

Assistant Commissioner of Vs. Virender Singh

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-18-2005

Reported in : (2007)104ITD365(Delhi)

Judge : R Easwar, P Parikh, S Vice

Appellant : Assistant Commissioner of

Respondent : Virender Singh

Judgement :

1. A short but interesting question which arises in this case is whether the assessee is entitled to the deduction under Section 24(1)(vi) of the Income-tax Act in respect of interest paid to the banks while computing the income from house property.

2. The assessee owned 1.5 per cent share in a building known as Choudhary Building in K-Block Connaught Circus, New Delhi. It was let out to May & Baker for rent. The assessee and the other co-owners entered into an agreement with May & Baker on 9-11 -1996 to get the property vacated for a total consideration of Rs. 1,65,00,000. The said company accepted the payment of the aforesaid amount and surrendered its tenancy rights. In order to make the payment the assessee had borrowed monies from Karnataka Bank and Lord Krishna Bank in respect of which interest had to be paid. The interest was claimed as a deduction by the assessee while computing the income from the said building under the head "Income from house property". The claim was made under Section 24(1)(vi) of the

Act. It amounted to Rs. 24,25,310. The Assessing Officer held that the loan was not taken for acquiring the property and, therefore, the interest cannot be allowed. The assessee's claim was that by making the payment of Rs. 1.65 crore to May & Baker he obtained the tenancy rights over the building which made him the full or complete owner of the property and in that sense he did acquire the property and hence the interest was allowable under Section 24(l)(vi).

The claim having been accepted by the CIT(A), the revenue is in appeal before us.

3. The contention of the learned Sr. DR, Dr. Balwan, is that the assessee did not "acquire" the property by making the payment to May & Baker, that he was the owner of the property both before and after making the payment to May & Baker, that therefore he could not be considered to have "acquired" any property by making the payment and therefore the condition prescribed by Section 24(1)(vi) for allowance of the interest is not satisfied.

4. The argument of the learned representative for the assessee runs as follows: "Property" is a bundle of rights, of which the right of occupation or tenancy, is one. This right has been parted with by the assessee when he let out the property for rent. He had to make a payment of Rs. 1.65 crore for acquiring the said right back from May & Baker under the agreement. The assessee thus "acquired" the property by making the payment, for which he had borrowed the money from the banks.

Therefore, the interest on the bank borrowing was allowable as a deduction under Section 24(1)(vi).

5. The difficulty in accepting the contention is primarily that the word "property" in Section 22 does not stand alone. It is followed by words descriptive of the property that is referred to in the section.

Those words are "consisting of buildings or land appurtenant thereto".

Thus the property referred to in the section is either a building or land appurtenant thereto. This does not admit of the wide interpretation which otherwise the word "property" is susceptible to under the general law or even for the purposes of the

Wealth-tax Act, 1957 or Section 2(14) of the Income-tax Act. Section 2(14) of the Income-tax Act defines a "capital asset" as "property of every kind".

It was, therefore, possible to hold, in the authorities to which our attention was drawn, that any interest in property, including a tenancy right, was a capital asset and monies received for surrender thereof would amount to a capital receipt subject to capital gains tax provided the right was acquired at a cost in terms of money. Under the Wealth-tax Act, 1957, it was held by the Supreme Court in the case of *Ahmed G.H. Arif v. CWT* that the words "property of every description" appearing in Section 2(e) of the said Act as it stood at the material time constitute "a term of widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold or enjoy" and on that basis went on to hold that there is no reason or justification to give any restricted meaning to the word "asset" as defined by Section 2(e) of the Act "when the language employed shows that it was intended to include property of every description". Now as we have already seen, Section 22 of the Income-tax Act makes a significant departure from the two other provisions referred to above. It does not leave any scope for imagining what property is being referred to. The property referred to is physical, viz., buildings or land appurtenant thereto. In the very nature of things, it cannot confine itself to an interest in property. A person, in order to be charged to tax under the head "Income from house property" has to be the owner of the building or land appurtenant thereto and not merely the holder of an interest therein. If that is the meaning to be given to the word "property" in Section 22, we cannot obviously ascribe any other meaning to the same word appearing in Section 24(1)(vi). What is referred to in this section is "the property" and the use of the definite article ("the") clearly shows that the meaning of the word "property" in this section has to be the same as in Section 22. Thus what is being meant in Section 24(1)(vi) is the property in the physical form and shape of a building or land appurtenant thereto. It is, therefore, not possible to accept the claim of the assessee that he acquired the tenancy right from May and Baker and completed his bundle of rights of ownership by paying the amount of Rs. 1.65 crore.

6. Mr. Ganesan laid considerable emphasis on the word "owner" appearing in Section 22 and contended that it was only by acquiring the tenancy right from May and Baker that the assessee became a complete owner of the property. If this contention were to be accepted, then in the case of an assessee who owns property and lets out the same, thus parting with the right of occupation for consideration, he would become somebody less than a full owner and cannot be taxed on the rental value under Section 22. That would make the section unworkable. It would be paradoxical to say that only a full owner (who has his entire bundle of rights intact with him) would be taxable in respect of the annual letting value of the property and at the same breath to say that the moment he lets out the property (parts with the right of occupation) he would cease to be the complete or full owner thereof. We cannot accept an interpretation that would render the charging section meaningless.

7. In our view, the section having manifested clearly that the property that is being referred to is the property consisting of buildings or land appurtenant thereto, the assessee would be eligible for the deduction under Section 24(1)(vi) in respect of interest paid on amounts borrowed, only if the borrowed monies have been utilized for acquiring buildings or land appurtenant thereto and not in respect of monies utilized for paying the tenant for handing over the possession of the property, or in other words, for surrendering the tenancy rights in the property. The CIT(A), with respect, was in error in accepting the assessee's claim.

8. Considerable reliance was placed on behalf of the assessee upon the judgment of the Hon'ble Delhi High Court in *Bawa Shiv Charan Singh v. CIT*. The question before the Hon'ble Court was whether tenancy rights could be considered as a "capital asset" within the meaning of Section 2(14) of the Act and whether the amount received for surrender of the rights could be subject to capital gains tax where it is not possible to compute the "cost of acquisition" of such rights.

It was held that tenancy rights constitute "capital asset", that when they are surrendered there is an extinguishment of the rights which would amount to a transfer and therefore the assessee would be liable to capital gains tax under Section 45. It was also held that since the tenancy was obtained without any cost

in terms of money no capital gains could be computed. It should be appreciated that the Hon'ble Court was not considering Section 22 of the Act or the significance or import of the word "property consisting of any buildings or lands appurtenant thereto" appearing therein. Their Lordships were considering Section 2(14) as can be seen from their observations at pages 32-33 of the report and since that sub-section defined a "capital asset" to mean "property of any kind..." subject to certain exclusions of which leasehold rights were not part, it was held that a tenancy right is property. Herein, we are not concerned with Section 2(14) of the Act. As already observed, Section 22 in a sense consists of a definition of the property, the income from which is subject to tax under the head "Income from house property", by saying that the property should consist of "buildings or land appurtenant thereto".

These words are descriptive of the property the income from which is being charged. Therefore, there is no scope to place such a wide interpretation upon those words as in the case of Section 2(14). For the same reasons, the other authorities to which our attention was drawn in the course of the arguments, also do not apply.

9. One of the points raised on behalf of the assessee before us is that the rent for the property, which was Rs. 2,66,700 per annum, went up to Rs. 1.34 crore per annum after the surrender of the tenancy rights by May & Baker, which is one indication that the assessee acquired the complete ownership and control over the property. We do not see how this makes any difference to the legal position. Obviously May & Baker were paying the old rent and the new tenant paid the rent at the rates prevalent when he occupied the property. This has nothing to do with the acquisition of the property and cannot have any impact upon the legal position that the assessee did not "acquire" the property on surrender of the tenancy rights by May & Baker.

10. We therefore reverse the decision of the CIT(A) and restore the disallowance of the interest. The appeal filed by the Department is thus allowed. No costs.