

Assistant Commissioner of Vs. Steel Rolling Mills of Hindusthan

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : May-13-1992

Reported in : (1992)42ITD620(Kol.)

Judge : P Pradhan, A Razack

Appellant : Assistant Commissioner of

Respondent : Steel Rolling Mills of Hindusthan

Judgement :

1. The only controversy in these revenue's appeals is whether the CIT (Appeals) was justified in deleting the sum of Rs. 4,48,345 as income from house property in respect of which no deed of conveyance was executed in favour of prospective vendee.
2. For the sake of convenience both the appeals are disposed of by this common order as they involve common issue.
3. To resolve this controversy it is essential to state at the outset the facts involved. The assessee-company was the owner of certain godowns which it transferred to its sister concern, M/s Surrendra Overseas Ltd. (hereinafter in short 'SOL'). From the beginning of the accounting years corresponding to the assessment years under appeal this was done under certain agreement without further executing any registered deed of conveyance as is required for perfect and effectual transfer of immovable properties under the Transfer of Property Act and

the Indian Registration Act. The assessee-company had handed over possession to SOL and also received full consideration in anticipation of the proposed sale by the assessee-company. As a result of this arrangement the SOL realised rents to the extent of Rs. 4,48,345 in each of the years from the tenants of the said godowns. It was contended by the assessee-company before the Assessing Officer at the original assessment stage that since it was not the owner of the godowns and also did not enjoy or receive any income therefrom it cannot be assessed in respect of the rental income of the said godowns under Section 22 of the Income-tax Act, 1961. The Assessing Officer did not agree with the contention of the assessee-company for the reason that since no registered deed of conveyance has been executed by the assessee-company in favour of SOL the assessee-company continued to be the "legal owner" of the said godowns/house properties and as such it has to be assessed under the head 'income from house property' in respect of rental income of the godowns for the two assessment years.

While assessing the assessee under Section 22 the Assessing Officer relied upon the decision of the Hon'ble Calcutta High Court in the case of CIT v. Ganga Properties Ltd. [1970] 77 ITR 637. On first appeal before the AAC the conclusion of the Assessing Officer was confirmed.

Not being satisfied the assessee-company took the matter before the Tribunal and challenged the orders of the lower authorities. As per its order dated 26-6-1979 the 'C' Bench of this Tribunal in ITA No.504(Cal.)/1978-79 after examining the contention of both the parties, without deciding the controversy, remanded the matter back with a direction to adjudicate the point afresh in accordance with law bearing in mind the observation made by the Tribunal in the said order. After the remand by the Tribunal the Assessing Officer passed an order on 23-3-1989 and again assessed the rental income of the godowns in a sum of Rs. 4,48,345 for both the assessment years. In doing so, the Assessing Officer applied the provisions of Section 60 of the Income-tax Act, 1961. Aggrieved against the said order passed by the Assessing Officer the matter was carried to the CIT (Appeals) again by way of first appeal. The CIT (Appeals) deleted the addition made by the Assessing Officer and was of the opinion that the Assessing Officer was not justified in taking recourse to the provision of Section 60 in the instant case as the

Tribunal in its order dated 26-6-1979 has not directed him to take the aid of provision of Section 60. The revenue not being satisfied with the order of the CIT (Appeals) has filed these second appeals before us.

4. It is contended by the learned departmental representative that the CIT (Appeals) went wrong in deleting the addition made by the Assessing Officer and holding that the Assessing Officer was not justified in taking the aid of provision of Section 60 of the Act when there was no direction from the Tribunal in this regard in its order dated 26-6-1979.

The learned departmental representative has taken us to the discussion and direction given by this Tribunal in para 6 of order dated 26-6-1979 and submitted that the Tribunal had stated that since all the documents which are necessary for a proper determination of the point at issue are not available it had set aside the decision of the AAC on the limited question and restored the matter for adjudication of the point afresh in accordance with law. The learned departmental representative submitted that since the assessee has not executed and registered a proper deed of conveyance in favour of SOL it continued to be the legal owner and the title still vested in it and, therefore, as per the provision of Sections 22 to 24 the assessee-company was rightly assessed in respect of the rental income though received by M/s. SOL.

To support his submissions the departmental representative has also relied on the decision of the Hon'ble Calcutta High Court in the case of Ganga Properties Ltd. (supra). The departmental representative also brought to our notice from the discussion made by the CIT (Appeals) in the impugned order at page 5 (para 2) that the assessee had re-transferred the said godowns during the previous year relevant to assessment year 1979-80. According to the departmental representative this arrangement with M/s. SOL was a make believe arrangement. It is, therefore, pleaded by the learned departmental representative that the order of the learned CIT (Appeals) was erroneous and as such should not be upheld by us.

5. The learned counsel for the assessee, Sri A.K. Roychowdhury while supporting the order of the CIT (Appeals) submitted that no doubt the assessee-company had

not executed a registered deed of conveyance in favour of SOL yet the assessee-company has not received the rental income in respect of godowns the possession of which were handed over to M/s. SOL (vendee). It is also submitted that the assessee-company had received the full consideration from M/s. SOL and, therefore, the capital asset namely, the godowns were not at all exploited by the assessee-company and this contention was advanced before the 'C Bench of this Tribunal in ITA No. 504(Cal.)/1978-79 and keeping in view this contention the matter was remanded back by the Tribunal. The Assessing Officer was, therefore, in error in taking recourse the provision of Section 60 of the Income-tax Act and assessing the assessee-company in respect of the rental income of Rs. 4,48,345 for each of the two assessment years. The assessee's counsel has also taken us to para 6 of Tribunal's order dated 26-6-1979. It is further submitted by the assessee's counsel that the Hon'ble Calcutta High Court in a recent judgment in the case of Madgul Udyog v. CIT [1990] 184 ITR 484 has held that if possession is handed over and full consideration is received in respect of house property though no regular and registered deed of conveyance is executed the vendor cannot be assessed under Section 22 in respect of the rental income. The learned counsel for the assessee also submitted that the Hon'ble Calcutta High Court in the case of Madgul Udyog (supra) have also considered the impact of the decision rendered in the case of Ganga Properties Ltd. (supra). According to the assessee's counsel, therefore, in view of the recent judgment of the Hon'ble Calcutta High Court in the case of Madgul Udyog (supra) the order of the CIT (Appeals) has to be upheld. The assessee's counsel has also relied on the judgment of the Calcutta High Court rendered in the case of Park Hotel (P.) Ltd. v. CIT [1987] 167 ITR 60. It is, therefore, urged by the assessee's counsel that the CIT (Appeals) did not go wrong in deleting the addition made by the Assessing Officer and, therefore, no interference should be made in the impugned order of the CIT (Appeals).

6. We have given our careful consideration to the submissions made before us by the representatives of both the parties and also perused the judgment of the Hon'ble Calcutta High Court cited and also the material on record. In the outset we wish to state that there is no force in the argument of the assessee's counsel that the Assessing Officer was not right in taking the aid and recourse to the provision of Section 60 of the Income-tax Act, 1961 as there was no direction by 'C Bench of

this Tribunal in its order dated 26-6-1979. In fact, in para 6 of that order of the Tribunal, we find that the Tribunal has stated that there is no dispute that in the absence of a registered deed of conveyance the assessee continued to be the legal owner of the godowns during the relevant accounting years. In the said para the Tribunal has further observed as under : We do not also have before us all the documents which are necessary for a proper determination of the point at issue. In the circumstances we would dispose of this ground by setting aside the decision of the Assessing Officer on this limited question and restoring the appeals to his file, direct him to adjudicate the point afresh in accordance with law bearing in mind the observation made by us hereinabove.

Thus, no particular or specific direction was given by the Tribunal while remanding the matter. The matter was left to be decided afresh in accordance with law. The only direction was that the observation made in the Tribunal's order should be borne in mind. Therefore, in our view the Assessing Officer was not wrong in taking recourse to the provision of Section 60 of the Income-tax Act and the CIT (Appeals) erred in: deprecating the approach of the Assessing Officer in this regard.

7. We have studied the judgment of the Hon'ble Calcutta High Court rendered in the case of Ganga Properties Ltd. (supra) and are of the opinion that the ratio of the said decision squarely applies to the controversy involved in the present appeals. The Hon'ble High Court has held as under in Ganga Properties Ltd. 's case (supra) : (a) That in the case of sale of an immovable property a registered documents is necessary to give effect to the sale and takes the sale effected only from the date of execution of the document; (b) In Indian law beneficial ownership is unknown, there is but one owner namely the legal owner both in respect of vendor and purchaser and trustee and cestui que trust; and (c) The mere expression 'income from property' used in Section 9 of the Indian Income-tax Act, 1922 (corresponding to Sections 22 to 24 of the Income-tax Act, 1961) refers to the income of legal owner of the property and he is the only person assessable to taxes on the basis of bonafide annual value thereof.

In our opinion the assessee cannot derive much support from the recent decision of the Calcutta High Court in the case of Madgul Udyog (supra) inasmuch as the said decision centred round the controversy regarding the income earned in respect of carrying on the business of construction of multi-storeyed buildings and sale of flats therein where the flats in question were constructed and sold as stock-in-trade and not as capital assets. In fact, we find in Madgul Udyog's case (supra) at page 502 that the Hon'ble Calcutta High Court has only distinguished the earlier judgment rendered in Ganga Properties Ltd.'s case (supra). We feel it useful to reproduce the observation in Madgul Udyog's case (supra) at p. 502 : Ganga Properties' case [1970] 77 ITR 637 (Cal.) does not consider the recent development of the concept of multi-storeyed buildings and issues incidental thereto. All cases so far decided relate to the holding and sale of property by an assessee as capital assets.

The assessee-firm in this case was carrying on the business of construction of multi-storeyed buildings and sale of flats therein.

The flats in question were constructed and sold as stock-in-trade and not as capital assets. Earlier cases including the case of Ganga Properties [1970] 77 ITR 637 are, therefore, clearly distinguishable on facts. The question of notional income should not arise in relation to stock-in-trade particularly when the business income arising on sale has already been assessed in the hands of the assessee-firm in respective years in which the construction was completed and possession was handed over.

In our opinion, therefore, the judgment of the Hon'ble Calcutta High Court in Ganga Properties Ltd.'s case (supra) still rules the field in the interpretation and application of the provision of Section 22 of the Income-tax Act, 1961 for facts and controversy as found in the present appeals. The decision of the Calcutta High Court in Park Hotel (P.) Ltd. 's case (supra) is distinguishable on facts.

8. Very curious results will follow if we accept the contention of the assessee's counsel that since full consideration was received by the assessee-company and it had handed over physical possession of the property to the intending purchaser it has ceased to be owner and, therefore, cannot be assessed under Section 22. We

wish to explain and analyse this as under : The person (intending purchaser) who has received possession of a property by paying full consideration to the vendor (owner of the property) can rightly question the power of the Assessing Officer to assess him under Section 22 in respect of real or notional income of that property on the ground that he is not the "legal owner" because the vendor has not executed and registered a deed/instrument conveying and transferring his title and ownership in him. The possessor (intending purchaser) of the property also cannot be rightly be assessed under the residuary head 'income from other sources' as he can claim that the receipts which he is getting on user and exploitation of that property is capital in nature and that he, by permissive user and enjoyment is defraying and recovering the capital payment made to the vendor termed as 'consideration'. Thus, on both the counts the revenue can be the loser. It can neither assess and collect tax from the vendor nor from the intending purchaser. If the provisions of Section 22 of the Income-tax Act, 1961 are to be interpreted in this manner then it will not only become etiose but also perhaps be abused and mis-used by tax payers.

9. We are conscious of the fact that if a person has the user and enjoyment of a property equitably it is he who should be assessed and required to pay tax in respect of income from such property, but unfortunately in the absence of a registered deed of conveyance in favour of the intending purchaser he continues to be the "owner" because the "legal title" is important and he has not yet been divested of the same. The assessee-company in the present facts and circumstances of the case as against the whole world, was still the legal owner and the real owner as the "title in rem" vested in it. It is well-known that under the provisions of Section 22 of the Income-tax Act, 1961, tax is payable by an assessee in respect of bonafide annual value of the property irrespective of the question whether he received that value or not. The income from property is an artificially defined income and the liability arises from the fact that the assessee is owner of the property. The liability to tax does not depend on the power of the owner to let out the property as it also does not depend on the capacity of the owner to receive the bonafide annual value.

Thus, to put it more plainly, when owner is spoken in Sections 22 to 24 of the Act in respect of house property it is the "legal owner" who is to be meant and understood and not equitable or artificial owner.

10. Therefore, in our view, the assessee-company is liable to pay tax in respect of the sum of Rs. 4,48,345 being rental income in respect of the god owns for which it continued to be the legal owner and the CIT (Appeals), therefore, went wrong in giving relief to the assessee-company by deleting the addition made by the Assessing Officer. We, therefore, vacate the impugned order of the CIT (Appeals) and confirm the order of the Assessing Officer.

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