(1989) 09 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 379 of 1979

Commissioner of Income Tax APPELLANT

Vs

P.V. Narasimhan RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:
Income Tax Act, 1961 — Section 22, 23, 24, 25, 256(1)

Citation : (1990) 81 CTR 141 : (1990) 181 ITR 101

Hon'ble Judges : Venkataswami, J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; Janarthana Raja, for Subbaraya Aiyar and Ramamani, for the Respondent

Judgement

Venkataswami, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, Madras Bench ""C"", Madras, has referred to us for

our opinion the following question of law, u/s 256(1) of the Income Tax Act, 1961 (hereinafter called ""the Act"") :

Whether, on the facts and in the circumstances of the case, the assessee was not entitled to exemption u/s 54 of the Income Tax Act, 1961, in

respect of the capital gains of Rs. 32,500 that arose on the sale of the residential house of the assessee at Tiruppattur during the accounting year

relevant to the assessment year 1975-75 ?

2. The brief facts leading to this reference are the following :

The respondent/assessee owned two residential houses, one at Tiruppattur and another at No. 19, Pinjala Subramaniam Road, Madras-17. The

house at Tiruppattur which was in his enjoyment for residential purpose was sold by him on May 24, 1974, for a sum of Rs. 45,000. By that sale,

admittedly, he has earned capital gain to an extent of Rs. 32,500. The assessee claimed exemption u/s 54 of the Act before the Assessing Officer

on the ground that by utilising the sale proceeds obtained by the sale of the house at Tiruppattur, he has put up first floor at No. 19, Pinjala

Subramaniam Road, Madras-17, after demolishing the old structure (first floor). The Income Tax Officer disallowed the assessee''s claim for

exemption on the ground that the assessee had made only some alternation by adding additional rooms to the existing house. Consequently, the

said sum of Rs. 32,500 was subjected to tax under the head ""Capital gains"".

3. Aggrieved by the view taken by the Income Tax Officer, the assessee preferred an appeal to the Appellate Assistant Commissioner who

accepted the case of the assessee and held that the construction of the first floor could be taken as construction of a unit of house property for the

purpose of granting exemption u/s 54 of the Act. In doing so, the Appellate Assistant Commissioner placed reliance on a ruling of the Gujarat High

Court in Commissioner of Income Tax, Ahmedabad Vs. Tikyomal Jasanmal, .

4. The Revenue preferred further appeal against the above said view of the Appellate Assistant Commissioner to the Tribunal. Before the Tribunal,

the assessee produced an order passed by the Accommodation Controller dated December 31, 1971, releasing the first floor from the

Government tenancy on the ground that the assessee required the first floor for demolition and reconstruction of the first floor. The purpose of filing

the said order before the Tribunal presumably was to show that there was a condition subject to which the release was ordered and the condition

was to the effect that the work of demolition must be commenced within one month and should be completed within three months from the date of

the order. The assessee, by producing the order of the Accommodation Controller, has made it clear before the Tribunal that the demolition of the

first floor was complete and it is not a case of mere alteration and addition as pointed out by the Income Tax Officer. The Tribunal, concurring with

the view taken by the Appellate Assistant Commissioner, held that the assessee is entitled to the exemption u/s 54 of the Act. In support of this

conclusion, the Tribunal placed reliance on two judgments of the Gujarat High Court, one referred to and relied on by the Appellate Assistant

Commissioner and another in Commissioner of Income Tax, Gujarat III Vs. Natu Hansraj, .

5. The Revenue, still aggrieved by the view taken by the Tribunal, decided that a reference should be made to this court for its opinion and,

accordingly, the Tribunal has referred the matter with a statement of the case, u/s 256(1) of the Act.

6. Mr. J. Jayaraman, learned senior counsel for the Revenue, distinguished the cases in Commissioner of Income Tax, Ahmedabad Vs. Tikyomal

Jasanmal, , Commissioner of Income Tax, Gujarat III Vs. Natu Hansraj, and another case of the Delhi High Court (concurring with the view of the

Gujarat High Court) in Addl. Commissioner of Income Tax, Delhi-II Vs. Vidya Prakash Talwar, by contending that, in all these cases, the

assessee, after selling the old house, has purchased a new property whereas in the case on hand, the assessee has put up the first floor in the

already existing ground floor. Therefore, the principles laid down in those decisions will not apply to the facts of this case. Apart from that, learned

counsel also pointed out that in construing the scope of section 54 of the Act, due regard must be given to the provisions of section 48 read with

section 55(b) of the Act. If regard is so given, the exemption granted to the assessee in this case cannot be sustained is the contention of learned

counsel.

7. Mr. Janarthana Raja, learned counsel for the assessee, submitted that the distinction made by learned counsel for the Revenue, as mentioned

above, is not at all warranted and the principles of those cases squarely apply to the facts of this case. In addition to the three judgments referred

to above, learned counsel for the assessee also cited a recent decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat-I Vs.

Kodandas Chanchlomal, and in this case all the three judgments mentioned above have been noticed.

8. In Commissioner of Income Tax, Ahmedabad Vs. Tikyomal Jasanmal, , though the case went against the assessee on facts, the principle laid

down therein, while interpreting the scope of section 54 by Bhagwati C.J., as he then was, speaking for the Bench, was to the effect that for the

purpose of claiming exemption u/s 54, two conditions are required to be satisfied, namely, (1) the house property must have been used by the

assessee or a parent of his mainly for the purposes of his own or the parent''s residence during the two years immediately preceding the date on which the transfer took place, and (2) the assessee must have, within a period of one year before or after such date, purchased or within a period

of two years after such date constructed a house property for the purposes of his own residence. It has also been pointed out in that judgment that

the ground floor could be taken as a unit of house property independently for the purpose of section 54.

9. In Commissioner of Income Tax, Gujarat III Vs. Natu Hansraj, , another Division Bench of the Gujarat High Court, after referring to

Commissioner of Income Tax, Ahmedabad Vs. Tikyomal Jasanmal, , has held as follows (headnote) :

Held, that it is well-settled that the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they

best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly

grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the

object to be attained.

The legislative object in enacting the exemption u/s 54 is that when an assessee utilises the surplus money realised on the sale of the old house

property, which was mainly in his or his parent''s self-occupation, for acquiring a new house property, which he purchases or constructs with the

end in view of his own immediate residential purpose, then, he should not be made subject to the charge of capital gains. In order to effectuate this

object, therefore, what the Legislature could have intended to provide is that the new property must have been really and substantially purchased

or constructed by the assessee for the immediate purpose of his own residence.

Under section 54, it is sufficient if the old house was mainly used for the purpose of the residence of the assessee or his parent. Since this is the

requirement of the first condition, it is difficult to ascribe to the Legislature, while laying down the second condition for exemption, the intention to

provide that the new property must be purchased or constructed by the assessee entirely or solely for the purpose of his own residence.

The Appellate Assistant Commissioner found that the assessee had to borrow a loan for the purpose of purchasing the new property, since his

other funds were locked up, and that because he ultimately found that he could not afford to live in a house, the cost of acquisition of which was so

high, he sold away the new property within a year and purchased another house of lesser value for his residence. This might explain why the

assessee let out 25% of the area of the new house.

Considering all the circumstances, the only conclusion possible was that the new property was purchased by the assessee in reality and in

substance for the purpose of his own residence and that he was entitled to the benefit of the exemption in section 54. The Tribunal was right in law

in holding that the capital gain earned by the assessee was exempt from tax u/s 54.

10. In Addl. Commissioner of Income Tax, Delhi-II Vs. Vidya Prakash Talwar, , Ranganathan J., as he then was, speaking for the Bench, after

referring to the above two Gujarat High Court decisions, has clearly and in unequivocal terms held as follows (at p. 664) :

... when the section talks of house property it does not mean an independent and complete house in the sense in which the term used to be

understood once upon a time. House property for the purposes of section 54 has the same meaning as the concept of house property under

sections 22 to 27 which make it clear that the expression ''house property'' takes into account an independent residential unit. In fact, there can be

no doubt, that the section takes into account all independent residential units particularly in these days when multi-storeyed flats are becoming the

order of the day.

The above judgment rendered by a Division Bench of the Delhi High Court has been cited with approval in the latest judgment of the Gujarat High

Court in Commissioner of Income Tax, Gujarat-I Vs. Kodandas Chanchlomal, , wherein the headnote reads as follows :

A house property for the purposes of section 54 of the Income Tax Act, 1961, has the same meaning as the concept of house property under

sections 22 to 27 which takes into account an independent residential unit and does not mean an independent and complete house; it takes into

account all residential units, particularly in these days when multi-storeyed flats are becoming the order of the day.

The assessee sold a residential property valued at Rs. 1,02,000 and earned capital gains of Rs. 79,000. Within two years of the sale of the property, the assessee constructed a house for Rs. 96,500 which consisted of a ground floor, a first and a second floor. The assessee leased out

the ground floor and used the first and second floors for personal residence. The assessee claimed deduction of Rs. 57,600 u/s 54 of the Income

Tax Act, 1961, on the ground that part of the capital gains in respect of the sale of the property was used for construction of a new residential

house property. The Income Tax Officer rejected the assessee''s claim. The Appellate Assistant Commissioner allowed the claim of the assessee

on the ground that section 54 did not provide that the new house property should be exclusively used for residential purposes of the assessee. The

Tribunal held that since the first and second floors which were used for the residential purposes of the assessee were completed within the statutory

time-limit of two years, he was entitled to the benefit of proportionate exemption from capital gains u/s 54. On a reference :

Held, that a substantial portion of the new house property was retained by the assessee for his personal purposes and since the construction of the

new building was completed within the statutory period of two years, both the conditions for grant of exemption were satisfied and the assessee

was entitled to pro rata exemption u/s 54 from the liability to tax on capital gains to the extent of the value of the portion of the property in his

occupation.

From the above decisions, it is quite clear that the view taken by the Tribunal is unexceptional having regard to the admitted position that the

assessee, after demolishing completely the first floor, had put up a new construction within the period allowed by the statute, namely, section 54 of

the Act. It is also common ground that the assessee is in enjoyment of the entire property. The distinction sought to be made by learned counsel for

the Revenue by contending that the construction put up by the assessee in the present case is on the existing old building and, therefore, the

principles laid down by the Gujarat High Court and the Delhi High Court will not apply, cannot be accepted. Once the principle laid down in the

said judgment to the effect that the ""house property"" takes into account an independent residential unit has come to stay with which we respectfully

agree, there is no force in the contention that, since the independent residential unit (in this case, the first floor) was put up on an existing old house, the exemption u/s 54 was not available. Therefore, we are unable to agree with learned counsel for the Revenue that the principles laid down in

those cases will have no application to the facts of the present case.

11. The other contention is that, having regard to the language employed in sections 48 and 55(b), if at all the assessee is entitled to any concession

it can be only at the time of sale of the newly built first floor along with the ground floor or independently. In other words, according to learned

counsel for the Revenue, the exemption/concession is postponed till such time the newly built up property comes for sale. Here also, we are not

able to agree with this contention as once we come to the conclusion that the assessee is entitled to the exemption u/s 54 of the Act, the question

whether section 48 read with 55(b) is applicable or not, will not arise.

12. For the foregoing reasons, we answer the question referred to us in the affirmative in favour of the assessee and against the Revenue. The

assessee is entitled to his costs. Counsel''s fee is fixed at Rs. 500.

