

(1979) 01 MAD CK 0044

In the Madras High Court

Case No : Tax Case No. 118 of 1975 (Reference No. 101 of 1975)

Commissioner of Income Tax

APPELLANT

Vs

V. Indira

RESPONDENT

Date of Decision : 22-01-1979

Acts Referred:

Income Tax Act, 1961 — Section 48, 49(1), 55, 55(1)

Citation : (1979) 13 CTR 76 : (1979) 119 ITR 837

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : A.N. Rangaswamy and Nalini Chidambaram, for the Appellant; K.C. Rajappa, for the Respondent

Judgement

Sethuraman, J.—In this reference u/s 256(1) of the I.T. Act, 1961, hereinafter referred to as "the Act", the Tribunal has referred the following question :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in including the sum of Rs. 6,943 paid by the assessee as per compromise decree in the cost of acquisition for the purpose of computation of capital gains in the assessee's case ?"

2. By a settlement deed dated May 28, 1967, a house property bearing Nos. 2 and 3, Lakshmipuram Street, was gifted to the assessee by her father. In the document of gift, the property was valued at Rs. 6,000. During the financial year ended March 31, 1971, the assessee sold the said property for a sum of Rs. 30,000. In the Income Tax assessment for the year 1971-72, the question arose whether there was any capital gains arising out of the sale of the property. The ITO took the cost of the acquisition of the property at Rs. 6,000 as shown in the gift deed and computed the capital gains accordingly. In the appeal before the AAC, the assessee claimed that the cost of the property was not only Rs. 6,000 but included another sum of Rs. 6,943 paid to one Appakannu Mudaliar under the following circumstances. There was a suit filed by the said Appakannu Mudaliar claiming title with reference to 1 ground and 744 sq. ft. In O.S.A. No.

69/62 and 9 of 1963, arising out of that suit, there was a compromise as a result of which the assessee paid a sum of Rs. 6,943 to the said Appakannu Mudaliar in relation to this property. Though a larger amount was, in other words, paid to him in the compromise, as far as this property was concerned, it is not in dispute that the sum paid to him is Rs. 6,943. The claim of the assessee was that this represented the cost of improvement to the property which would be deductible u/s 49(1) read with Section 55(1)(b) of the Act. The AAC held that capital expenditure in making any additions or alterations to the property could alone be added to the original cost of the property and that, in the instant case, there was no such addition or alteration. He was, therefore, of the view that the ITO was justified in not deducting the sum of Rs. 6,943 in computing the capital gain. The assessee appealed to the Tribunal. The Tribunal, after going into the facts, came to the conclusion that the assessee, by paying the amount under the compromise decree, had perfected her title by removing the cloud cast on it by a rival claimant and that this involved both addition and improvement to the title to the capital asset. It was considered that the amount so paid would constitute cost of acquisition within the meaning of Section 49(1) and that, therefore, the assessee would be eligible for deduction of Rs. 6,943. It is this order that has been challenged by the revenue by causing this reference to be made on the question already referred to.

3. In order to appreciate the point involved, it is necessary to refer to the relevant provisions of the Act. Section 45 provides for the levy of tax on the capital gains arising out of the transfer of a capital asset effected in the previous year. The capital gains is deemed to be the income of the previous year in which the transfer took place. Section 48 provides that the income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely, (i) expenditure incurred wholly and exclusively in connection with such transfer; and (ii) the cost of acquisition of the capital asset and the cost "of any improvement thereto. Section 49(1) applies to cases where the capital asset became the property of the assessee under certain given circumstances. In the present case, as already seen, the property became the capital asset of the assessee under a gift. The provision, in so far as it is material to such a case, is as follows :

"Where the capital asset became the property of the assessee---... (ii) under a gift or will;..... the cost of acquisition of the assets shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be."

4. Section 55(1)(b) defines the expression "cost of any improvement". In so far as it is material, that provision runs as follows :

"For the purposes of Sections 48, 49 and 50,--.....

(b) "cost of any improvement", in relation to a capital asset,--

(i) where, the capital asset became the property of the previous owner or the assessee before the 1st day of January, 1954, and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(ii) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in Sub-section (1) of Section 49, by the previous owner,....."

5. The rest of the provision has been omitted as not relevant for our present purpose.

6. In the present case, by applying these provisions it would be clear that the full value of the consideration is admittedly Rs. 30,000 and that the ITO has proceeded on the basis that the cost of acquisition of the property was Rs. 6,000 only because that is the value shown in the gift deed. However, s. 49 says that the cost of acquisition of the asset is the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the asset. In the present case, there is no information as to what was the cost of the acquisition of the asset by the previous owner. As there has been an undisputed deduction of a sum of Rs. 6,000, it is unnecessary to proceed on this point further, except to point out that the ITO does not appear to have applied his mind properly to the statutory provision which authorises the deductions.

7. Section 55(2)(ii) defines the "cost of acquisition" in relation to capital asset for the purposes of Sections 48 and 49, where the capital asset became the property of the assessee by any of the modes specified in Sub-section (1) of Section 49, and where the capital asset became the property of the previous owner before the 1st day of January, 1954, the cost of acquisition means the cost of the capital asset to the previous owner or the fair market value of the asset as on the 1st day of January, 1954. The assessee can choose one of the two, amounts, as it may suit him. This choice is not available if the property was acquired by the previous owner on or after January 1, 1954. It is not clear whether the previous owner acquired this property prior to January 1, 1954. Having regard to this aspect also the sum of Rs. 6,000 given as deduction may not be a proper one.

8. There is one other aspect. If the property had been acquired prior to the 1st day of January, 1954, by the previous owner, then the cost of acquisition of the capital asset or the fair market value as on the 1st day of January, 1954, would alone represent the cost of acquisition or the deductible amount. The cost of any improvements to the property by the successor to the previous owner would not be eligible for deduction.

9. The learned counsel for the assessee submitted that the amount paid, namely, Rs. 6,943, represented the cost of acquisition of the property. The expression "cost of acquisition" occurs both in Sections 49 and 55, In Section 49 it is provided that the cost of acquisition shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement to the asset. We have already seen that there is no material in the present case as to whether the asset became the property of the previous owner prior to the 1st day of January, 1954. If the property became the property of the previous owner after the 1st day of January, 1954, Section 55(2)(ii) cannot, on its language, be applied. She would be governed only by Section 49(1) so that the cost to the previous owner would alone be the cost of acquisition.

10. Section 48 provides for the deduction of cost of acquisition of the capital asset and also cost of any improvement thereto subject to the terms of the other provisions. This is not a case where the sum of Rs. 6,943 can be considered to be the cost of acquisition of capital asset as such, as Section 49 provides for the cost of acquisition only with reference to the previous owner. As far as the previous owner is concerned, he has not paid the sum of Rs. 6,943 and, therefore, the sum of Rs. 6,943 cannot be taken to be the cost to the previous owner. If, in this case, the amount had been paid by the previous owner rather than by the assessee, then, perhaps, the amount would have been deductible in the hands of the assessee as the cost of the acquisition of the assets of the previous owner. But as the amount had been paid by the donee, the assessee here, the amount paid cannot qualify for deduction as cost of acquisition of the capital asset. The Tribunal in its order has not borne in mind the dichotomy between these two concepts, viz., cost of acquisition of, and cost of improvement to, the asset. The Tribunal's conclusion that the sum of Rs. 6,943 represents the cost of acquisition is contrary to Section 55(2) defining that expression.

11. We have now to examine whether the amount can be allowed as deduction as "cost of any improvement thereto". The expression "thereto" would appear to cover a case where the amount is expended on the asset itself. Improving the owner's title to the asset is different from improving the asset itself. Therefore, the amount paid as and by way of settlement of a claim to the person who disputed the title of the assessee, cannot be said to be an expenditure by way of any improvement to the asset as such.

12. The learned counsel for the assessee drew our attention to a decision of the Calcutta High Court in Commissioner of Income Tax Vs. Bengal Assam Investors Ltd., . That case came to be rendered under the provisions of Section 12B, the corresponding provision in the Act of 1922. In the said decision, the facts were as follows :

13. The assessee purchased certain shares of a mill in an auction and incurred expenses of Rs. 1,00,721 for defending his title to the shares, to have them registered in his name and to get the proper voting rights for them, and wanted the said amount to be added to the cost of the shares in order to arrive at a

capital loss. The Calcutta High Court held that the assessee was eligible for the allowance of the amount spent in the litigation. But for this expenditure, the shares would have been of no value. Part of the expenditure referable to getting the shares registered in his name would be cost of acquisition. The expenditure on getting better voting rights would be cost of improvement to the asset. That case has no application here. In the present case, as already seen, the amount cannot be treated as cost of acquisition. The only further question is whether this amount represents the cost of improvements to the asset. The preposition "to" would show that the asset must itself be the beneficiary of the expenditure. There is no such improvement of the asset. The expenditure was only in improving the title of the owner rather than improving the asset as such. There is no scope for deducting this amount u/s 49 or Section 55. The reference is accordingly answered in the negative and in favour of the revenue. There will be no order as to costs.