Assistant Cit Vs. Sekhar Gupta

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Court : Kolkata

Decided On : Aug-02-2000

Reported in : [2001]79ITD192(Cal)

Appeal No. : IT Appeal No. 3892 (Cal) of 1992 2 August 2000 A.Y. 1990-91

Appellant : Assistant Cit

Respondent : Sekhar Gupta

Advocate for Pet/Ap. : A.K. Das, *for the Revenue* S.K. Tulsiyan, *for the Assessee*

Judgement :
ORDER

S. Chandra, J.M.

This is an appeal filed by the department against the Commissioner (Appeals)s order dated 31-8-1992 for the assessment year 1990-91.

2. The appeal is time barred by 2 days and on the basis of the application dated 22-12-1992, we condone the delay on merits and the appeal is admitted.

3. The brief facts of the case are that the assessee had purchased a plot of land in January 1984 for a consideration of Rs. 32,292. Later, he constructed a dwelling unit in the said piece of land with a cost of Rs. 7,50,522 and the same was completed in the year of 1988. On 21-5-1989 the assessee has transferred the

land as well as dwelling unit through two separate Registered Deeds for a sum of Rs. 2,50,000 and a sum of Rs. 7,50,000. In this case the long-term capital gain was Rs. 2,17,186. About the house property there was a short-term capital loss of Rs. 522. (Rs. 7,50,522 minus Rs. 7,50,000). But the claim of the assessee was not accepted by the assessing officer who made the addition accordingly. In first appeal, the Commissioner (Appeals) has deleted the said addition by observing that there is no provision in the law which prohibits two deeds for the land and building separately. Not being satisfied, the department is in appeal before the Tribunal.

4. During the course of argument, the learned Departmental Representative relied on the order of the assessing officer and submitted that the structure cannot be separated from the land and both are the same unit. He said that the assessee made an attempt to avoid the tax by bifurcating the land from the building. Lastly, he justified the order of the assessing officer.

5. On the other hand, the learned Authorised Representative relied on the order of the Commissioner (Appeals) and submitted that it is true that both the land and building were transferred by the assessee. He said that it was done for getting the benefit under section 54E. He further submitted that the construction was taken place after a long time and both cannot be treated alike. In support of his argument, he relied on the ratio laid down by the Kerala High Court in the case of Vasavan v. CIT (1992) 60 Taxman 278 where it was held that the capital gains arising out of compensation paid to wife for acquisition of land belonging to her would attract the provisions of section 54 while being assessed in hands of husband by virtue of provisions contained in section 64. It was further held that the assessing authority was bound to treat the capital gains which but for section 64 should have been assessed in the hands of the wife, as the capital gains of the assessee liable to be assessed in his hands in the same way in which the same would have been assessed in the hands of the wife.

6. We have heard both the parties at length and gone through the material available on record from which it appears that it is an undisputed fact that the land as well as building was transferred by two separate deeds for a different

consideration. It may be mentioned that the definition of capital asset includes property of any kind and land held by the assessee is a capital asset and a building held by the assessee is also a capital asset and it is possible to bifurcate the capital gain arising with reference to the sale of the land and building even if they are sold as one unit, if the lands are held by the assessee for a period more than that prescribed under section 2(42A) of the Income Tax Act, namely, 36 months. It is not possible to say that by construction of the building, the land which was a long-term capital asset, has ceased to be a long-term capital asset. The land is an independent and an identifiable capital asset, and it continues to remain as an identifiable capital asset even after construction of the building. As per the ratio laid down by the Honble Madras High Court in the case of CIT v. Ramachandra Rao (Dr. D.L.) : [1999]236ITR51(Mad) where the bifurcation of the capital gains for the purpose of long-term capital gains pertaining to land and short-term capital gains pertaining to the superstructure was upheld.

7. Further, the Karnataka High Court in the case of CIT v. C.R. Subramanian (2000) 159 CTR 218 (Karn) observed that the capital gains arising out of the land are long-term capital gain while capital gains arising out of building are short-term capital gains. In the said case, the site and the building were treated as separate for the purpose of capital gains.

8. In the light of above discussion, as well as in the well established legal position CIT v. Vimal Chand Golecha , we are of the view that though in the case of sale of land and building constructed on it as a single asset even then the site and the building are to be treated as separate for the purpose of ascertaining the capital gains in each case as long-term gains and short-term gains. Therefore, the capital gains arising on both assets have to be worked out separately.

9. By taking into consideration the facts and circumstances of the case, we find no infirmity with the order of the Commissioner (Appeals) which is hereby upheld.

10. In the result, the appeal filed by the department is hereby dismissed.