SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shri Babu Ram Vs. Ito

Shri Babu Ram Vs. Ito

SooperKanoon Citation : sooperkanoon.com/72979

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-23-2004

Reported in : (2004)90TTJ(Delhi)332

Appellant : Shri Babu Ram

Respondent : ito

Judgement :
These cross appeals, one by the revenue and the other by the assessee .for the assessment year 1991-92, are directed against the order of the Commissioner (Appeals). As the grounds involved in both the appeals are common, these were heard together and are being disposed of through this consolidated order.

In the first ground of appeal the assessee has challenged initiation of proceedings under section 147/148 of the Income Tax Act. It was contended that notice issue by the assessing officer was bad in law and illegal as in the said notice dated 5-2-1993 it was not stated whether the notice was being issued to individual or to the HUF. It was contended that status of the assessee has to be mentioned by the assessing officer in the notice otherwise it would be bad in law. It was further contended that issue of a valid notice is condition precedent to assumption of jurisdiction under section 147/148 of the Income Tax Act. If notice is bad in law, a very assumption of jurisdiction is erroneous. The learned counsel for the assessee drew our attention to the following decisions;ITO v. Chandi Prasad Modi The learned Departmental Representative opposed above contention and claimed that the proper notice was issued to the assessee in his individual capacity and

assessment was also made in the same capacity and as such no illegality was involved in the assumption of jurisdiction under section 147/148 of the Income Tax Act.

We have given careful thought to the rival submission of the Parties.

The assessing officer issued notice under section 148 of the Income Tax Act dated 5-2-1993. A copy of the. said notice is available at page 20 of the Paper Book filed before us. The said notice is issued to' Shri Babu Ram S/ o Shri Mool Chand. It is stated to be issued to Shri Babu Ram in his individual capacity. In our considered opinion when notice is issued to individual, no capacity need be stated in the notice. The presumption under the law is that said notice is issued to the person in his individual capacity. At the same time, if notice is issued to the assessee as Karta of his HUF or as trustee or member of AOP, BOP etc. the said capacity need to be stated in the said notice. Above is all the more necessary if the person to whom the notice is issued, as per the Income-tax record is being assessed in various capacities. In such a case it is necessary for the assessing officer to point out in the notice under section 48 as to on. which file the action has been taken by the assessing officer. The capacity of the assessee need be clearly stated in the notice under section 148 of the Income Tax Act.

In the present case Shri Babu Ram the assessee received compensation from the Municipal Corporation on acquisition of his agricultural land in Village Nagla Tasi. This came to the notice of the assessing officer and accordingly notice was issued to the said Shri Babu Ram, assessee.

He has been assessed in his individual capacity. It is not the claim of the assessee that Shri Babu Ram is being assessed in several capacities and therefore, there was scope to misunderstand the capacity in which action was taken against him. The notice and the assessment was rightly made on the individual. We see no legal infirmity in the notice issued in this case. The second notice issued on 31-3-1993, out of abandoned precaution, has already been treated as infructuous by the revenue authorities and the learned counsel for the assessee had nothing further to say on the same. Various decisions cited on behalf of the assessee have no application in this case as in all the cases the assessee had more than one

capacity and notices were issued to the assessee as Karta of his HUF etc. without specifying the said status.

There is no such problem in this case and decisions cited are held to be not applicable to the facts of the case. In the light of above discussion, we reject the ground raised by the assessee relating to the validity of notice issued under section 148 of the Income Tax Act.

In the next ground of appeal the assessee has challenged estimate of cost of acquisition of land. in question (as on 1-4-1974) by the learned Commissioner (Appeals) at Rs. 25 per sq. yard against Rs. 40 per sq. yard claimed by the assessee. The assessing officer estimated the cost @ Rs. 15 per sq. yard and accordingly the revenue has challenged in their appeal the relief allowed to the assessee.

While allowing cost of acquisition @ Rs. 25 per sq. yard the learned Commissioner (Appeals) has observed as under: "3.1 The learned counsel for the appellant submitted that the cost of acquisition as on 1-4-1974 should have been allowed at the rate of Rs. 40 per sq. yard on the basis of valuation report filed at pages 110-118 of the Paper Book. He has further submitted that the land in question was right on bye-pass of Delhi road i.e. Partapur to Modipuram; A map of Village Nagla Tasi prepared by Shri R.K. Gupta, Valuer in this context has been filed. It was further submitted that this land is also near Sardhana Road and one kilometer away from Meerut Cantt. Railway Station. The appellant had also filed a sale deed of Khasra No. 139 in village Nagla Tasi which is quite near to bye-pass where the land was sold on 9.9.1974 at the rate of about Rs. 29 per sq. yard. It is not very far from the land in question. It was contended that the rate of the land in question was to be more than the land referred to because the land. referred to was slightly away from the main bye-pass road.

The learned counsel submitted that stamp rate of the said land was Rs. 36 per sq. yard as mentioned in the sale deed. Reliance was also placed on the certificates of Gram Pradhan, Village Nagla Tasi and Tehsildar, Meerut placed at pages 115 and 116 of the Paper Book wherein the rates have been mentioned between Rs. 35 to Rs. 40 and Rs. 35 to Rs. 50 per sq. yard in 1974. Reliance was also placed

on circle rates of Village Nagla Tasi placed at page 114 wherein circle rates for 1978-79 for ordinary land were fixed at Rs. 70. In view of all this, it was argued that rate of Rs. 40 per sq. yard claimed by the appellant as on 1-4-1974 was fully justified and the assessing officer erred in adopting the rate of Rs. 15 per sq. yard without any reason whatsoever as the order did not show as to on what basis it was adopted.

3.2 1 have considered the submissions of the appellant. The appellant has raised various arguments regarding the value of land in question as on 1-4-1974 and also relied on various evidences. However, all these point out different values of the land for the period in question. The valuer's report, sale deed, referred to, certificate of Gram Pradhan, Village Nagla Tasi and Tehsildar, Meerut all gives different value of land. There is no uniformity in the land rates pointed out therein. The only solid instance which can be considered is sale deed of Khasra No.139. As per sale deed the land was sold on 9-9-1974 at the rate of about Rs. 29 per sq. yard. We are concerned with value of land as on 1-4-1974. My predecessor had determined the value of land in Village Nagla Tasi in the case of Smt. Makhmali Devi W/o Shri Prem Chand R/o 133, Ganj Bazar, Meerut for asst. year 1991-92 (Appeal No.264/92-93/MRT) at Rs. 25 per sq. yard as on 1-4-1974 vide his order dated 18-12-1992. Considering his order which was followed by me in the case of Shri Kabool Singh S/o Kehri Village Nagla Tasi Kasampur, Meerut for asst. year 1991-92 (order dated 13-10-1995 - Appeal No.281/95-96/MRT) I consider it reasonable to determine the value of land as on 1-4-1974 at the rate of Rs. 25 per sq. yard and direct the assessing officer to adopt this rate on the said date for the purposes of computation of capital gain." During the course of hearing, the learned counsel for the assessee placed before us a copy of an order dated 20-6-2000 in the case of Makhmali Devi, referred to and relied upon by the Commissioner (Appeals) to point out that ITAT fixed cost of acquisition at Rs. 30 per sq. yard. The learned counsel for the assessee further argued that having regard to material placed in this case and referred to by the learned Commissioner (Appeals) the assessee was justified in claiming cost of acquisition @ Rs. 40 per sq. yard. The learned Departmental Representative relied upon the order of the assessing officer. She further placed on record a copy of order of the Commissioner (Appeals) dated 18-12-1992 in the case of Smt. Makhmali Devi and submitted that

the assessing officer was right in allowing cost @ Rs. 15 per sq. yard.

We have also considered the orders of the Commissioner (Appeals) and of the Tribunal in the case of Smt. Makhmali Devi. In the aforesaid case cost of acquisition has been allowed at Rs. 30 per sq. yard. There is, therefore, no justification to allow cost of property at a lower figure. After considering the material on record we are inclined to allow cost of acquisition @ Rs. 40 per sq. yard. It is relevant to mention that material brought on record by the assessee in this case was not available in the case of Smt. Makhmali Devi. As noted by the learned Commissioner (Appeals) the assessee for claiming cost at the rate mentioned above, relied upon valuation report of the registered valuer. We see no good ground to reject the aforesaid report, particularly when said report was collaborated with other material available on record and referred to in the impugned order of the Commissioner (Appeals). No error or defect has been pointed out by the revenue authorities in the report of the Registered Valuer. No justifiable reason has been given for not relying upon the said report.

We are, therefore, of the view that capital gain assessable be computed by adopting rate of Rs. 40 per sq. yard as on 1-4-1974. Accordingly, we accept the appeal of the assessee and reject that of the revenue on this point.

In the next ground of appeal the assessee has claimed that deduction under section 54B was wrongly denied to the assessee for investment of Rs. 7,12,894 in purchase of agricultural land.

It is the claim of the assessee that after receipt of compensation for acquisition of agricultural land, the assessee invested Rs. 7,12,894 in purchase of agricultural land and therefore, was entitled to rebate in terms of section 54B of the Income Tax Act. The assessing officer while denying relief to the assessee, held that land was not purchased by Shri Babu Ram and therefore, exemption under section 54B was not available.

In appeal, the assessee submitted before the learned Commissioner (Appeals) that under a family settlement, land was purchased in the names of three sons and grand-sons of the appellant and therefore, the claim should have been allowed. It

was further submitted that land acquired was ancestral and therefore, sons and grandsons had right in the said land. Therefore, purchase in their names was made as per Hindu Law. It was submitted that sons and grandsons had shares in the compensation allotted on acquisition of agricultural land. A copy of family settlement was placed before the Commissioner (Appeals). The assessee lied upon the decisions of the Hon'ble Gujarat and Madras High Courts noted by the learned Commissioner (Appeals) in para 5.1 of his order.

The learned Commissioner (Appeals) however, did not find any force in the above contention. He relied upon the decision of the Hon'ble jurisdictional High Court in the case of Controller of Estate Duty v.Smt. Sheela Prasad (143 ITR 458) to hold that claim of ancestral land in this property was not possible. He, therefore, held that deduction of Rs. 7,12,894 as claimed by the assessee under section 54B of the Income Tax Act, cannot be allowed to the assessee.

The assessee is aggrieved and has come up in appeal. We have heard both the parties and with their help examined the material on record. The learned counsel for the assessee vehemently contended that decision in the case of Smt. Sheela Prasad (supra) was in fact supported the claim of the assessee that land acquired was. ancestral and, since and grandsons of the assessee had right in the compensation paid. The learned counsel for the assessee further relied upon the decisions in the cases of Arvind Chandulal v. CIT (1983) 140 ITR 241(Guj.); and CIT v. R. Ponnammal (1987) 164 ITR 706 (Mad.) to contend that claim of the assessee under section 54B was in order. The learned Departmental Representative supported the impugned order of the Commissioner (Appeals).

We have given careful thought to the contention advanced on behalf of the assessee. There is no material on record to show that the land acquired was ancestral in the hands of Shri Babu Ram. It is further not stablished on record that land in question was allotted to the assessee on abolition of Jamindari rights under the U.P. Jamindari Abolition and Reform Act. It is well settled law that it is for the assessee to prove at land or property in question was ancestral. The aforesaid onus has discharged by the assessee and therefore, we are unable to old that either the land acquired or the compensation or enhanced compensation paid was

HUF assets in the hands of Late Shri Babu Ram.

All the same, we are of the view that this matter relating to the claim of the assessee under section 54B of the Income Tax Act, is required to be re-examined by the assessing officer in accordance with law and in the light of directions given herein below.

The relevant portion of section 54B of the Income Tax Act provides as sunder : "54B(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of capital asset being land 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 for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, 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 land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 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, 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 under section 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, the cost shall be reduced, by the amount of the capital gain It is evident from the above that rebate as per section 54B is given to encourage investment in the agricultural land for being used for agricultural purposes. It is intended to safeguard the interest of the agriculturist. 'if capital gain arises on account of transfer or compulsory acquisition of agricultural land, then rebate is provided if the sale consideration/ compensation is used for the purchase of other agricultural land for the purposes of cultivation. Due to expansion of cities on account of commercialization and globalization, agriculturists are forced to shift their agricultural holdings from towns or places

near to towns to places in the interior. This section enables them to carry on agricultural activities by providing relief against chargeability to capital gain.

It is also well known that a holder of agricultural land in most cases, is not able to carry on the process of agriculture alone. He is helped by his sons, wife and other members of the family and in that sense holder alone is not taken to be the owner of the land. The land and agricultural income from such land is considered to belong to the entire family to be used for their benefit. Courts and Tribunals have to take judicial notice of the manner in which agriculturists are operating in village. We. are therefore, of the view that provision of section 54B(1) cannot be construed in a narrow manner and in case the seller has purchased other land for being used for agricultural purposes, the benefit of the provision has to be allowed. The material thing to be established is whether sale proceeds or some part of it were utilized for purchase of land to be used for, agricultural purposes.

The learned counsel for the assessee has placed on record a copy of order dated 18-6-1991 of the Commissioner (Appeals), Meerut in the case of Shri Ram Das S/o Shri Balwant Singh. In the said case relief was allowed to the assessee for similar investment made in the names of his sons. The learned Commissioner (Appeals) while allowing relief to the assessee, observed as under: "4. However, I agree with the learned counsel that since the amount of Rs. 3,30,000 was also invested in the specified asset, the same was also exempted as envisaged under section 54-E. It is immaterial whether the investment was made in the name of sons or appellant himself. The crucial point to see here is as to whether the investment was made in the aforesaid assets or not. It was brought to my notice that Rs. 3,30,000 was invested in capital gain units and therefore this amount is entitled for exemption under section 54-E. I would, therefore, direct the assessing officer to treat the amount of Rs. 3,30,000 also for the purpose of allowing exemption under section 54-E.We are inclined to agree with the above observations for the reasons given above. We therefore, set aside the impugned order and restore the matter to the file of the assessing officer for examining whether Rs. 7,12,894 out of compensation receipt was invested in purchase of agricultural land. This question was not examined by the revenue authorities as they were of the view that the assessee is not entitled to any relief under section

54B of the Income Tax Act. Let the above question be examined in accordance with law by the assessing officer.

In the last ground of appeal, the assessee has challenged the assessment of the disputed interest on enhanced compensation. The learned counsel for the assessee submitted that enhanced compensation and interest allowed to the assessee did not attain finality and was subject to further appeal filed by the Government. The right of the assessee in interest was inchoate. The learned counsel did not press this point when his attention was drawn to the provisions of sub-section (5) of section 45 brought on the Statute Book by Finance Act, 1987 with effect from 1-4-1988. There was no machinery in the Statute now to tax capital gain or interest on accrual basis. These are now assessable on receipt basis. Having seen above provision, the learned counsel for the assessee did not press his arguments.

Therefore, this ground of appeal relating to the taxability of enhanced compensation is rejected.

In the result, the assessee's appeal is allowed in terms as stated above whereas that of the revenue is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com