

(1998) 01 DEL CK 0079

In the Delhi High Court

Case No : Income-tax Reference No. 104 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Arun Kumar Sen

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Income Tax Act, 1961 — Section 10(3), 256, 45

Citation : (1999) 151 CTR 430 : (1998) 231 ITR 945 : (1998) 98 TAXMAN 413

Hon'ble Judges : R.C. Lahoti, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Sanjeev Khanna, Ajay Jha and Prem Lata Bansal, for the Appellant;
None, for the Respondent

Judgement

R.C. Lahoti, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, arising out of the assessment year 1973-74, seeking opinion of the High Court on the following three questions of law, out of which the first question is stated at the instance of the Department while the remaining two questions are stated at the instance of assessed :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessed was not liable to tax on capital gains of Rs. 50,000 received as compensation for vacating the leasehold premises ?

2. Whether, on the facts and in the circumstances of the case, the tenancy right of the assessed in 13, Narendra Place, New Delhi, was a capital asset ?

3. Whether, on the facts and in the circumstances of the case, there was relinquishment of the capital asset u/s 2(47) on the assessed vacating the said premises ?"

2. The assessed had received Rs. 50,000 on January 7, 1973, from Northern Enterprises (P.) Ltd., as compensation for surrendering possession of house No. 13, Narendra Place, New Delhi. The house was rented by the father of the assessed and on his death, the tenancy rights had devolved on the assessee. The

case of the assessed was that the tenancy was not an enforceable right and the sum of Rs. 50,000 was a casual receipt of capital nature. It was also urged that this amount was a compensation for the maintenance and upkeep of the house. The Income Tax Officer held that the assessed had a right of occupation under the rent control law and there were negotiations prior to receiving the payment, which made it a business deal but since the right to tenancy was a capital asset, it had to be treated as a capital gain. As there was no cost involved in acquiring this property by the assessee, the Income Tax Officer brought to tax the sum of Rs. 50,000 as long-term capital gains. The order of the Income Tax Officer was upheld in appeal by the Appellate Assistant Commissioner.

3. The assessed went in appeal to the Tribunal. The Tribunal held that the transfer resulting in payment of Rs. 50,000 would fall under the definition of transfer of capital asset. u/s 2(47), transfer in relation to a capital asset included relinquishment of the asset. Relinquishment by the assessed of the right to transfer, in the house clearly fell within the definition of transfer u/s 2(47), in the opinion of the Tribunal. The Tribunal rejected the contention advanced on behalf of the assessed that it was a voluntary payment by the landlord without any consideration. However, the Tribunal further formed an opinion that there being no cost of acquisition of the tenancy by the assessee, in the same manner as goodwill could not be taxed on account of there being no cost of acquisition thereof, the compensation received by the assessed was also not taxable. In forming this opinion, the Tribunal relied on the Delhi High Court decision in Jagdev Singh Mumick Vs. Commissioner of Income Tax, , and the Madras High Court decision in COMMISSIONER OF Income Tax, MADRAS Vs. K. RATHNAM NADAR., .

4. Subsequent to the passing of the order of the Tribunal, we have available before us yet another Division Bench decision of the Delhi High Court in Bawa Shiv Charan Singh Vs. Commissioner of Income Tax, Delhi, , wherein on an analysis of the relevant provisions of the Income Tax Act, the view of the law taken by the Delhi High Court is that the cost of the assessed in the acquisition of the asset is clearly contemplated in the scheme as Sections 4, 5, 45, 48, 49 and 55 of the Act. The charging section and the computation provisions together constituted an integrated code for the purpose of ascertaining whether the transfer of tenancy rights which is a capital asset gives rise to a capital gain for the purposes of the Act. If the computation provisions cannot apply to a given case, then such a case could not be intended by the Legislature to fall within the charging section.

5. The Delhi view as stated hereinabove has been followed by the Patna High Court in Commissioner of Income Tax Vs. Neba Ram Hansraj and the Kerala High Court in Commissioner of Income Tax Vs. Merchandisers (P.) Ltd., . We also find ourselves in entire agreement with the view so taken.

6. Learned senior standing counsel has invited our attention to the Division Bench decision of the Allahabad High Court in Commissioner of Income Tax Vs.

Gulab Chand, , wherein the view taken is that though the amount received for surrender of the tenancy was a capital gain, not chargeable u/s 45 for the reason that there was no cost of acquisition for the tenancy rights, the receipt was of a casual and nonrecurring nature within the meaning of Section 10(3). Learned counsel submitted that the receipt should have been held liable to tax as casual income. There may be substance in the submission of learned counsel. However, while hearing a reference u/s 256(1) of the Act, we cannot direct the amount to be taxed as such in view of the nature of our jurisdiction--advisory in nature. We have to confine ourselves to the questions arising out of the order of the Tribunal and referred as such to the High Court. The contention that in the event of the receipt being held not liable to capital gains tax, the same would be liable to be taxed as casual income was not raised on behalf of the Revenue at any stage during the assessment proceedings and the hearing of the appeals preferred against the order of assessment. We cannot entertain the contention for the first time while hearing the present reference as the same is not found reflected in the order of the Tribunal and hence cannot be treated as one arising from the order of the Tribunal.

7. For the foregoing reasons, question No. 1 framed and referred at the instance of the Revenue is answered in the affirmative, i.e., in favor of the assessed and against the Revenue. So far as questions Nos. 2 and 3 framed and referred at the instance of the assessed are concerned, the same are rendered academic merely and hence are refused to be answered.

8. By way of abundant caution, we would like to state that the question whether such receipt though held not liable to tax as capital gains would be liable to tax as casual income is being left open to be taken up for consideration in an appropriate case.

9. The reference is answered accordingly. No order as to costs.