
(2005) 02 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 44 of 1987

Dr. A.S. Atwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Income Tax Act, 1961 — Section 230A(1), 54
Presidency Towns Insolvency Act, 1909 — Section 56

Citation : (2005) 195 CTR 353 : (2005) 277 ITR 462 : (2005) 146 TAXMAN 171

Hon'ble Judges : Satish Kumar Mittal, J; N.K. Sud, J

Bench : Division Bench

Advocate : S.K. Mukhi, for the Appellant; D.S. Patwalia, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—At the instance of the assessee, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh {for short "the Tribunal"}, has referred the following question of law arising out of its order dt. 29th Sept., 1984, relating to asst. yr. 1975-76, for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that--

- (i) there was no residential house on plot No. D-10;
- (ii) the said house, if at all, was not occupied by the assessee or a parent of his for a period of two years immediately preceding the sale thereof;
- (iii) the new house purchased out of the sale proceeds of the plots sold was not utilised for the purpose of his residence as major portion thereof was let out; and
- (iv) plot No. D-11 did not form part of plot No. D-10 on which some structure was raised and, therefore, the assessee was not entitled to exemption u/s 54 of the IT Act, 1961."

2. The assessee purchased a plot of land measuring 2,000 sq. yards in village Sunet, opposite Punjab Agricultural University, Ludhiana, in the year 1970-71. Subsequently on urbanisation, the property was marked as plot Nos. 10-D and 11-D, Sarabha Nagar, by the Improvement Trust, Ludhiana. Vide letter dt. 28th May, 1965, from the chairman, Improvement Trust, Ludhiana, regarding the exemption u/s 56 of the PTI Act, 1922, the assessee was informed that against the original plot of 2,000 sq. yards, he was allotted plot Nos. 10-D and 11-D measuring 1,955 sq. yards as per plan deposited in the office of the trust. It was also stipulated in the said letter that the assessee was not allowed to sub-divide the allotted land and shall abide by the building bye-laws and other regulations of the trust for future construction. He was also required to get the construction of the existing structure, if any, regularised. The assessee through this letter was also asked to make certain payments and execute an agreement in the prescribed form. This letter was addressed to the assessee as Shri Avtar Singh, son of Raghubir Singh, Entomologist, Government Agricultural College, Ludhiana. On 3rd Sept., 1984, another letter was addressed to the assessee by the chairman, Improvement Trust, Ludhiana, whereby he was required to maintain similar specifications in respect of the two plots. In this letter, it was also mentioned that the assessee had applied for exemption from acquisition on the ground that he had already done some construction and also planted-research material to carry on his work and the exemption from acquisition of his plot originally of 2,000 sq. yards was given to him as one unit. The assessee was allowed to retain the above plots with minor adjustments in the area subject to payment of development charges. These two plots were identified as two independent units for two houses to be constructed thereon.

3. The said plots were sold by the assessee by two separate sale deeds on 19th April, 1974. Plot No. 10-D was sold to Smt. Manorma Sethi for Rs. 60,760 while plot No. 11-D was sold to Smt. Narinderjit Kaur for Rs. 65,660. In both the sale deeds, the assessee had described himself as resident of Punjab Agricultural University, Ludhiana.

4. The ITO proposed to assess the capital gain on the sale of above two plots whereas the assessee claimed exemption u/s 54 of the IT Act, 1961 (for short "the Act"), on the ground that he had purchased a residential house at Chandigarh within one year of date of sale of the two plots. It was claimed that there was a tin shed on plot No. 10-D which was used by the assessee for self-residence prior to its sale as required by Section 54 of the Act. The ITO rejected the claim for exemption. According to him, his predecessor had visited the site and found that tin shed was not worth living as there was no amenities of life provided therein and at best, it could be used as a cattle shed. He further observed that the so-called house was never used by the assessee or his parents for their self-residence. The ITO also recorded the statement of the assessee wherein he admitted that no bill for water supply was paid or received by him and that there was no electric connection in the tin shed. He also observed that even in the sale deed, there was no mention of any house on the aforesaid plot.

Reference was also made to the application filed by the assessee for obtaining clearance certificate u/s 230A(1) of the Act on 7th March, 1974, wherein the information regarding the cost of construction of the property and cost of acquisition of land was given as under :

"(i) Cost of land only not constructed Rs. 6,000

(ii) Plus development charges paid to Improvement Trust Rs. 9,775

(iii) Tin shed, water connection, barbed wiring boundary plantation fruit grapes and non-fruit trees Rs. 5,000 approximately."

From the above, the ITO observed that it was crystal clear that there was no residential house as there were no boundary wall and it was covered by barbed wire only. There was neither any kitchen nor any bathroom in the said property. He also observed that the tin shed was being used only for the purposes of storage of fruit, etc. The ITO, therefore, held that it could not be believed that the assessee or his parents had ever resided in the above tin shed where no living amenities were available.

5. The matter about the disallowance for exemption u/s 54 of the Act was referred to the IAC by the ITO. The assessee contended that the omission of non-mention of superstructure in the sale deeds was merely an inadvertent omission, but it was clear from the contemporaneous evidence available on record that the superstructure existed on the plots in question. For this purpose, the assessee relied on the application for water connection and payment of house-tax. The ITO, on the other hand, urged before the IAC that apart from the fact that tin shed could not be treated as residential house, the exemption u/s 54 was not available even otherwise, as the new house purchased at Chandigarh had been let out and was not used by the assessee for his own residence. The IAC took the view that since there was no mention, whatsoever, in the sale deeds about the alleged superstructure on the land sold, the subsequent contemporaneous evidence could not substitute the sale deed which constituted important and conclusive evidence of the sale transaction. He, therefore, held that there was no residential house in existence which was being used by the assessee or his parents for residential purposes before its sale. He also agreed with the ITO that the new house at Chandigarh was only partly used by the assessee, if at all, for his residence. This was borne out from the fact that in the IT return filed for the assessment year under consideration, the ALV of the let out portion was three times the ALV in respect of the portion occupied by the assessee for his own residence.

The ITO, therefore, in the light of the direction from the IAC computed the chargeable capital gain from two plots sold by the assessee.

6. The assessee went up in appeal before the Commissioner of Income Tax (Appeals) [for short "the CIT(A)"], who accepted the claim for exemption u/s 54 of the Act against the sale of plot No. 10-D. He considered the tin shed

constructed on the said plot as a residential house and he also accepted the claim that the house was occupied by a parent of the assessee for self-residence within the two years preceding the date of sale. Regarding the new house purchased at Chandigarh, he observed that the intention of the assessee to have purchased the house for self-residence was enough to entitle him for exemption u/s 54 of the Act. He also observed that major portion of the property was used by the assessee for his residence. The CIT(A), however, did not accept the claim for exemption in respect of plot No. 11-D on the ground that it was a separate and distinct plot on which admittedly, there was no structure. He, therefore, held that the capital gains arising out of the sale of plot No. 11-D did not qualify for exemption u/s 54 of the Act.

7. Both the Revenue as well as the assessee filed appeals against the order of the CIT(A). The Revenue challenged the exemption granted in respect of plot No. 10-D whereas the assessee was aggrieved by the non-grant of exemption in respect of plot No. 11-D.

8. The Tribunal considered the point whether there was any structure on plot No. D-10 and whether the same could be termed as a residential house so as to claim exemption u/s 54 of the Act. It took the view that the tin shed on plot No. D-10 could not be considered as a residential house and, therefore, the capital gain arising out of the sale of said plot along with the shed did not qualify for exemption u/s 54 of the Act. The Tribunal also held that the tin shed was never occupied by the assessee or either of his parents mainly for the purpose of their residence in the two years immediately preceding the date of transfer. The Tribunal observed that the assessee was residing at Punjab Agricultural University Campus, Ludhiana, and was only visiting the plot in question in connection with research work of fruit trees, etc. from there. The Tribunal also recorded a finding that the new house purchased by the assessee at Chandigarh out of the sale proceeds of the plots in question, was not occupied by him or either of his parent for their residence as 75 per cent area of this house had been let out and only 25 per cent had been retained by him for self-residence. This action, according to the Tribunal, disentitled the assessee from claiming exemption u/s 54 of the Act. The Tribunal also upheld the contention of the Revenue that Plot No. D-11 could not be treated as a part of plot No. D-10 as the two plots were distinct and had been earmarked by the Improvement Trust separately for separate units. Thus, the assessee's claim for exemption in respect of sale of plot No. D-11 on which admittedly there was no structure was rejected. Accordingly, the Tribunal accepted the appeal of the Revenue and dismissed the appeal of the assessee.

9. Mr. S.K. Mukhi, learned counsel for the assessee, reiterated the stand taken before the authorities below. According to him, the tin shed existing on plot No. 10-D duly fell within the description of a house and even in the absence of any electric connection or kitchen or latrine, it was capable of being used as a residence. He further submitted that although the assessee had a residential

house at Punjab Agricultural University Campus which was located opposite village Sunet in which the said plots are located, yet the assessee was using the tin shed for his own residence off and on. He also contended that merely because of a part of the new house at Chandigarh had been let out, it could not be a ground for disallowing the claim for exemption u/s 54 of the Act as there was no requirement that the entire house should be used for assessee's own residence.

10. Mr. D.S. Patwalia, learned counsel for the Revenue, on the other hand, supported the order of the Tribunal. He contended that the findings of the Tribunal that there was no house in existence on plot No. 10-D and that the tin shed raised thereon was incapable of being used as a residence, are based on material on record and supported by sound reasoning. These findings are pure findings of fact in which no perversity has been pointed out.

11. It is not in dispute that exemption in respect of capital gain envisaged u/s 54 of the Act as it existed at the relevant (time) was available in the following circumstances :

- (i) The capital gain arises in respect of house and land appurtenant thereto;
- (ii) the house, in the two years immediately preceding the date of transfer, was being used by the assessee mainly for the purpose of his own or either of his parents' residence;
- (iii) the assessee within a period of one year before or after that date purchases or within a period of two years after that date constructs a house property; and
- (iv) the new house property is for the purposes of his own residence.

Thus, to be entitled for exemption u/s 54 of the Act, all the above four conditions have to co-exist. Non-fulfilment of any of these, disentitles an assessee for claiming the exemption.

12. In the case in hand, the Tribunal has recorded categorical findings of fact that the property sold by the assessee was not a house and that the tin shed on the said property was not used by the assessee for his own residence in the two years immediately preceding the date of transfer. The conclusion of the Tribunal is based on the following grounds :

- (i) There is no mention in the sale deed of any superstructure.
- (ii) The structure on plot No. D-10 is merely a tin shed which, according to the assessee, had been erected at a cost of Rs. 6,000.
- (iii) In the application made by the assessee u/s 230A(1) for obtaining tax clearance certificate before the sale of the property, the assessee had stated that there was a tin shed, water connection, barbed wire boundary, fruit grapes and non-fruit trees of the value of Rs. 5,000 approximately. This statement is verified by way of a declaration at the end that the information furnished in the application is complete and is truly stated to the best of knowledge and belief of

the applicant. Thus, this statement clearly showed that there was no house in existence, but the structure was merely a tin shed with barbed wire boundary.

(iv) The shed was covered with barbed wire and there was no boundary wall.

Further, there was neither any kitchen or bathroom nor was any electricity provided in the shed. Thus, tin shed was not a house for living but only a cattle shed or for storage of fruit.

(v) The assessee had a residence in the Punjab Agricultural University, Ludhiana, close by where he was residing. This fact is borne out from the sale deeds where he has shown himself to be a resident of Punjab Agricultural University.

13. We are satisfied that the reasoning given by the Tribunal to hold that the tin shed was not a house used by the assessee for his residence, is quite justified. It stands admitted that the structure on plot No. D-10 is only a tin shed surrounded only by barbed wire. There is neither any bathroom or kitchen nor is any electricity provided in the said shed. It is, therefore, not possible to believe that a person of the status of senior teacher in the Punjab Agricultural University would use such a structure for his residence especially when he has been provided residential accommodation nearby in the university campus. It is not in dispute that the university campus is located opposite village Sunet where the plots in question are located. Thus, we do not find any infirmity in the finding of the Tribunal that the tin shed on plot No. D-10, even if considered a house, was not occupied by the assessee or a parent of his for their residence in the two years immediately preceding the date of transfer. Thus, the assessee is not entitled to exemption u/s 54 of the Act on this ground alone.

14. Accordingly, we answer question No. (ii) in the affirmative, i.e., in favour of the Revenue and against the assessee. In view of answer to question (ii), we do not deem it necessary to go into the controversy raised in question Nos. (i), (iii) and (iv) as the same is merely of academic interest only.