

(1994) 01 GAU CK 0015

In the Gauhati High Court

Case No : Income-tax Reference No. 27 of 1989

G.C. Sen Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Contract Act, 1872 — Section 25

Income Tax Act, 1961 — Section 52(2)

Citation : (1996) 220 ITR 254

Hon'ble Judges : Manisana, Acting C.J.; M. Sharma, J

Bench : Division Bench

Advocate : P.K. Barua and A. Dasgupta, for the Appellant; D.K. Talukdar, for the Respondent

Judgement

Manisana, Actg. C.J.

1. On being moved by the assessee u/s 256(2) of the Income Tax Act, 1961 ("the Act", for short), the Income Tax Appellate Tribunal has referred to this court the following questions :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that there was capital gains in the hands of the assessee u/s 52(2) of the Income Tax Act, 1961, for the assessment year 1971-72 on the sale of the leasehold right in land and the building standing thereon in occupation of tenants ?

(2) Whether, on the facts and in the circumstances of the case, and on the materials on record, the Tribunal was justified in law in holding that the consideration as shown in the sale deed for sale of the leasehold right in land and the building standing thereon in occupation of tenants was less by more than 15 per cent. of the fair market value of the said property on the date of transfer and was right in law in invoking the provisions of Section 52(2) of the Act in the instant case ?"

2. Facts.--The reference relates to the assessment year 1971-72 and the assessee was assessed as an individual. On October 1, 1970, the assessee sold his property known as "Khalil Market" to one Ratanlal Sharma. The price declared or stated" in the deed of sale was Rs. 1,81,000. The Assessing Officer noticed that the Appellate Tribunal in W. T. A. No. 78/(Gau) of 1971-72, decided on October 31, 1972, with regard to the assessment year 1963-64, directed to fix the value of the property at Rs. 2,61,200. Thereafter, the Assessing Officer invoked his jurisdiction u/s 52(2) of the Act by holding that the fair market value of the asset transferred was Rs. 2,61,200 and that the consideration amount had been understated. Accordingly, the Assessing Officer computed the net income, under his order dated March 30, 1974, for payment of capital gains tax. The assessee appealed before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner upheld the order of the Assessing Officer. On further appeal by the assessee to the Income Tax Appellate Tribunal, the order of the Appellate Assistant Commissioner was confirmed by the Tribunal on February 27, 1976, in I. T. A. No. 768/(Gau) of 1974-75.

3. Section 52(2) came up for consideration before the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, The court held that so far as material for the present purpose, Sub-section (2) of Section 52 could only be invoked only where the consideration for the transfer of a capital asset had been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, and the burden of proving such understatement or concealment was on the Revenue. The court further observed that the sub-section had no application in the case of an honest and bona fide transaction where the consideration received by the assessee had been correctly declared or disclosed by him. This was reiterated by the Supreme Court in Commissioner of Income Tax, Madras Vs. Shivakami Co. Pvt. Ltd.,

4. The effect of the decision of the Supreme Court is that the burden lies on the Revenue to prove that actual price of the asset received by the assessee was shown or declared, at a lesser figure not that the asset was sold at an inadequate consideration. Sub-section (2) has no application in the case of an honest and bona fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him. Understatement of a value is a mis-statement of value actually received and, therefore, the inadequacy of price is different from understating the value in the document of sale.

5. Mr. P.K. Barua, learned counsel for the petitioner, has submitted that the Revenue has failed to prove that the consideration for the transfer of the capital asset had been understated by the assessee. But, the Tribunal had given a finding that there was a mis-statement of value. The question which, therefore, arises for consideration is whether the High Court can interfere with the finding of the Tribunal in a matter like the present one. In Commissioner of Income Tax,

Madras Vs. Shivakami Co. Pvt. Ltd., the Supreme Court, at paragraph 12, stated in the following terms (page 75 of 159 ITR) :

" It is well-settled that when a conclusion of a fact-finding body is based on an inference from primary facts, then the findings of fact are not amenable to challenge but the inferences drawn from the primary facts are open to challenge as a conclusion of law. It is also open to challenge the same on the ground that the conclusion of fact drawn by the Tribunal was not supported by legal evidence or that the impugned conclusion drawn from the fact was not rationally possible. In such a case, it is necessary to examine the correctness of the conclusion. Reliance may be placed on the decision of this court in Commissioner of Income Tax, West Bengal II Vs. Rajasthan Mines Ltd., This position is well-settled by many decisions of this court."

6. In the present case, the Tribunal directed to fix the value of the property at Rs. 2,61,200 as already stated. On a perusal of the orders of the Tribunal, it appears that the Tribunal was dealing, with the fair market value of the asset sold, The Tribunal also took into consideration the price rise while considering the fair market value. Fixing of fair market value is one thing and inadequacy of consideration is another. The capital gains tax is not a tax on what might have been received. The actual price received by the assessee may, be less, than the fair market value. There may be honest and bona fide transactions. It may also be stated here that, under Explanation 2 appended to Section 25 of the Indian Contract Act, merely because consideration is inadequate a transaction is not void. Therefore, the Revenue must lay primary facts from which inference can be drawn that full consideration, or the actual price received by the assessee for the transfer of the asset involved was understated in the deed. On a perusal of the records before us, we do not find that the Assessing Officer or the Tribunal had given a finding as to the actual price received by the assessee for the transfer of the asset nor is there any evidence or material to that effect. This being the situation, the condition precedent for the exercise of jurisdiction, namely, the jurisdictional fact, is lacking in the present case, that is to say, the conclusion of the Tribunal that the consideration was understated is, not supported by legal evidence or material. In that view of the matter, the finding of the Tribunal in the matter like the present one can be interfered with in view of the decision of the Supreme Court, and it is held that the Revenue has failed to prove mis-statement or understatement of value.

7. For the foregoing reasons, the questions are answered in the negative and in favour of the assessee.

8. A copy of this judgment under the signature of the Registrar and the seal of the court will be sent to the Appellate Tribunal.