(2001) 07 CAL CK 0008

In the Calcutta High Court

Case No : IT Ref. No. 47 of 1996 17 July 2001 A.Y. 1987-88

Commissioner of Income Tax APPELLANT

Vs

SMT. KANTA DEVI SARAF RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 54F

Citation : (2002) 172 CTR 322

Hon'ble Judges : Y.R. Meena, J;Arun Kumar Mitra, J

Bench : Full Bench

Advocate : Jayanta Khaitanwith Dipayan Chowdhury, Ranjan Koli and Alokesh Mullick, for the Assessee B.D. Halderwith P.K. Bhomick, for the Revenue, for the Appellant;

Judgement

By The Court

On an application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that for the purpose of getting exemption u/s 54F there was no requirement that the sale price should be actually invested in the house property and that it was sufficient if the legal title to the property vests with the assessee ?

2. Whether the Tribunal was right in holding that notwithstanding the fact that the sale price of the shares was not actually invested in the house property, the assessee would get exemption u/s 54F since the house property was registered in her name within two years from the date of the sale of the shares?

3. Whether, on the facts and in the circumstances of the case and on a proper interpretation of section 54F the Tribunal was right in law in upholding the assessee''s claim to relief u/s 54F on the ground that all the conditions of the section were satisfied ?"

2. The assessment year in hand is 1987-88. During the course of assessment assessing officer noticed that assessee has sold shares and invested the sale consideration in the purchase of a house on 30-9-1986. The house purchased in Flat No. 3, Iron Side Road, Calcutta and claimed exemption of capital gains tax on the sale of shares u/s 54F. The purchase price was Rs. 25 lakhs out of which Rs. 5 lakhs was paid to the seller at the time of register of sale deed and for balance cheques were issued by the assessee in favour of the seller but the seller could not encash that amount as assessee made the request to the seller to treat the amount shown in the tax as loan to the assessee.

The Income Tax Officer on the aforesaid facts was not satisfied with the claim of the assessee.

According to him, as the sale proceeds on account of sale of shares has not been utilized for purchase of the residential house. Therefore, assessee is not entitled for benefit of section 54F.

In appeal before the Commissioner (Appeals), Commissioner (Appeals) has allowed the claim of the assessee. In appeal before the Tribunal, Tribunal has also allowed the claim of the assessee and confirmed the view taken by the Commissioner (Appeals).

3. The facts are not in dispute that assessee sold 2,32,500 equity shares of Madras Elastonors Ltd. to M/s Modern Goars (P) Ltd. at the rate of Rs. 30 per share. Total amount she received on account of sale of shares is Rs. 30,32,500. Out of that she received only Rs. 10,22,789. On 30-9-1986 she purchased residential house property for consideration of Rs, 25 lakhs and deed was executed and registered. But actually she used the sale proceeds to the tune of Rs. 5,21,279 for purchase of stamps, Rs. 4,75,000 was paid to the seller on 8-10-1985 and Rs. 21,667 was paid to the seller on 26-12-1986, Rs. 43,334 was paid to the seller on 24-10-1987. The case of the assessing officer was that as she has not actually utilized the entire sale proceeds on account of sale of shares. The amount to the extent has not been utilized for purchase of residential house is not entitled for benefit of section 54F of the Act.

The Tribunal was of the opinion that when assessee has purchased the property on 30-9-1986, by registered sale deed in her name, the legal title of the property vested in her from that date and that is sufficient for the purpose of section 54F.

4. Learned counsel for the revenue submits that, when the amount of the sale proceeds of shares has not been utilized within the period specified in section 54F, she is not entitled for benefit u/s 54F. He placed reliance on the decision of the Apex Court in Commissioner of Income Tax, Andhra Pradesh Vs. T.N. Aravinda Reddy, .

5. Mr. Khaitan learned counsel for the assessee submits that actual utilization of the same amount within the period given in section 54F is not required prior to 1988, i.e., before insertion of sub-section (4), if assessee has purchased any

property after the sale of his undivided property within the period specified in section 54F, the assessee is entitled for the benefit of section 54F.

6. The requirement of benefit of the provisions of section 54F is that assessee should purchase or the transfer would take place within the period of two years from the date of the sale of assets by the assessee or the residential house should be constructed within 3 years from the date of the sale of the assets of the assessee. There is no requirement such as utilization of the sale proceeds by assessee within the period stipulated in section 54F.

After insertion of sub-section (4) the legislature has made it clear that the amount of the consideration which is not apportioned by the assessee towards the purchase of the new assets made within one year before the date on which the transfer of the original assets took place or which is not utilized by him for the purchase or construction of the new assets before the date of furnishing the return of income u/s 139 or that amount is not deposited as required under sub-section (4) the assessee shall not be entitled for benefit of provisions of section 54F.

7. The admitted facts in the case in hand are that the shares are sold on 29-9-1986 and assessee purchased a residential house on 30-9-1986, for Rs. 25 lakhs and she paid Rs. 5 lakhs to sellers, Rs. 5,00,000 used for purchase of stamp papers for execution of sale deed. Therefore, the total amount comes to Rs. 30 lakhs for purchase of residential house within the stipulated period in section 54F. Before insertion of sub-section (4) in section 54F, if assessee purchased any property within the period stipulated in section 54F, that is sufficient to take the benefit of section 54F of the Act.

In our view, the Tribunal was right in allowing the benefit of section 54F to the assessee.

In the result, we answer all the questions in affirmative, i.e., in favour of the assessee and against the revenue.

The reference so made stands disposed of accordingly.