
(1999) 09 KAR CK 0062
In the Karnataka High Court
Case No : Income Tax R.C. No. 111 of 1995

Commissioner of Income Tax

APPELLANT

Vs

C.R. Subramanian

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 2 (14), 32

Citation : (2000) 242 ITR 342 : (2000) 1 KCCR 9

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; G. Sarangan, for S. Parthasarathy, for the Respondent

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following questions of law arising out of its order dated July 18, 1997, for the assessment year 1981-82 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the site purchased in 1976 and the building constructed thereafter were different assets for the purpose of capital gains though they had been sold as a single asset during the previous year relevant to the assessment year 1981-82 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the site and the building were separable assets for the purpose of capital gains and that the profits arising from the sale of site was required to be considered as long-term capital gain and that the profits arising out of the sale of the building should be considered under short-term capital gains ?"

2. The facts of the case are that the assessee is an individual and had purchased a site in 1976. The construction of the building was made in the year 1980. The building was sold in the relevant assessment year. The assessee has treated that

site and building as separate for the purpose of capital gains. In regard to the site he had treated the capital gains as long-term capital gains because there was a gap of more than three years from the date of purchase of the site to the date of sale. With regard to the building, the assessee treated it as short-term capital gains. The Income Tax Officer did not accept this contention. Subsequently, in appeal, the Appellate Assistant Commissioner accepted the said contention. He found that the cost of acquisition of the land was Rs. 49,525 and the investment on building was Rs. 76,500 and it was directed to treat the capital gain arising out of the land as long-term capital gain and the capital gain arising out of the building as short-term capital gain. The Tribunal was also of the same view.

3. Arguments of both learned counsel for the parties heard.

4. The Rajasthan High Court in the case of Commissioner of Income Tax Vs. Vimal Chand Golecha, , considered that the land is a capital asset in terms of Section 2(14) of the Income Tax Act, 1961 and in accordance with the scheme of the Income Tax Act, it has to be treated as a separate asset. Even for the purpose of Section 32, a building which is entitled to depreciation would mean only the superstructure and would not include site. In these circumstances, the Tribunal was justified in holding that the capital gains arising from the sale of land has to be treated as long-term capital gain. This judgment was followed in the case reported in Commissioner of Income Tax Vs. Dr. D.L. Ramachandra Rao, , by the Madras High Court, where also it was observed that it is not possible to say that by construction of the building, the land which was a long-term capital asset, has ceased to be a long-term capital asset. The land is an independent and an identifiable capital asset and it continues to remain an identifiable capital asset even after the construction of the building.

5. Learned standing counsel for the Revenue submits that the Tribunal has referred the case given by it which was reversed in the case of Commissioner of Income Tax Vs. Dr. V.V. Mody, . We have gone through the judgment given in the case of Commissioner of Income Tax Vs. Dr. V.V. Mody, , where the land was allotted to the assessee under a lease-cum-sale agreement in 1972 where as the sale deed was executed in 1982. In these circumstances, it was considered that the transfer of property to the assessee was in 1982 and therefore it was a matter of short-term capital gain. The facts of that case are completely distinguishable. The property passes only on its registration and that was the view taken by this court. In respect of every immovable property having a value of more than Rs. 100 there cannot be any transfer of the property unless the sale deed is registered. The lease agreement entered into would not confer any ownership nor could the property be considered to be entitled to the benefit of long-term capital gain. The Tribunal to that extent was not justified in relying on Commissioner of Income Tax Vs. Dr. V.V. Mody, .

6. The controversy being fully covered by the decisions given in the case of Commissioner of Income Tax Vs. Vimal Chand Golecha, of the Rajasthan High

Court and Commissioner of Income Tax Vs. Dr. D.L. Ramachandra Rao, of the Madras High Court, we are of the view that the Tribunal is justified.

7. Accordingly, the reference is answered in favour of the assessee and against the Department.