

(1999) 09 KL CK 0073

In the High Court Of Kerala

Case No : IT Appeal No. 33 of 1999 17 September 1999 A.Y. 1984-85

INCOME TAX OFFICER

APPELLANT

Vs

K.C. GOPALAN

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 45, 53, 54, 54B, 54D

Citation : (2000) 107 TAXMAN 591

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J

Bench : Full Bench

Advocate : P.K.R Menon and George K. George, for the Revenue, for the Appellant;

Judgement

Usha. J.

Appeal at the instance of the revenue is against the order dated 18-11-1998 passed by the Tribunal, Cochin Bench, in Income Tax Appeal No. 72 (Coch) of 1991. The relevant assessment year is 1984-85. Only question to be considered in this case is whether the Tribunal was correct in holding that the assessee is entitled to deduction u/s 54 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") even though for the acquisition of the asset, that is, construction of a house, the amount that was received by way of sale of his property as such was not utilised.

2. Section 45 of the Act, provides that "Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53, 54, 54B and 54D, be chargeable to Income Tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place." In the facts of the present case, during the accounting year relevant to the assessment year, the assessee sold 93.33 cents of land along with building. The claim put forward by the assessee that it was an agricultural land and, therefore, no Income Tax under the head of "Capital gains" is liable to be paid, was not accepted by the Income Tax Officer.

There was a further claim u/s 54 in respect of the "capital gains" on the ground that the amount realised out of the sale of the property was utilised for the construction of a house at Calicut. This claim was not accepted by the assessing officer on the ground that the sale price was not utilised for the construction of the building and it was deposited in private banks. Aggrieved by the above finding of the Income Tax Officer, the assessee filed an appeal before the Commissioner (Appeals), Cochin. It was submitted on behalf of the assessee that he had completed the construction of a house in Calicut on 31-12-1983 at a cost of Rs. 2,98,300. The cost of the building which he had sold was valued at Rs. 40,000.

Therefore, the assessee put forward a contention that cost of the construction of the new house property is more than the capital gains even if any liability of capital gains would arise from the sale of his house. It was further contended that even if the house property was purchased or constructed within a period of one year before the transfer of the old property, he can claim exemption from capital gains in view of the provisions contained u/s 54. It is not necessary that consideration received on the sale of the property as such should be utilised for the construction of the new building. The only condition is that a new house property should have been purchased within one year before or after the sale or should have been constructed within two years of the sale of the property for the purpose of his own residence. The sale was on 28-10-1983 and the new house property was constructed during the period between May, 1982 and December, 1983.

3. The Commissioner (Appeals) took the view that the portion of the land other than the portion occupied by the building sold by the assessee has to be considered as agricultural land and the sale price of that portion, being agricultural land, will have to be excluded from the computation of income. It was also held that even if the entire property is considered as non-agricultural land, the assessee is entitled for the claim of benefit u/s 54 in view of the fact that the assessee constructed a house property in Calicut during the period between May, 1982 and December, 1983 as per the report of the registered valuer. It was found that section 54 does not require that sale consideration obtained by the assessee itself should be utilised for the purpose of constructing or acquiring house property. Appeal of the assessee was, therefore, allowed holding that the appellants entitled for deduction u/s 54 in respect of the capital gains arising out of the transfer.

4. Aggrieved by the above order of the Commissioner (Appeals), the revenue filed appeal before the Tribunal. The Tribunal accepted the view taken by the Commissioner (Appeals). It was held that the capital gains arising out of the sale of agricultural land should have been excluded from the computation of the income in the case of the assessee. The interpretation of the provisions of section 54 made by the Commissioner (Appeals) was affirmed by the Tribunal.

5. The learned standing counsel for the revenue contended before us that so long

as the assessee has no case that the sale consideration received by him while disposing of his property on 28-10-1983 was utilised for the purpose of acquiring the house property at Calicut, the assessee is not entitled to the benefit of section 54. The learned counsel sought to place reliance on three decisions, namely, *Staness Motors (South India) Ltd. Vs. Commissioner of Income Tax*, , *COMMISSIONER OF Income Tax, WEST BENGAL Vs. SAMNUGGER JUTE FACTORY CO. LTD. AND ANOTHER.*, and *BASANT KUMAR ADITYA VIKRAM BIRLA Vs. COMMISSIONER OF Income Tax, CALCUTTA.*, , in support of his contention. We do not find any merit in the above contention raised by the revenue. A mere reading of section 54 would make it clear that the statute has not laid out a condition for the assessee to get the benefit u/s 54 that he should utilise the sale consideration for the purpose of acquisition of property. Section 54 reads as follows :

"Profit on sale of property used for residence.-Where a capital gain arises from the transfer of a capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after date purchased, or has within a period of two years after that date constructed, a house property for the purposes of his own residence, then, instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-

(i) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged u/s 45 as the income of the previous year and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged u/s 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain."

The assessee has to construct or purchase a house property for his own residence in order to get the benefit of section 54. The wording of the section itself would make it clear that the law does not insist that the sale consideration obtained by the assessee itself should be utilised for the purchase of house property. The main part of section 54 provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he

should have constructed a house property within a period of two years after the date of transfer. Clauses (i) and (ii) of section 54 would also make it clear that no provision is made by the statute that the assessee should utilise the amount which he obtained by way of sale consideration for the purpose of meeting the cost of the new asset.

6. A reading of sections 53 and 54 of the Act would make it clear that a special provision is made in respect of capital gains arising out of transfer of particular type of capital asset, namely, house property which was being used by the assessee or a parent of his for the purpose of their residence. Entitlement of the exemption u/s 54 relates to the cost of the acquisition of a new asset in the nature of a house property for the purpose of his own residence within the specified period. The three decisions relied on by the learned standing counsel for the revenue have no application to the issue raised in this appeal. The statutory provision is clear that it does not call for a different interpretation from what has been given to it by the Commissioner (Appeals) and the Tribunal.

7. We find no merits in the contention raised in the appeal and, therefore, it stands dismissed.