(2008) 01 KL CK 0005

In the High Court Of Kerala

Commissioner of Income Tax — APPELLANT

Vs

Smt. Chandra Balakrishnan — RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (2008) 174 TAXMAN 78

Hon'ble Judges : T.R. Ramachandran Nair, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Judgement

C.N. Ramachandran Nair, J.—The reference is at the instance of the revenue and it is pursuant to direction of the Supreme Court in the SLP filed by revenue against judgment of this court dismissing an O.P. filed u/s 256(2) of the Income Tax Act for compelling reference of question of law. While the revenue contended that question raised is pure question of law, Counsel for the assessee contended that the question raised arises from pure findings of fact rendered by the Tribunal. However, we have considered the same issue in IT Appeal Nos. 6 and 18 of 1999 arising in the connected cases pertaining to the company to which the assessee sold the property. We have held in the judgment rendered today in the connected Income Tax appeals that sale of the property by the respondent assessee to the company was for actual sale price of Rs. 32.5 lakhs as against Rs. 18 lakhs declared in the sale deed. Therefore, following the judgment in the connected IT appeals referred above, we reverse the order of the Tribunal and uphold the assessment where under capital gains is determined by taking into consideration sale price at Rs. 32.5 lakhs. However, we find force in the contention of the Counsel for the assessee that the market value determined by the assessing officer as on 1-4-1981 at Rs. 1 lakh and refixed by the Tribunal at Rs. 2 lakhs is too low. In fact the property was purchased by the respondent assessee in 1974 for Rs. 65,000. There is no basis for assuming that the actual sale price was declared by the assessee because assessee was found to be suppressing sale price when the property was later sold. It is quite possible that there was suppression of purchase price in the sale deed at the time of purchase of property by the respondent assessee. Besides this, the more important aspect is that the property was found to be sold in November, 1994 for Rs. 32.5 lakhs. It is hard to believe that the property the value of which was estimated by the Tribunal at Rs. 2 lakhs in 1981, was sold for Rs. 32.5 lakhs in the course of 13 years. It is common knowledge that the property price started increasing in a very unprecedented manner in the State only for the last 3 to 4 years. Price of immovable property, though has been steadily growing, the unprecedented level of increase is only a recent phenomenon. Therefore, we feel the price fixed by the Tribunal as on 1-4-1981 for the purpose of determination of capital gains is too low, We, therefore, set aside this part of the order of the Tribunal and refer the matter to the Tribunal for refixation of market value as on 1st April, 1981 for determination of capital gains. The Tribunal is directed to decide the matter afresh within a period of three months from the date of receipt of copy of this judgment. The Income Tax reference is accordingly disposed of answering the question referred in favour of the revenue and against the assessee.