

**(1978) 03 MAD CK 0058**

**In the Madras High Court**

**Case No :** Tax Case No. 399 of 1974 (Reference No. 212 of 1974)

M. Viswanathan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision :** 07-03-1978

**Acts Referred:**

Income Tax Act, 1961 — Section 54

**Citation :** (1979) 117 ITR 244

**Hon'ble Judges :** P. Govindan Nair, C.J.; V. Ramaswami, J

**Bench :** Division Bench

**Advocate :** K.S. Sivaraman and B. Kumar, for the Appellant; Nalini Chidambaram, for the Respondent

## Judgement

P. Govindan Nair, C.J.—The question referred to us in respect of the assessment year 1966-67 reads as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the requirement of the provisions of Section 54 of the I.T. Act, 1961, had not been satisfied and consequently the assessee was not entitled to the benefit under the aforesaid provisions for the assessment year 1966-67?"

2. The assessee had purchased a residential building. This was outstanding with the tenant and it was recovered by the assessee on January 5, 1964. He resided in that building from January 16, 1964. The building was sold on June 16, 1965. The question referred has to be answered in the light of the provisions of Section 54 of the Act, the relevant part of which we shall extract:

"54. 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 that 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,--..."

3. There is no dispute regarding the condition that the building must be one the income from which is chargeable as income from house property; nor is there any dispute that the house was used for residential purpose. The revenue would have it that it is not enough that these two conditions are satisfied, but there should be the user of the house as a residential house for the entire period of two years immediately preceding the date on which the transfer took place in order that the section may be attracted. The assessee's contention is that the wording of the section does not warrant the insistence of continuous user as residential house for the entire period of two years immediately preceding the date of transfer. According to counsel for the assessee, it is enough if the building was used as a residential house at any time during the period of two years immediately preceding the date of sale. It was submitted that the word "in" which has got several meanings also denotes that it can be at any time during the period which is mentioned in the case on hand, two years. On that basis it was further submitted that if the section is capable of two meanings, then that meaning which is beneficial to the assessee must be adopted, because it is a well-known principle in regard to taxation statutes that an ambiguity should be resolved in favour of the assessee wherever possible and unless the language is very clear the imposition of the liability under taxing statutes should not be visited upon the assessee.

4. The words in the section which are important are "two years immediately preceding the date of sale" and "was being used". If the words "in the two years immediately preceding" would have stood by themselves some ambiguity would have arisen, because it is possible to say that when we speak of "in the two years", it can be any time during the period of two years. But when the words "in the two years immediately preceding" are coupled with the words "was being used", it connotes in the English language the user which extends to the date of transfer and the expression in the English language is described as past continuous, a continuity which extends up to the termination date which is clearly stated as the date of transfer. The wording of the section appears to us to be clear and it is also clear that the wording is not capable of any meaning other than what we have indicated above. In that view, the principle relied on by the statute is clear and we have got to apply it irrespective of the consequences. It may look harsh, for, the assessee having occupied the house from January 16, 1964 to May 16, 1965, for a year and four months, he should be deprived of the benefit of Section 54. But that is the will of the legislature. It is not for us to say anything on that. There is no principle that if the law is harsh we can interpret the section and give it a meaning which the words do not convey.

5. In the light of the above, we answer the question referred to us in the affirmative, that is to say, in favour of the department and against the assessee. In the circumstances, we direct the parties to bear their costs, which is the only indulgence that can be shown to the assessee in this case.