

(1997) 01 MAD CK 0068

In the Madras High Court

Case No : Tax Case No. 707 of 1982 (Reference No. 445 of 1982)

Commissioner of Income Tax

APPELLANT

Vs

Haridoss Purushothamdoss

RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Income Tax Act, 1961 — Section 49, 55(2)

Citation : (1998) 234 ITR 711

Hon'ble Judges : S.M. Siddick, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K. Mani, for P. Haridoss, V.R. Nagarajan and Puran Khemka, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Revenue, the Tribunal referred the following question for the opinion of this court u/s

256(1) of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that in computing the capital gains arising to

the assessee by the sale of the property in question its cost of acquisition should be taken as its market value as on April 1, 1964 ?

2. The assessee is a Hindu undivided family having income from business, property and other sources. During the year relevant to the assessment

year, the assessee had sold vacant lands at Arumbakkam garden measuring 42 grounds for Rs. 2,10,000 in June 1972. The property was known

as ""Gokul Bagh"". In ascertaining the capital gains arising from the sale, there was dispute as to the cost to be taken for such lands. The cost was

worked out by the assessee at Rs. 4,000 per ground as the market value of the lands as on April 1, 1964, when they were taken over by the

assessee from the firm in which it was a partner consequent on a partition in the family with effect from April 1, 1964.

3. The Income Tax Officer, on the other hand, held that the property always continued to be that of the family notwithstanding its being enjoyed as

an asset of the firm under the partnership deed dated November 6, 1953, and that its cost should be taken at the original cost and at best the

assessee has the right to have the cost as on January 1, 1954, to be substituted in view of section 55(2) of the Act. Since there was no such

option, it was his view that the cost has to be taken as the market value as on the date of acquisition of the property by the Hindu family in 1919

estimated at Rs. 400 per ground.

4. On appeal, the first appellate authority found that the facts were identical with the case of the brother of the assessee, Sri Govindoss

Purushothamdoss, whose case came up on identical facts to the Tribunal. The Appellate Tribunal in the case of I.T.A. No. 1021 (Mds) of 1971-

72 dated January 15, 1974, had found that the property was once enjoyed as an asset of the firm and that it was only on April 1, 1964, there was

a transfer by the firm to the erstwhile members and that the assessee should be deemed to have acquired the property only on April 1, 1964. But it

rejected the valuation put on the property by the firm and partners as notional and not a true value of the property. The market value of the

property as on that date was directed to be adopted. The Commissioner of Income Tax (Appeals) following the said decision allowed the

assessee's appeal as to date of acquisition (April 1, 1964) but remitted the question of actual computation of capital gains to the Income Tax

Officer, by ascertaining the market value as on that date.

5. On further appeal, the Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals). Before us learned standing counsel

appearing for Department submitted that in view of the decision of this court in the case of the assessee's brother in Additional Commissioner of

Income Tax Vs. Govindoss Purushothamdoss, , the Tribunal was not correct in holding that the cost of acquisition should be taken as its market

value as on April 1, 1964. According to learned standing counsel, the book value when the property was acquired should be considered as cost of

acquisition. In Additional Commissioner of Income Tax Vs. Govindoss

Purushothamdoss, , this court held that the assessee was bound by the cost as shown in the books of the firm as well as its own books and the value which the parties put for the lands was not a notional one, but a real one and the Tribunal was not right in holding that in computing the capital gains, the cost of acquisition should be taken as its market value as on April 1, 1964.

6. Learned counsel appearing for the assessee relying upon the decisions in Commissioner of Income Tax Vs. Duncan Brothers and Co. Ltd., and

Goculdas Dossa and Co. and others Vs. J.P. Shah and others, contended that the market value as on April 1, 1964, should be taken as cost" of

acquisition. In view of the fact that in the assessee's brother's case in Additional Commissioner of Income Tax Vs. Govindoss Purushothamdoss, ,

this court has already taken a view that the market value as on April 1, 1964, cannot be taken as cost of acquisition, it is not possible for us to take

a different view, accepting the contention put forward by the assessee's counsel.

7. In that view of the matter, we answer the question referred to us in the negative and in favour of the Department. No costs.