
(1990) 12 MAD CK 0028
In the Madras High Court
Case No : Tax Case No. 291 of 1980

Commissioner of Income Tax

APPELLANT

Vs

G.K. Devarajulu

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Income Tax Act, 1961 — Section 147, 2, 2(31), 2(7), 45

Citation : (1991) 92 CTR 184 : (1991) 191 ITR 211

Hon'ble Judges : V. Ratnam, J; T. Somasundaram, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Ratnam, J.—The assessee is a Hindu undivided family. In respect of the assessment year 1972-73, on sale of agricultural lands, it was

assessed to capital gains on a sum of Rs. 2,99,500 which, on appeal to the Appellate Assistant Commissioner, was reduced to Rs. 1,30,500. On

a petition filed by the assessee that it had purchased agricultural lands within two years from the date of sale, the Income Tax Officer allowed

exemption from capital gains u/s 54B(ii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). On the basis of an audit objection that

exemption u/s 54B(ii) of the Act is available only to individual assesses and not to a Hindu undivided family, the Income Tax Officer reopened the

assessment u/s 147(b) of the Act and the exemption granted u/s 54B(ii) of the Act was withdrawn. On appeal by the assessee, the Appellate

Assistant Commissioner took the view, following the decision of the Gujarat High Court in Kasturbhai Lalbhai Vs. R.K. Malhotra, Income Tax

Officer, Group Circle II (1), Ahmedabad, , that an audit objection cannot

constitute information with the meaning of section 147(b) of the Act and, therefore, the reopening of the assessment was not valid. However, on merits, it was held that exemption u/s 54B(ii) of the Act was available not

only in respect of individuals, but also in respect of Hindu undivided families. On further appeal by the Revenue before the Tribunal, the Tribunal

held that the reopening of assessment u/s 147(b) of the Act was valid as the decision in Kasturbhai Lalbhai Vs. R.K. Malhotra, Income Tax

Officer, Group Circle II (1), Ahmedabad, was reversed by the Supreme Court in R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs.

Kasturbhai Lalbhai (Huf), . On the question whether the expression ""assessee"" occurring in section 54B of the Act will take within its ambit a

Hindu undivided family, the Tribunal, following the reasoning in its order in I.T.A. No. 417/Mds/1975-76 dated September 25, 1975, held that the

assessee, though a Hindu undivided family, was entitled to the benefit u/s 54B(ii) of the Act. That is how. At the instance of the Revenue, u/s

256(1) of the Act, the following question of law has been referred to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal's view that the Hindu undivided family is entitled to exemption

u/s 54B(ii) of the Income Tax Act, is sustainable in law ?

2. Section 54B of the Act came to be inserted by section 11 of the Finance Act, 1970, with effect from April 1, 1970, and there was no

corresponding provision in the Indian Income Tax Act, 1922. Section 54B of the Act reads as follows :

54B. Where the capital gain arises from the transfer of a capital asset being land 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 for agricultural purposes, and the assessee has, within a period of two

years after that date, purchased any other land for being used for agricultural purposes, 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,

that is to say, -

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference

between the amount of the capital gain and the cost of the new asset shall be charged u/s 45 as the income of the previous year; and for the

purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost

shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged u/s 45; and for the

purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost

shall be reduced by the amount of the capital gain.

3. From the aforesaid provision, it is clear that, in order to claim the benefit of section 54B(i) or (ii), the capital asset, viz., the land should have

been used by assessee or a parent of his for agricultural purposes in the two years immediately preceding the date of transfer and the assessee,

within a period of two years after the date of transfer, should have purchased any other land for use for agricultural purposes. The expression

employed while referring to the user of the capital asset is ""used by the assessee or a parent of his"" for agricultural purposes. The question now is

whether the words ""assessee or a parent of his"" would apply to a Hindu undivided family. The Tribunal referred to its earlier order in I.T.A. No.

417/Mds/1975-76 dated September 25, 1975, which is an annexure D to the stated case. Therefrom, it is seen that the assessee in that case was to

Hindu undivided family and the matter had been dealt with in relation to sale of building and land appurtenant thereto for the purpose of claiming

the benefit of exemption falling u/s 54 of the Act. The Tribunal had referred to the definition of ""assessee"" and ""person"" occurring in section 2(7)

and 2(31) of the Act and construed those expressions as prima facie including a Hindu undivided family also. Referring to the language employed in

section 54 of the Act, the Tribunal interpreted the expression ""was being used by the assessee or a parent of this mainly for the purpose of his own

or the parent's own residence"" occurring therein, as making a provision for a hard case as when the individual owning a house, does not reside

there, but his parent lives in that house and that the benefit u/s 54 of the Act would be available even to a Hindu undivided family. To reach this

conclusion, the Tribunal placed reliance on the observations of Bayley J. in *Cortis*

v. Kent Water-works Co. (108 Eng. Reports 741; (1827) 7 B

&C 314 and the decisions in Perumal Goundan v. Thirumalarayapuram Jananukoola Dhanasekhara Sangha Nidhi (Ltd.) [1919] 41 TLR Mad 624

and The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, , and construed the provision relating to user by ""an

assessee or a parent of the assessee"" as not being restricted only to cases of ""individual assesseees"". On this reasoning, the Tribunal concluded that

the assessee was entitled to the benefit of section 54 of the Act. In the course of disposing of the appeal out of which this reference has arisen,

relating to section 54B of the Act, the Tribunal had applied the reasoning adopted by it with reference to a case falling u/s 54 of the Act. Section 2

of the Act containing the definitions of words occurring in the Act show, that all the definitions would apply unless the context otherwise requires.

Section 2(7) of the Act defines the expression ""assessee"" as meaning a person by whom any tax or any other sum of money is payable under this

Act and includes certain other persons enumerated under clauses (a) to (c) therein. Section 2(31) defines the word ""person"" as including an

individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, a local

authority and every artificial juridical person, not falling within any of the preceding sub-clauses. In section 54B of the Act, the expression

employed is ""used by the assessee or a parent of his"".

4. Generally, the purpose of a definition is to furnish a key to the proper interpretation of the words in an enactment and to avoid a repetition of the

use of the same words contained in the definitions, in the body of the provisions, where the defined word occurs with a view to shorten the

language of the infesting part of the statute. Where an expression is defined in an Act, normally, it must be taken to have the meaning given to it by

the definition throughout the provisions of the Act, but it is not always the rule that the expression used should be interpreted in the manner

indicated by the definition, even when the user of such expression had been made in a sense and context different from that set out in the definition.

Reference may usefully be made in this connection to the following observations of the supreme Court in The Vanguard Fire and General Insurance

Co. Ltd., Madras Vs. Fraser and Ross and Another, .

It is well-settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses

which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is

possible for the word to have a somewhat different meaning in different section of the Act depending upon the subject or the context. That is why

all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything

repugnant in the subject or context. Therefore, In finding out the meaning of the word "insurer" in various section of the Act, the meaning to be

ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be section in the Act where the meaning may have

to be departed from on account of the subject or context in which the word has been used and that will be given effect to in the opening sentence

in the definition section, ""namely, unless there is anything repugnant in the subject or context."" In view of this qualification, the court has not only to

look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning

intended to be conveyed by the use of the words under the circumstances ...

5. In view of the aforesaid observations of the Supreme Court, the word ""assessee"" occurring in section 54B of the Act can also be interpreted in

such a manner as to accord with the context and subject of its usage. The words ""assessee or a parent of his"" occurring in section 54B of the Act,

in the context in which the word ""assessee"" has been used and from the meaning of the words associated with it, would appear to us to clearly

indicate that only an ""individual assessee"" has been contemplated and not any other entity of assessment. No doubt, under the provisions of the

Act, a Hindu undivided family is a distinct taxable entity for the purposes of the Act, apart from the individual members constituting it. Even so, if, in

place of the word ""assessee"" occurring in section 54B of the Act, the words ""Hindu undivided family"" are substituted and the section is read, it will

lead to assured results. On the other hand, if, for the word ""assessee"", one class of assessees, viz., an individual, is substituted and the section is

read, then, section 54B makes sensible reading. In the former case, the provision would read ""used by a Hindu undivided family or a parent of his"",

while, in the letter, it would read as ""used by an individual or a parent of his"". It is difficult to conceive of a parent of or for a Hindu undivided family

or the user by such a parent of Hindu undivided family. Further, the use of the expression ""by a parent of his"" occurring in section 54B of the Act

indicates that in order to claim benefit thereunder, the user must be an assessee, who has a parent, or a parent of his. That would mean user only

by such an assessee, as has parent, or user by apparent of the assessee. The user ""by his parent"" contemplated and the word ""his"" employed, can

have reference only to a living person like an individual and not to an entity or person like a Hindu undivided family. The user by the parent, which

would also qualify for claiming the benefit of section 54B would be inapplicable to a case where the Assessee is none other than an individual. In

other words, when the meaning of the word ""assessee"" used is ascertained from the meaning of the words associated with it, it is clear from the

company the word ""assessee"" keeps, that what had been contemplated is only an individual and not a Hindu undivided family. We may also

observe that the reasoning of the Tribunal, in this case, is based upon an interpretation of section 54 of the Act and the words ""used by the

assessee or a parent of his mainly forth purpose of his own or his parent's own residence"" had been interpreted as contemplating only the case of

an assessee who is an individual and not a Hindu undivided family or a firm : vide Rowji Sojpal Vs. Commissioner of Income Tax, Bombay City II,

; K. I. VISWAMBHARAN and BROTHERS AND OTHER Vs. COMMISSIONER OF Income Tax., and Shrigopal Rameshwardas Vs. Addl.

Commissioner of Income Tax, . We are relieved of the necessity of making a detailed reference to those cases, as they had arisen u/s 12B(4) of

the 1922 Act and section 54 of the 1961 Act, where the language employed is different from that found in section 54B of the Act. It would also be

pertinent to point out that, by section 19 of the finance Act, 1987, in section 54(1) of the Act, a Hindu undivided family has also been included.

The legislative change thus brought about is also an indication that what had been contemplated by ""assessee"" u/s 54(1) of the Act was not a Hindu

undivided family but only an individual. While a charge had been brought in in section 54(1) of the Act, section 54B of the Act had been left intact.

This, in our view, also clearly indicates that though Parliament was fully alive to the need for including a Hindu undivided family within the scope of

section 54(1) of the Act, for some reasons, it had not thought it fit to do so in a case falling u/s 54B of the Act. Thus, on a careful consideration of

the words employed and interpreting the words in the context in which they have been used and their collocation, we hold that the word "assessee

used in section 54B would be applicable only to the case of an "individual" and would not take in a Hindu undivided family.

6. We may now make a brief reference to the decisions relied on by counsel on both sides. Learned counsel for the Revenue mainly relied upon

the decision in Shrigopal Rameshwardas Vs. Addl. Commissioner of Income Tax, with reference to section 54 of the Act. We have earlier pointed

out how section 54 is differently worded and how there had been a change introduced in section 54 of the Act to include a Hindu undivided family.

That decision cannot, therefore, be of any assistance to the Revenue. Reliance was placed by learned counsel for the assessee on the decisions in

Cortis v. Kent Waterworks Co. 108 Eng. Reports 741, the principle of which had been followed in Perumal Goundan's case [1917] ILR 41 Mad

624, Which was approved in Swaminathan v. Official Receiver, AIR 1937 Mad 549 (FB). Attention was also drawn to the decision of the

Supreme Court in The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, . We have carefully considered those

decisions and we are of the view that the principle laid down in those decision cannot have any application whatever to the interpretation of section

54B of the Act. In Cortis' case (108 Eng. Reports 741; (1827) 7B & 314), one of the contentions raised was that an appeal at the instance of a

corporation was not maintainable as a corporation was incompetent to enter into a recognizance. While dealing with this objection that the

provision for appeal against levy of rates did not intend to include corporations, Bayley J. pointed out that the should pause before saying that a

corporation is not competent to enter into a recognizance, for, a corporation may appoint an attorney for a variety of purpose and they may do so

for the purpose of entering into a recognizance. It is thus seen that the corporation was also considered as a person capable of entering into a

recognizance through an attorney for that purpose. Bayley J. also proceeded to consider the position on the assumption that the corporation cannot

enter into a recognize and, with reference to that, it was stated that part of the clause which confers a right of appeal applies to all persons capable

of appealing and that the other part of the clause, which requires a recognizance to be entered into, applies only to those persons, who are capable of entering into a recognizance, but is inapplicable to those who are not. This interpretation proceeds on the assumption that a corporation cannot enter into recognizance, which had been accepted as possible, by the appointment of an attorney. Further, on the language employed in section 54B of the Act, and looking at what is stated therein, it is difficult to apply this principle, for it is not possible in our view, for a proper, reasonable and intelligible interpretation giving effect to the words employed in the section, the context and their collocation, to construe the word "assessee" as applicable to all categories of assessees and the words "a parent of his" as confined in its applicability only to such assessees, as are capable of having a parent. We have earlier indicated the interpretation we are inclined to put on the words occurring in section 54B and the section should be made workable with the words employed, viz., "the assessee or a parent of his" and the section could be worked only by holding that the assessee contemplated therein is an individual or a parent of that individual and that cannot be interpreted as including all assessees, by the expression "assessee" and excluding all those other than an individual by the words "a parent of his". To accept the contention of learned counsel for the assessee would be to interpret the provision in a manner which would be totally out of context and to destroy the very purpose for which the provision had been enacted and would also lead to incongruous result. We find that in *Perumal Goundan's case* [1917] ILR 41 Mad 624, *Swaminathan's case*, AIR 1937 Mad, 549 (FB) *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, the principle laid down by Bayley J. in *Cortis's case* (108 Eng. Reports 741) had been referred to. We have already indicated why the reasoning of that decision could not be made applicable to the interpretation of section 54B of the Act. We are, therefore, of the view that none of those decision would, in any manner, advance the case of the assessee. We, therefore, answer the question referred to us in the negative and in favour of the Revenue. The Revenue will be entitled to the costs of this reference. Counsel's fee Rs. 500.