
(2006) 08 GAU CK 0060
In the Gauhati High Court
Case No : Income-tax Appeal No. 27 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Rajesh Kumar Jalan

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(4), 142(1), 2(47)
Transfer of Property Act, 1882 — Section 53A

Citation : (2006) 206 CTR 361 : (2009) 1 GLR 827 : (2006) 4 GLT 256 : (2006) 286 ITR 274

Hon'ble Judges : T. Nandakumar Singh, J;D. Biswas, J

Bench : Division Bench

Advocate : U. Bhuyan, for the Appellant; R.P. Agarwalla, R.L. Jain, M. Talukdar and U.K. Barthakur, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh J.

1. The appellant/Commissioner of Income Tax, Gauhati-I, preferred this appeal u/s 260A of the Income Tax Act, 1961 against the common order dated April 18, 2001, passed by the Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, in I. T. A. No. 328(Gau) of 1999 and I. T. A. No. 49(Gau) of 2000 for the assessment year of the assessee 1996-97. By an order of this Court dated February 28, 2003, the appeal is admitted on the question : "Whether, in the facts and circumstances of the case, the assessee was entitled to claim benefit u/s 54 of the Income Tax Act, 1961, on the entire amount received by him on account of sale of his house property ?" The respondent/assessee is an Income Tax assessee and the status of the assessee is that of an individual trading in the business of truck plying. The assessment year under consideration is 1996-97.

2. The issue involved in the present appeal is the claim for benefit of exemption from being charged to Income Tax on the sale of properties used for residence u/s 54 of the Income Tax Act, 1961. Section 54 of the Income Tax Act, 1961, is a

beneficial provision of the Income Tax Act, 1961 for the assessee in the matter relating with the sale of properties used for residence, it appears, for the constitutional goal of providing residence to the citizen of India. It is fairly well-settled that in construing a beneficial enactment, the view that advances the object of the beneficial enactment and serves its purpose must be preferred to the one which obstructs the objects and paralyses the purpose of the beneficial enactment. In this regard, we may refer to the decision of the apex court in Kunal Singh Vs. Union of India (UOI) and Another, Since Section 54 of the Income Tax Act, 1961, is required to be read and discussed in the present appeal it would be more convenient to quote Section 54 of the Income Tax Act, 1961, in entirety.

54. Profits on sale of property used for residence.--(1) Subject to the provisions of Sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset ["to which the provisions of Section 53 are not applicable, omitted by the Finance Act, 1985 with effect from 1-4-1985] being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property (hereafter in this Section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, 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 residential house so purchased or constructed (hereafter in this Section 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 or construction, as the case may be, 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 gains 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 or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income u/s 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under

Sub-section (1) of Section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of Sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in Sub-section (1), then,--

(i) the amount not so utilized shall be charged u/s 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

3. The facts which would suffice for deciding the present appeal are that the respondent/assessee sold his 1/4th share in a residential property known as "Jalal House" at Rehabari, Guwahati, for a consideration of Rs. 40,00,000 (rupees forty lakhs) only to the Government of Meghalaya for the sale deed No. 348 dated December 21, 1995. Admittedly, the indexed cost of the property was worked out at Rs. 10,26,925 (rupees ten lakhs twenty-six thousand nine hundred and twenty-five) and thus, there was a capital gain of Rs. 29,73,048 (rupees twenty-nine lakhs seventy-three thousand and forty eight) earned by the respondent/assessee and it was also not disputed. The respondent/assessee with the money for the sale of his residential property known as "Jalal House" decided to purchase a residential Flat No. 4B on the fourth floor of a multistoried building situated at Bally High, Ballygunge Park Road, Calcutta-19, from Shri Radha Krishna Jalan and Smt. Anguri Devi Jalan on February 8, 1996, each having one half share of ownership of the residential flat. The respondent/ assessee negotiated with the above two owners to purchase their residential flat for a consideration of Rs. 30,00,000 (rupees thirty lakhs) and accordingly entered into two agreements dated May 9, 1996, and May 17, 1996, and under the said two agreements, the respondent/assessee had taken physical possession of the said residential flat. From the two agreements of purchase, it is clear that each of the co-owners agreed to transfer and assign their respective shares or interest in the said flat together with a car park space for a consideration of Rs. 30,00,000 (rupees thirty lakhs) in total.

4. The Assessing Officer (for short the "AO") under his assessment order rejected the respondent/assessee's claim for exemption u/s 54 of the Income Tax Act, 1961, for the reason that (a) the appellant/assessee has taken only a sub-lease of the property vide indenture of sub-lease dated January 17, 1998, in between him and M/s. Agarwal Company Ltd, and the said indenture has been executed in

pursuance of the letter dated August 28, 1961, written by Shri R.K. Jalan and Smt. Anguri Devi Jalan to the said lessee ; (b) the sub-lease cannot be taken as a clear purchase as per the meaning of the provisions of Section 54(1) of the Income Tax Act and also that there was no transfer of property as claimed and the same was merely a sub-lease ; (c) the appellant/assessee had not complied with the provisions of Section 54(2) of the Income Tax Act by not depositing the unappropriated amount of capital gain in the Capital Gains Deposit Scheme, 1988, within the stipulated time of furnishing the return of Income Tax u/s 139(1) of the Income Tax Act. The respondent/ assessee preferred the first appeal being Appeal No. GUWA-75/99/2000 against the assessment order of the Assessing Officer to the Commissioner of Income Tax (Appeals), Guwahati. The first appellate authority had partly allowed the appeal by passing the final order dated September 24, 1999, wherein the first appellate authority held that even a lease also amounts to a transfer within the meaning of the Transfer of Property Act, 1882, by referring to two decisions of the Supreme Court in R.K. Palshikar (HUF) Vs. Commissioner of Income Tax, M.P., Nagpur, and A.R. Krishnamurthy and Another Vs. Commissioner of Income Tax, Madras, and as such the transfer in question between the respondent/ assessee on the one side and Shri Radha Krishna Jalan and Smt. Anguri Devi Jalan on the other side is the transfer of capital asset within the provisions of Section 2(47)(v) of the Income Tax Act but the first appellate authority held that the respondent/assessee could utilise only Rs. 14,43,254 (rupees fourteen lakhs forty-three thousand two hundred and fifty-four) up to August 31, 1996, towards the purchase of the property and balance amount of capital gain of Rs. 15,29,794 (rupees fifteen lakhs twenty nine thousand seven hundred and ninety-four) was not deposited in a separate capital gain account with the bank by construing Sub-section (2) of Section 54 of the Income Tax Act, 1961, in such a manner that the appellant/assessee did not deposit the unutilized portion of the capital gain before the date of furnishing the return of Income Tax u/s 139(1) of the Income Tax Act, 1961.

5. The respondent being aggrieved by the findings of the first appellate authority, i.e., the Commissioner of Income Tax (Appeals), that the respondent/assessee was eligible for exemption u/s 54 of the Income Tax Act, 1961, to the extent of only Rs. 14,43,254 (rupees fourteen lakhs forty-three thousand two hundred and fifty-four) and direction to the Assessing Officer to levy the capital gains tax on the amount of Rs. 15,29,794 (rupees fifteen lakhs twenty nine thousand seven hundred and ninety-four) only in place of Rs. 29,73,048 (rupees twenty-nine lakhs seventy-three thousand and forty eight) u/s 54 of the Income Tax Act also preferred an appeal against the order of the first appellate authority dated September 24, 1999, before the Income Tax Appellate Tribunal, Gauhati Bench, Gauhati. The Department also preferred an appeal against the order of the learned first appellate authority, i.e., the learned Commissioner of Income Tax dated September 24, 1999, before the learned Income Tax Appellate Tribunal, Gauhati Bench, Gauhati. By a common order dated April 18, 2001, the Income Tax Appellate Tribunal had allowed the appeal preferred by the respondent/

assessee and rejected the appeal preferred by the appellant/Commissioner of Income Tax, Gauhati Bench. The basis on which the Income Tax Appellate Tribunal, Gauhati Bench, allowed the appeal preferred by the respondent/assessee is that Section 54 of the Income Tax Act being the beneficial provision, it should be construed liberally to advance the object of giving benefit to the assessee by exempting the capital gain on the sale of property used for residence from being charged to Income Tax and also that Sub-section (2) of Section 54 of the Income Tax Act, 1961, simply mentions that the unutilized portion of the capital gain on the sale of the property used for residence could be deposited by the assessee before the date of furnishing return of Income Tax u/s 139 of the Income Tax Act and also that the Sub-section (2) of Section 54 of the Income Tax Act does not mention that the date of furnishing of return of Income Tax should be construed within the meaning of Section 139(1) of the Income Tax Act, 1961. The learned Income Tax Appellate Tribunal, Gauhati Bench was of the view that the date of furnishing of return of Income Tax contemplated in Sub-section (2) of Section 54 should also include Sub-section (4) of Section 139 of the Income Tax Act inasmuch as Sub-section (2) of Section 54 of the Income Tax Act mentions only Section 139 of the Income Tax Act without any further restriction or without confining to Sub-section (1) of Section 139 of the Income Tax Act, 1961. The operative portion of the order of the learned Income Tax Appellate Tribunal Gauhati Bench, Gauhati, dated April 18, 2001, reads as follows :

9. We have carefully considered the submissions of the learned representatives of the parties. We have also gone through the orders of the authorities below and the copies of the documents to which our attention was drawn by the learned representatives of the parties at the time of hearing of the appeals.

10. There is no dispute that the assessee entered into two separate agreements with Shri Radha Krishna Jalan dated May 9, 1996 ; and Smt. Anguri Devi Jalan dated May 17, 1996, for purchase of undivided 1/2 share of each in the said flat together with the said undivided share in the land for a consideration of Rs. 15 lakhs to each aggregating to Rs. 30 lakhs. We also observe from the said agreement that the said vendors agreed to transfer and assign in favour of the assessee all their rights and interest in the said flat with the absolute ownership without any objection, obstruction and/or hindrance whatsoever on their part or any person claiming through under or on their behalf. We also observe that the assessee was liable to pay all future maintenance charges, municipal rates and taxes and other outgoings in respect of the said flat. Not only this, there is no dispute that the assessee got the possession of the said flat in May, 1996. We further observe that in the balance-sheet, a copy of which is placed at pages B-1 to B-6 of the paper book the assessee had shown in the list of investments in Schedule E the total investment in the properties in respect of the said flat at Rs. 30 lakhs and the balance amount payable to Sri Radha Krishan Jalan and Smt. Anguri Devi Jalan was shown as unsecured loans. Clause 5 of Section 2(47) of the Act reads as under :

any transaction involving the allowing of possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882), or, . . .

11. Therefore, for the purpose of transfer the possession of the flat in part performance of the contract u/s 53A of the Transfer of Property Act is essential. Further, under the provision of Section 54(1) of the Act, it is stipulated that a person is entitled to take the benefit if the purchase has been made within the stipulated period of one year before or two years after the date on which the transfer took place. In the case before us, the assessee has undisputedly entered into agreement for purchase of the flat and taken possession within one year from the date of sale of the old residential house. Therefore, we agree with the learned authorised representative of the assessee that the assessee has complied with the requirements as laid down in Section 54(1) of the Act by purchasing the flat at a cost of Rs. 30 lakhs as against the capital gain of Rs. 29,73,048. Therefore, we agree with the learned authorised representative of the assessee that there has been no necessity to comply with the conditions for availing of the benefit from tax of the capital gain, as laid down u/s 54(2) of the Act, i.e., to deposit the unpaid amount in a separate bank account under the capital gain account scheme. We are of the view that the assessee had already appropriated the entire capital gain for purchase of the new asset within the stipulated time. In this regard, we find support from the decision of the Kerala High Court in the case of K.C. Gopalan wherein it was held that the assessee is entitled to exemption u/s 54 even though for the construction of the new house, the amount that was received by way of sale of his old property as such was not utilised. It was held by the Kerala High Court that no provision is made by the statute that the assessee should utilise the amount which he obtained by way of sale consideration for the purpose of meeting the cost of the new asset. It was held that Section 54 only provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he should have constructed a house property within a period of two years after the date of transfer. It was further held that entitlement of exemption u/s 54 relates to the cost of acquisition of a new estate in the nature of a house property for the purpose of his own residence within the specified period.

12. In the case before us, the ratio laid down by the hon^{ble} Kerala High Court squarely applies to the case before us as the assessee had acquired the house at a cost more than the capital gains within the specified period.

13. Therefore, we hold that the assessee is entitled to for the exemption u/s 54 of the Act for the entire long-term capital gain of Rs. 29,73,048. Accordingly, we allow the ground of appeal of the assessee and reject the ground of appeal of the Department.

6. From a plain reading of Sub-section (2) of Section 54 of the Income Tax Act, 1961, it is clear that only Section 139 of the Income Tax Act, 1961, is mentioned

in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax u/s 139 of the Income Tax Act. Section 139 of the Income Tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income Tax Act, 1961. Under Sub-section (4) of Section 139 of the Income Tax Act any person who has not furnished a return within the time allowed to him under Sub-section (1) of Section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Such being the situation, it is the case of the respondent/assessee that the respondent/assessee could fulfil the requirement u/s 54 of the Income Tax Act for exemption of the capital gain from being charged to Income Tax on the sale of property used for residence up to March 30, 1998, inasmuch as the return of Income Tax for the assessment year 1997-98 could be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier under Sub-section (4) of Section 139 of the Income Tax Act, 1961.

7. The apex court in *State of Maharashtra and Others Vs. Santosh Shankar Acharya*, held that it is too well known a principle of construction of statutes that the Legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons.

8. The apex court in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras. 24 and 25 of the *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, read as follows:

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

9. For the reasons discussed above, we answer the question formulated in the

present case in positive. Accordingly the order of the learned Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, dated April 18, 2001, passed in I. T. A. No. 328/Gau/1999 and I. T. A. No. 49/Gau/2000 is not interfered with and the appeal is dismissed.

Parties are to bear their own costs.