
(1989) 08 CAL CK 0027

In the Calcutta High Court

Case No : Income-tax Reference No. 23 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Pramia Engineering Pvt. Ltd.

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 45

Citation : (1992) 101 CTR 373 : (1993) 202 ITR 298 : (1992) 63 TAXMAN 579

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : R.C. Prasad, for the Appellant; None, for the Respondent

Judgement

Suhas Chandba Sen, J.—The Tribunal has referred the following question of law u/s 256(2) of the Income Tax Act, 1961, to this court ;

" Whether the Tribunal is right, on the facts and the circumstances of the case, in interpreting that the composite and lump sum amount of Rs. 2,71,110 received by the lessee from the lessor is not liable to capital gains, though a part of this lump sum amount relates to consideration for premature surrender of the leasehold rights ?"

2. In this case, the assessment year involved is 1975-76 for which the corresponding accounting period is the year ended on April 30, 1974.

3. The facts stated by the Tribunal contained in the statement of case are as follows :

The assessee, a resident company, took on lease several plots of land within the premises known as " Tagore Villa " at Nos. 1 and 1A, Kali Kishen Tagore Street, Calcutta, for periods varying between 30 and 50 years. The assessee agreed to develop the plots at its own cost to lay roads, drainage, etc., and make out small plots for constructing buildings thereon for sale, the proceeds of which were agreed to be shared between the lessor and the lessee as per the agreement.

After several years, the Government of India negotiated with the lessor for purchase of a substantial portion of Tagore Villa including the portion of land leased out to the lessee free from encumbrance. Thereupon, the lessor and the lessee agreed to terminate the lease on terms mutually agreed upon by them. In the meantime, the assessee had spent Rs. 1,17,563 on improvement of the lands, but no building was, however, constructed thereon by the lessee. The property was purchased by the Government on April 18, 1974, and the assessee received Rs. 2,71,110 on April 26, 1974, out of the sale proceeds as consideration for premature surrender of its leasehold interest in the property. The Income Tax Officer brought the case of the assessee within the definition of "transfer" contained in Section 2(47) of the Income Tax Act, 1961. As regards the computation of capital gains, the assessee claimed not only the cost of the improvement amounting to Rs. 1,17,563 incurred by way of developing the plots but also a further sum of Rs. 3,31,388 which represents the value of the land for the purpose of wealth-tax assessment as the estimated cost of acquisition of leasehold interest thereby working out capital loss in respect of the transfer. The Income Tax Officer rejected the claim of the estimated cost of acquisition of the leasehold interest claimed at Rs. 3,31,388 on the ground that the assessee had only leasehold interest and not freehold interest in the property under consideration and the lessor had reversionary interest in the property. Further, he has also stated that there was no actual cost to the assessee in terms of money for the acquisition of leasehold interest in the property. Hence, from the sale consideration received, the Income Tax Officer deducted the actual cost of improvement claimed by the assessee at Rs. 1,17,563 and determined the short-term capital gains of Rs. 1,53,547.

The Appellate Assistant Commissioner, on appeal, upheld the levy of , short-term capital gains, subject to deduction of Rs. 3,050 as law charges incurred. On further appeal, the Tribunal held : " where, in a case, the computation provisions do not apply, such case was not intended to fall within the charging section. In the case of the assessee, admittedly, there was no cost of acquisition of leasehold interest in the property and, therefore, applying the ratio decidendi of the Supreme Court, such case also is not intended to fall within the charging Section 45. Therefore, on the facts and in the circumstances of the case and in view of the ratio decidendi of the Supreme Court cited supra, we hold that the assessment of short-term capital gains was not justified in law".

4. There cannot be any dispute that the leasehold interest is an interest in land. The assessee had acquired the leasehold right for 99 years, This valuable right was acquired by virtue of an agreement entered into by the assessee with the lessor. The interest in land cannot be equated with self-created goodwill. The land was acquired by the assessee by an agreement and, for possession of the land, moneys were regularly paid under the agreement. This valuable right was surrendered by the lessee and compensation was received for premature termination of the lease. "Transfer" of a capital asset includes not only relinquishment of the asset or extinguishment of any rights therein but also

compulsory acquisition of the asset. The Government has acquired the land and the assessee as a leaseholder was given compensation. The assessee prematurely surrendered the lease. This was a clear case of capital gains and the transaction squarely comes within Section 45 of the Act.

5. In that view of the matter, the question is answered in the negative and in favour of the Revenue. The case is remanded to the Tribunal for deciding the same on merits on all other points.

6. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

7. I agree.