 of the Act was not applicable. On appeal, the Appellate Assistant Commissioner confirmed the order of the Income Tax Officer. The assessee appealed to the Tribunal. The Tribunal held that the capital gains arising to an assessee by the sale of capital asset belonging to him could alone be brought to tax u/s 45 of the Act and that the gains arising out of the sale which were brought to tax should have belonged to the assessee. After referring to a decision of the Madhya Pradesh High Court in CIT, Madhya Pradesh v. Hukumchand Mohanlal which was affirmed on appeal by the Supreme Court in CIT, Madhya Pradesh v. Hukumchand Mohanlal, the Tribunal considered that Ramanathan had not sold the capital asset in question and that he could not, therefore, be given the benefit of s. 54 of the Act. It is this order of the Tribunal that it is now challenged by the assessee in this reference.

3. Sec. 45 of the Income Tax Act, 1961 provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to Income Tax under the head "capital gains" and shall be deemed to be the income of the previous year in which the transfer took place S. 54 provides :

Where a capital gain arises from the transfer of a capital asset being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purpose of his own or the parents own residence, and the assessee has within a period of two years after that date constructed a house property for the purposes of his own residence, then, instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section

It is unnecessary to set out the rest of the provisions.

4. Under the Income Tax Act, ordinarily, what is called revenue income was alone brought to tax until the capital gain became the subject of assessment in the

year 1947. The transactions on capital account were excluded from assessment. Parliament, when it enacted the relevant provisions relating to capital gains, provided certain concessions to the persons deriving capital gains. One of the concessions, was that where a person sold away his residential property and substituted another in its place, then any capital gain derived by him would not be liable to assessment so long as the entire capital gain was reinvested in the newly acquired property. S. 54 was previously in form of a proviso to s. 12B of the Indian Income Tax Act, 1922 which corresponds to s. 45 and the related provisions of the present Act. The whole scheme behind s. 45 and 54 was thus to give relief in respect of capital gains by substituting another property for the one which was sold.

5. The contention urged on behalf of the Revenue in the present case, which found favour with the Tribunal, was that there must be identity between the person who sold the property and the person who actually acquired the new one. According to the learned counsel for the Revenue, the property had been sold by Venkateswaran in the present case on 9-9-1969. The deed for purchase was executed in favour of Ramanathan, his son on 8-6-1970. It was therefore, submitted that the provision of s. 54 of the Act could not be brought into operation in the present case. We have, therefore to examine whether there is any warrant for this submission in s. 54.

6. Analysing s. 54, we have first to find out whether there is a capital gain arising from the transfer of the capital asset. That the starting point. In the present case, there is no doubt that there was transfer of capital asset and that the capital gain arose therefrom. The next condition is that this capital gain should arise from buildings or lands appurtenant thereto, the income of which was chargeable under the head "Income from house property". There is no dispute that in the present case, the income from the Ernakulam house, which was sold on 9-9-1969, was dealt with under the head "Income from house property". This condition is also satisfied. The third condition is that the property must have been used by the assessee or a parent of his mainly for the purpose of his own or the parents own residence. In the present case, Venkateswaran (the father of Ramanathan) was using the property as his own residence. The last condition is that the assessee must have, within a period of two years after the date of sale, constructed a house property for the purposes of his own residence. In the present case, it is clear on the facts that Venkateswaran paid an advance for the purposes of acquisition of the property to serve as a residential accommodation for him. Unfortunately before the conveyance could be executed in his favour, he passed away, and the sale deed had, therefore, to be executed in favour of his son. When once all these conditions are satisfied, the section provides that instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place as set out in s. 45, it has to be dealt with in accordance with the provisions of section 54. Thus section 54 is the only provision on which attention has to be riveted. If we do so and if we examine all the conditions which has been set out above, it would be clear that

the present assessee satisfies the requisites or the conditions stipulated in section 54.

7. The learned counsel for the Revenue put his contention in the form of dilemma. He said that if the assessee was the deceased Venkateswaran, then though he had sold the property, he had not purchased and built another in its place. If the assessee was the legal representative, i.e. Ramanathan, then, according to the Id. counsel, he had not sold the property, though he may have acquired a new one. We do not find that there is any scope for this kind of dilemma in section 54. As indicated earlier, section 54 is the only provision to which attention was to be paid. Venkateswaran is the vendor. The capital gains are to be taxed in his hands. The assessment on Ramanathan is only as his legal representative. As the section contemplates the later events, i.e., the purchase within two years, to be taken into account, we have only to see if this condition is satisfied. The legal representative cannot be differentiated from the assessee for this purpose. If he was liable to pay the tax, he cannot be denied the benefit of section 54 which forms part of the scheme of taxation of capital gains. If the counsel for the revenue were right, then we should read into section 54 words to the effect that the vendor and purchaser must be the same.

8. The learned counsel submitted that this being an exemption provision, it has to be strictly construed. We do not find that there is any strict or liberal construction to be considered in the context of the provision on hand. The provision has to be construed and on construing it, we find that the result is that, on the facts here, the assessee get the benefit of section 54. The learned counsel drew our attention to the decision relied on by the Tribunal in CIT v. Hukumchand Mohanlal. The question, which arose for the decision of the Madhya Pradesh High Court, was on the following facts : One Kanhaiyalal was carrying on business as selling agent of another for Kanhaiyalal died and his widow succeeded to the business. The principal firm had recovered from Kanhaiyalal a certain sum as sales tax for the transactions effected between 26-1-1950 and 31-3-1951. Kanhaiyalal was allowed deduction on this amount of sales tax in his assessment. Subsequently in the assessment of the principal firm it was held that the sales effected between 26-1-1950 and 31-3-1951 were not liable to sales tax and so the Government refunded to the principal firm the amount collected as sales tax on the transactions of the said period. The principal firm in its turn paid back the amount to Kanhaiyalal's estate. The question was whether, after the death of Kanhaiyalal, this amount could be brought to tax u/s 41(1) of the Income Tax Act, 1961. The Madhya Pradesh High Court held that the amount, which was received by Kanhaiyalal's widow, could not be taxed in her hands as she was not the person who had obtained deduction or allowance for the amount of sales tax paid. This judgment was affirmed on appeal by the Supreme Court. The question turned on the construction of section 41(1) and section 54 is not couched in the same language. We do not find that the said decision has any scope for application of the construction of sec. 54. Further, she was not being assessed as the legal representative of Kanhaiyalal. We, therefore, answer the question

referred to us in the negative and in favour of the assessee. The assessee will be entitled to his costs. Counsels fee Rs. 500/-.