

(2001) 01 DEL CK 0082

In the Delhi High Court

Case No : Income-tax Reference No. 199 of 1981

Ravi Kumar Narula

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Income Tax Act, 1961 — Section 2(14), 2(42A), 256(1), 49(1)

Citation : (2001) 168 CTR 529 : (2001) 249 ITR 480 : (2001) 118 TAXMAN 641

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Non, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the assessed, the following question has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Delhi Bench "D", Delhi (in short, the "Tribunal"), u/s 256(1) of the Income Tax Act, 1961 (in short, the "Act") :

"Whether, on the facts and circumstances of the case and on the true interpretation of Section 2(14) read with Section 2(42A) and 49(1)(ii) and the Explanations thereto, the Tribunal was right in holding that on the transfer of property No. W-80, Greater Kailash-II, New Delhi, the assessed had made a short-term capital gains and not long-term capital gains ?"

2. The dispute relates to the assessment year 1974-75,

3. The factual position, as indicated in the statement of the case, is as follows :

The assessed during the assessment year in question sold a plot of land measuring 1,000 sq. yards in Greater Kailash-II on January 4, 1974. He had purchased the plot by a sale deed which was registered on December 24, 1973. The Income Tax Officer considered that the period between the purchase of the plot and the sale thereof, that is, the period of ownership of the plot, was less than 60 months and, Therefore, the gain arising from the sale transaction was to

be treated as short-term capital gain and not a long-term capital gain as claimed by the assessed. The assessed's stand was that the right to have the plot was acquired from one Shri S.P. Sehgal on August 25, 1965, by making payment of Rs. 21,000 by the assessed's father. The said price of Rs. 21,000 was also included in the DLF price of the plot of Rs. 18,000. The original purchaser Shri O.P. Malhotra, who had the original receipt No. GK II of 1973, dated May 17, 1960, had endorsed the same in favor of Shri S.P. Sehgal and Shri S.P. Sehgal handed it over to Shri R.C. Narula, father of the assessed, against payment of Rs. 21,000. The assessed's stand was that on September 25, 1969, a letter was addressed to the Secretary, DLF Housing Construction Pvt. Limited (hereinafter referred as "DLF"), enclosing therewith an affidavit of Shri R.C. Narula, praying that necessary endorsement may be completed on the receipts, which were also enclosed. The affidavit filed stated that Shri R.C. Narula had agreed to purchase the plot in question for a sum of Rs. 17,100 and that DLF had agreed to sell it to him. It was further stated in the affidavit that the assessed was the son of Shri R.C. Narula and the latter desired to get the sale deed executed and registered in favor of his son. The matter was carried in appeal by the assessed before the Appellate Assistant Commissioner (in short, "the AAC"). The Appellate Assistant Commissioner held that since the capital asset in question was held by the previous owner for a period of more than 60 months, the capital gains arising from the sale thereof is to be taken as long-term capital gains. The Revenue preferred an appeal before the Tribunal. The stand of the Revenue was that the title to the plot remained with the assessed for a period of 11 days only. It was noticed by the Tribunal that a gift-tax return was also filed by the father of the assessed showing the value of the gift at Rs. 17,100 and the Department had considered that what was gifted to the assessed was the right of ownership of the plot to the assessed, which was valued by the Department at Rs. 80,000 for the purpose of charging gift-tax in the assessment year 1970-71 by taking the date of the gift as September 29, 1969- In the wealth-tax proceedings for the year 1970-71, the assessed had valued his right in the plot at Rs. 21,000. It was his stand that the plot having not been registered in the assessed's name, it was only the value of the right, namely Rs. 21,000--which called for being assessed. The wealth-tax authorities did not accept the assessed's stand and considered that the DLF could not exercise its right to revoke the transactions and further that it could not refuse to give the assessed possession of the plot. Accordingly, it was held that the assessed had a right in the plot in question and the same had to be evaluated on the basis of the market valuation. The right in question was valued at Rs. 80,000. The assessed's stand was that the said right was thus a capital asset and the capital asset having been held by the assessed or by the previous owner in terms of Section 49(1) for a period of 61 months, the capital gains could be assessed as long-term capital gains and not as short-term capital gains. The Revenue's contention, on the other hand, was that only when the sale deed was registered, the assessed acquired title in the plot and what the assessed had got transferred in January, 1974, was the title in the plot and not the right to acquire the plot and further that execution of the sale deed did not

relate back to the date of acquisition of the right to have the plot. The Tribunal accepted the Department's stand. It also observed that the payment of Rs. 21,000 remained a deposit only till the plot was allotted to the assessed and the sale thereof was also registered by the sale deed. The title in the property was got by the assessed only when the sale deed was executed and registered in December 1975. There were endorsements only on the original receipt granted by the DLF in respect of the original deposit made by the original buyer and that the further endorsement on the receipts showed the transfer of the right only, but not of the plot. On being moved for a reference, the question, as set out above, has been referred for opinion of this court.

4. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice.

5. The factual position, as highlighted above, clearly shows that the period between the purchase by the assessed and the sale by him was less than 60 months. Even if it is taken that there was a gift on September 29, 1969, and the date of the gift is taken to be the date of acquisition, then also by the date of transfer on January 4, 1974, the period of 60 months was not over. That being the position, the Tribunal was justified in its conclusion in holding that the assessed had made a short-term capital gain and not long-term capital gain. Our answer to the question referred is, Therefore, in the affirmative, in favor of the Revenue and against the assessed. This reference accordingly stands disposed of.