
(2011) 12 AHC CK 0276
In the Allahabad High Court
Case No : ITA No. 299 of 2009 (A.Y. 1996-97)

Sompal Gupta

APPELLANT

Vs

CIT

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 22, 260A, 54F

Citation : (2012) 207 TAXMAN 17

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Suyash Agarwal and R.R. Agarwal, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

1. Present appeal filed u/s 260-A of the Income Tax Act against the order dt. 25-2-2004 passed by the Income Tax Appellate Tribunal, New Delhi has been admitted on the following substantial questions of law:

(i) Whether the ITAT was correct to decide the appeal of Revenue on merits despite the fact that the tax effect in the appeal was Rs. 76,330 i.e. below Rs. 1 lac., contrary to the policy of Board in view of the Circular F. No. 279/126/98/ITJ, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes New Delhi, dt. 27-3-2000, considered in Commissioner of Income Tax Vs. Camco Colour Co., and such Circular is binding on the Revenue Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, ?

(ii) Whether the ITAT was correct not to consider that the word owner/ownership mentioned in section 54F of the act has the same meaning as that of section 22 of the Income Tax Act and there is no requirement of Registration of Sale Deed as held in case of Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., and R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, ?

(iii) Whether the ITAT while denying exemption u/s 54F, rightly ignored to consider that the test to decide the owner/ownership of the property, is the right to derive income from the property and having actual control over the property without hindrance, whereas the Appellant has already relinquished the right to drive income from the property by virtue of the execution of Memorandum of Family Settlement?

(iv) Whether the ITAT rightly disallowed the long term capital gain claimed by the appellant u/s 54F of the Act discarding the family settlement dt. 17-3-1994 following the decision of Kale and Others Vs. Deputy Director of Consolidation and Others, ?

(v) Whether the ITAT rightly applied the decision of Commissioner of Wealth Tax Vs. Santokh Singh, which pertain to the controversy under the Gift Tax Act and has not dealt with Long Term Capital Gains exemption u/s 54F?

(vi) Whether the ITAT rightly reversed the order of CIT (Appeals), M. Nagar for the reason that there must be some dispute between the members at the time of making of family settlement?

Briefly stated the facts giving rise to the present appeal are as follows:

The respondent assessee is an individual. For the assessment year 1996-97 for which the previous year was from 1-4-1995 to 31-3-1996 the assessee has filed return of income in response to the notice issued u/s 147/148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). declaring income at Rs. 90,320. It came on record that the assessee had made investment in the construction of residential house No. A-8, Shivlok W.K. Road in Meerut jointly with his wife Usha Rani. The investment during the year in question was at Rs. 3,30,000. The matter was referred to the Departmental Valuation Officer who vide report dt. 29-11-1999 determined the cost of construction for the relevant period at Rs. 7,79,664 as against Rs. 6,60,000 disclosed by the assessee and his wife. The assessee has worked out long term capital gains on the sale of shares at Rs. 2,01,300 which has been claimed to be exempt u/s 54F of the Act on the ground that the amount has been invested in the construction of a residential house at Meerut. The Assessing Officer had not allowed the claim of exemption on the ground that the assessee already owns a residential house on the date of transfer of original asset i.e. house property No. 330, Kambalwala Bagh, Muzaffarnagar. Accordingly he assessed total income at Rs. 3,52,667 A demand notice of Rs. 1,36,099 was issued. The matter was taken up in appeal before the Commissioner of Income Tax (Appeals) who vide order dt. 27-7-2000 partly allowed the appeal. The addition made by the Assessing Officer in respect of the differences in the investment shown by the assessee and the value shown by the Departmental Valuation Officer was deleted. The claim of exemption u/s 54F was also accepted. The Revenue feeling aggrieved preferred an appeal before the Tribunal. Before the Tribunal relying upon the circular dt. 27-3-2000 issued by the Central Board of Direct Taxes, New Delhi an objection was raised regarding

the filing of the appeal by the Revenue. On merits it was submitted by the assessee that in view of the memorandum of agreement of family settlement dt. 17-3-1994 between the assessee and his brother the assessee has relinquished all rights of ownership including those of all benefits and income of one fourth portion of the said house No. 330, Kambalwala Bagh, Muzaffarnagar and therefore was entitled for benefit of exemption u/s 54F of the Act. The Tribunal by the impugned order repelled both the contentions. It has come to the conclusion that the memorandum of agreement is a sham document and no benefit can be derived.

2. We have heard Sri Suyash Agarwal, learned counsel for the appellant and Sri A.N. Mahajan, learned Senior Standing Counsel, Income Tax Department.

3. Sri Suyash Agarwal learned counsel relying on the Boards circular dt. 27-3-2000 submitted that the Department could not have preferred an appeal before the Tribunal as the tax effect was less than one lac. However after scrutiny we find that the addition which was made by the Assessing Officer and deleted by the Commissioner of Income Tax (Appeals) was subject matter of challenge in appeal preferred by the Revenue the tax effect was Rs. 1,36,099. That being the position as the tax effect was more than one lac there is no prohibition on the right of the Department for filing an appeal and the Boards circular dt. 27-3-2000 would not be attracted in the present case. On merits of the case Sri Suyash Agarwal placed reliance on memorandum of agreement of family settlement dt. 17-3-1994 entered into between the assessee and his brother. The said memorandum finds place at page 18 of the memo of appeal as Annexure 2. From a reading of the aforesaid memorandum we find that on account of family settlement entered into between the assessee's wife and her brother who belongs to Bindal family the assessee will relinquish his one fourth share in Muzaffarnagar property on the stipulation that members of Bindal family had constructed a house at Meerut. It has come on record that no such house has been constructed by the members of Bindal family at Meerut pursuant to the family settlement entered into between the assessee's wife and her brother. Clause 2 of the agreement which is one of the terms and conditions of the family settlement reads as follows:

2. That the House No. constructed at Meerut as per oral family settlement between the brothers of Bindal family has become the residence of party first and her family members.

As no such house has been constructed by the brothers of Bindal family at Meerut which was a term and condition of the family settlement entered into between the assessee's wife and her brother as also the memorandum of agreement of settlement arrived at by between the assessee and his brother we are of the considered opinion that no advantage can be taken from the family settlement and the order of the Tribunal does not suffer from any legal infirmity. The appeal fails and is dismissed. We may mention here that the appeals being Income Tax Appeal No. 96 of 2004 and 98 of 2004 filed by the assessee's wife

relating to the assessment years 1995-96 and 1996-97 have been allowed on technical ground that the tax effect involved in these appeals were less than one lac without going into the question of the validity of the family settlement entered into between the assessee's wife and her brother. Similarly in Income Tax Appeal No. 97 of 2004 which relates to the assessment year 1995-96 filed by the present assessee has also been allowed on technical ground relying upon the Board circular dt. 27-3-2000 without going into the question of the validity of the family settlement entered into between the assessee and his brother.