(1988) 11 BOM CK 0083

In the Bombay High Court

Case No : Income-tax Reference No. 31 of 1976

Commissioner of Income Tax APPELLANT

Vs

A.A. Heptulla RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:
Income Tax Act, 1961 — Section 48, 55(2)

Citation : (1989) 75 CTR 37 : (1989) 176 ITR 413 : (1989) 42 TAXMAN 78

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

T.D. Sugla, J.—The questions of law raised in this reference at the instance of the Revenue ar :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sale effected by the assessee''s father of the property in question was a gift to the extent of 2/3rds thereof and, as such, the assessee was competent to adopt the fair market value of the gifted portion of the property which represents the ''cost of acquisition'' referable to such gifted portion as on January 1, 1954 ?"

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no case for enhancement of ''capital gains'' as proposed by he Income Tax Officer ?"

2. Briefly stated, the relevant facts are that the assessee in an individual and the proceedings relate to the assessment year 1965-66. The assessee sold a plot of land admeasuring 3,125 sq. yards and a structure thereon during the previous year for a sum of Rs. 3,90,625. He computed the capital gain on this transaction at Rs. 1,36,946 by estimating the market value of the property as on January 1, 1954, at Rs. 2,16,250. This was on the basis of a valuer''s report. There was no dispute that the assessee had incurred expenditure of Rs. 37,429 in connection with the sale. The Income Tax Officer did not accept the assessee''s estimate of

valuation of the property as on January 1, 1954. According to him, the value of the property as on January 1, 1954, could be reasonable estimated at Rs. 1,13,125 only. This he did by valuing the land at the rate of Rs. 17 sq. yard s against Rs. 50 per sq. yard by the assessee''s valuer. In this manner, the Income Tax Officer computed the capital gain at Rs. 2,40,071 in place of Rs. 1,36,946 declared by the assessee.

3. During the pendency of the appeal, the Income Tax Officer requested the Appellate Assistant Commissioner to compute the capital gain on the transaction at Rs. 3,08,196. It was stated that he subsequently found that the assessee had, in fact, purchased this property for a sum of Rs. 45,000 on March 25, 1957, and, therefore, the question of estimating its fair market value as on January 1, 1954, could not arise. The assessee''s case, on the other hand, was that though the property was shown as a sale, in reality it was gift from his father to him as a son. It was stated that the assessee was a Muslim and his father was keen to give this property as gift to the assessee. However, during the period of marz-ul-maut (illness leading to death), the gift under the Muslim law was not permissible and hence the transaction was shown as a sale at a nominal value. In support of the claim, it was pointed out that the property in question was purchased by his father on November 1, 1946, at a distress sale for a sum of Rs. 79,999, that the prices of land had substantially gone up during the period of 11 years between 1946 and 1957, and that, therefore, it was inconceivable that such a property would be sold for a paltry sum of Rs. 45,000 in the year 1957. The Appellate Assistant Commissioner accepted the assessee''s claim that the fair market value of the property was required to be estimated as on November 1, 1954. However, accepting the Income Tax Officer''s estimate of the fair market value, the Appellate Assistant Commissioner confirmed the computation of the capital gain at Rs. 2,40,071 as originally made by the Income Tax Officer.

4. The Department filed an appeal before the Tribunal. It was argued that the Appellate Assistant Commissioner was not justified in treating the sale of the property for a consideration of Rs. 45,000 in March 1957 as a gift and, consequently, he was equally unjustified in holding that the fair market value of the property was required to be estimated as on January 1, 1954, for the purpose of computing the capital gain. However, the Tribunal was impressed with he assessee''s submission that the property having been purchased at a distress sale in 1946, the sale of it for a paltry sum of Rs. 45,000 in March 1957 could not be genuine, particularly, as the seller was none else than the assessee''s father who died within 20 das of the execution of the deed of sale. Having regard to the fact that a sum of Rs. 45,000 was, in fact, paid by the assessee to his father, the Tribunal considered it reasonable to assume that 2/3rds of the property was a gift and the remaining 1/3rd was a sale for Rs. 45,000. The Tribunal then estimated the fair market value of the 2/3rds of the property at Rs. 74,682 as on January 1, 1954, on the basis of the Income Tax Officer''s own estimate and the cost of the entire property at Rs. 1,13,125 by adding Rs. 45,000 as the value of the 1/3rd of the property purchased in 1957 and reduced

the computation of the capital gain from Rs. 2,40,071 to Rs. 2,35,514, thereby giving a relief of Rs. 4,557 to the assessee in the departmental appeal.

5. The question before us is whether the Tribunal was justified in holding that 2/3rds of the property was a gift and, as such, there was justification for estimating its fair market value as on January 1, 1954. Speaking for ourselves, we are more than convinced that in view of the fact that the property was purchased by the assessee''s father in the year 1946 at a distress sale for a sum of Rs. 79,000 and that the prices of the immovable property have, it is not seriously disputed, risen considerably during the intervening period of 11 years and that yet the property was shown as a sale by the father to the assessee during the period of marz-ul-maut for a paltry sum of Rs. 45,000, the transaction was shown as a sale merely to avoid complications in making a gift during the period of marz-ul-maut, but was, in fact, a gift. In the above view of the matter, we are in agreement with the findings of fact arrived at by the Tribunal.

6. In the result, he first question of law is answered in the affirmative and in favour of the assessee. As a natural corollary, the second question also requires to be answered in the affirmative and against the Revenue.

7. No order as to costs.

