(1991) 01 MAD CK 0023

In the Madras High Court

Case No : T.C. No. 1062 of 1979 (Reference No. 676 of 1979)

D.D. Chittaranjan APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 03-01-1991

Acts Referred:
Income Tax Act, 1961 — Section 45, 48

Citation : (1992) 193 ITR 238 : (1993) 66 TAXMAN 335

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : R. Janakriraman, for the Appellant; C.V. Rajan, for the Respondent

Judgement

Ratnam, J.—The assessee is an individual. During the previous year relevant to the assessment year 1974-75, the assessee sold two

properties bearing door Nos. 52 and 53, Lalbagh Road, Bangalore, for a total consideration of Rs. 85000. In the course of the assessment

proceedings, the assessee claimed that a sum of Rs. 40,000 paid to one Moosa Haji Ahmed as per the terms of the compromise decree in O. S.

No. 109 of 1970, City Civil Judge, Bangalore, dated October 10, 1972, in respect of the property at No. 24, Cunningham Road Bangalore, Rs.

15,000 each towards purchase price of the properties sold by the assessee and Rs. 15,000 towards cost of improvement, stamp duty, legal

expenses, etc., should be deducted from the sum of Rs. 85,000. Thus, according to the stand of the assessee, on the sale of the properties for Rs.

85,000, no amount could be assessed as income relatable to capital gains. However, the Income Tax Officer took the view that the sum of Rs.

40,000 paid by the assessee in respect of the property at No. 24, Cunningham Road, Bangalore, did not form part of the cost of acquisition of the properties sold by the assessee and hence not deductible. Further, out of a sum of Rs. 15,000 claimed as deduction by way of cost of

improvement, the Income Tax Officer disallowed Rs. 3,119 as having been incurred by the wife the assessee and, determining the cost of the

properties sold by the assessee at Rs. 30,000, brought to tax an aggregate capital gain of Rs. 43,119 (Rs. 85,000 minus Rs. 41,881). On appeal

by the assessee before the Appellate Assistant Commissioner, she look the view that the deductions claimed by the assessee in computing the

capital gains referable to the sale of properties at Nos. 52 and 53, Lalbagh Road Bangalore, by the assessee were not admissible and, in that view,

the appeal was dismissed. On further appeal by the assessee before the Tribunal, it went into the factual detail relating to the acquisition of the

properties sold by the assessee as well as property belonging to the wife of the assessee and finally found that the authorities below were right in

subjecting the capital gain of Rs. 43,119 to tax treatment. u/s 256(1) of the Income Tax, Act, 1961 (hereinafter referred to as ""the Act""), at the

instance of the assessee, the following question of law have been referred to this court for its opinion :

1. Where, on the facts and circumstances of the case, the Appellate Tribunal was right in law in upholding the liability to capital gain in the sum of

Rs. 43,119 ?

2. Where, on the facts and in the circumstances of the case and having regard to the agreements dated June 17, 1969, and the compromise decree

dated October 10, 1972, the Appellate Tribunal was right in law in holding that the payment of Rs. 40,000 did not form part of the cost of

acquisition of the properties sold by the applicant during the relevant previous year and was, therefore, not deductible while computing the capital

gains ?

3. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in its conclusion that there was no overriding title

obliging the applicant to pay Rs. 40,000 ?

2. Before proceeding to answer the question so referred, it would be necessary to notice briefly the factual backdrop relating to the acquisition of

the properties sold by the assessee, viz, door Nos. 52 and 53, Lalbagh Road, Bangalore. One V. Ramalingam had, among others, two daughters

Sumathi and Sivakami, and three sons, Viswanathan, Amarnath and Swaminathan. Sumathi is the wife of the assessee. Ramalingam executed a will

on September 10. 1942, and later he died on February 18, 1942 (sic). Under that will, the wife of the assessee, Sumathi, was given the property

at No. 24, Cunningham Road, Bangalore. Swaminathan and Amarnath, respectively, were given the properties bearing old door Nos. 9A and 9B

corresponding to door Nos. 52 and 53, Lalbagh Road, Bangalore. The other son, Viswanathan, was not given any property at all under the will of

Ramalingam. Viswanathan, who, under the will of his father, Ramalingam, did not have any interest in any of the properties, purported to mortgage

the property at No. 24, Cunningham Road, Bangalore, which belonged to Sumathi, the wife of the assessee, under the will of her father,

Ramalingam, to one Mrs. Kathleen Margaret Spears. Later, on July 23, 1957, Viswanathan purported to act as the power of attorney of Sumathi,

the wife of the assessee, and sold the property at No. 24, Cunningham Road, Bangalore, to one Moosa Haji Ahmed for Rs. 28,000 with an

agreement for reconveyance and, under the term of the agreement executed on June 15, 1961, it was provided that Viswanathan, as the power of

attorney holder of sister, Sumathi, would be entitled to purchase the property at Rs. 24, Cunningham Road, Bangalore, within six year from that

date on payment of a consideration of Rs. 33,000. While matters stood thus, on May 17, 1966, Swaminathan who, under the will of his father,

Ramalingam, became entitled to the property at No. 52, Lalbagh Road, Bangalore, sold it to Abdul Razack with an agreement for reconveyance

within the period of three years from June 17, 1969. Likewise, Amarnath, who was entitled to the property at No. 53, Lalbagh Road, Bangalore,

under the will of his father, Ramalingham, sold that property to one Mir Abdul Subhan with an agreement for reconveyance on the same term as in

the case of Swaminathan. The wife of the assessee, Sumathi, field a suit in the Court of the City Civil Judge, Bangalore, in O. S. No. 109 of 1970

with reference to the property at No. 24, Cunningham Road, Bangalore, impleading Moosa Haji Ahmed, Mrs. Kathleen Margaret spears,

Viswanathan and Sivakami for a declaration that the power dated May 6, 1957 given by her in favour of her brother, Viswanathan, was not valid

and not binding on her mortgage dated April 1, 1952, and the sale dated July 23, 1957, executed by Viswanathan were forged documents not binding on her. Besides, Sumathi had also prayed for the relief by way of recovery of possession and mesne profits. On October 10, 1972, the suit

was decreed in terms of a compromise in the following terms : (1) Moosa Haji Ahmed to whom the property at Cunningham Road was sold was

to hand over vacant possession to Sumathi together with all documents on or before October 1, 1973; (2) Moosa Haji Ahmed was also to

execute a sale deed in Sumathi''s (3) In consideration of the above, Sumathi was to pay Rs. 40,000 to Moosa Haji Ahmed at the time of

registration before October 1, 1973; and (4) If Moosa Haji Ahmed failed to execute the deed before October 1, 1973, Sumathi was to deposit

Rs. 40,000 in the court and call upon Moosa Haji Ahmed to execute the sale deed. Meanwhile, both Swaminathan and Amarnath were unable to

repurchase the properties at Nos. 52 and 53, Lalbagh Road, Bangalore, from Abdul Razack and Mir Abdul Subhan in accordance with the terms

of the agreements for reconveyance and assessee, at the request of Swaminathan and Amarnath, repurchased the properties from Abdul Razack

and Mir Subhan for Rs. 15,000 each and, in turn, entered into agreements to reconvey the properties to Swaminathan and Amarnath on or before

June 17, 1972, on the latter paying him Rs. 15,000 each, which was the amount paid by the assessee to Abdul Razack and Mir Abdul Subhan, a

sum of Rs. 1,000 towards arrears of corporation tax and a further sum of one-half of the amount that was to be paid by the assessee to Moosa

Haji Ahmed for obtaining a reconveyance of the property at No. 24, Cunningham Road, Bangalore. With reference to the agreements for

reconveyance of the properties so entered into the assessee with Swaminathan and Amarnath, suits in O. S. Nos. 318 and 319 of 1972

respectively were instituted by them before the City Civil Judge, Bangalore, to enforce the terms of the agreements for reconveyance, but those

suits were, however, dismissed on January 10, 1978. During the pendency of those suits, on June 25, 1973, the assessee sold the property at No.

53, Lalbagh Road, Bangalore, to flight Lt. A. Rehman for Rs. 45,000 and, on July 31, 1973, he sold the property at No. 52, Lalbagh Road

Bangalore, to Hajria begun for Rs. 40,000 aggregating to Rs. 85,000. It is in the aforesaid factual background that the claim of the assessee for

deduction of the amounts as claimed by him in the course of the assessment proceedings has to be considered.

3. u/s 48 of the Act, the income chargeable under the head ""Capital gains"" shall be computed by deducting from the full value of the consideration

received as a result of the capital asset the following amounts, namely, (i) expenditure incurred wholly and exclusively in connection with transfer;

and (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto. As a result of the inability of Swaminathan and

Amarnath to secure reconveyance of the property from Abdul Razack and Mir Abdul Subhan in terms of the agreement of reconveyance, the

assessee came to purchase the properties at Nos. 52 and 53, Lalbagh Road, Bangalore, for Rs. 30,000 and the agreements for reconveyance

entered into by the assessee with Swaminathan and Amarnath, though sought to be enforced by instituting suits, did not fructify and, consequent

upon the dismissal of the suits in O. S. Nos. 318 and 319 of 1972, the assessee become the owner of the properties at Nos. 52 and 53, Lalbagh

Road, Bangalore, on payment of a consideration of Rs. 30,000. In other words, in so far as the assessee was concerned, the cost of acquisition of

the properties at Nos. 52 and 53, Lalbagh Road, Bangalore, sold by him was Rs. 30,000 (Rs. 15,000 + 15,000). In so far the claim of the

assessee for deducting the payment of Rs. 40,000 made to Moosa Haji Ahmed was concerned, that payment had absolutely no connection

whatever with the properties acquired by the assessee, which were also later disposed of by him led to the arising of the capital gains. It was not

disputed that O. S. No. 109 of 1970 related. to property at No. 24, Cunningham Road, Bangalore, which was bequeathed in favour of the wife of

the assessee, Sumathi, under the terms of the compromise decree, the amount of Rs. 40,000 was payable not by the assessee but by his wife. In

other words, with reference to the payment of Rs. 40,000, no obligation was cast on the assessee for such payment and that too from out of the

amounts realised by him by the sale of the properties at Nos. 52 and 53. Lalbagh Road, Bangalore. If the assessee had paid Rs. 40,000 to Moosa

Haji Ahmed, that at best was in fulfillment of the obligation of his wife, Sumathi, to him under the terms of the compromise decree and with

reference to the property at No. 24, Cunningham Road Bangalore. By the discharge of such an obligation by the assessee, the cost of acquisition

or the properties sold by the assessee cannot be permitted to be swollen. In the events that happened, the title of the assessee to properties at

Nos. 52 and 53, Lalbagh Road, Bangalore, became absolute on the sale deeds in favour of the assessee by Abdul Subhan on payment of Rs.

30,000 and the dismissal of the suits instituted by Swaminathan and Amarnath in O. S. Nos. 318 and 319 of 1972 so that, on the sale by the

assessee of the properties at Nos. 52 and 53, Lalbagh Road, Bangalore, he had an unfettered right over the sale proceeds of Rs. 85,000. No

material was also placed before this court to show that the view taken by the authorities below that out of the amount of Rs. 15,000 claimed by the

assessee as expenses, a sum of Rs. 3,119 was inadmissible, as that amount was spent in connection with the litigation launched by the wife of the

assessee is, in any manner incorrect. We have carefully considered the order of the Tribunal and we find that the Tribunal had taken into account

all the relevant facts to conclude that the claim made by the assessee cannot be sustained. We agree with the conclusion of Tribunal and answer

questions Nos. 1 to 3 in the affirmative and against the assessee. The revenue will be entitled to the costs of this reference. Counsel''s fee Rs. 500.